

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(93) 209 final - SYN460

Brussels, 14 May 1993

Proposal for a

COUNCIL DIRECTIVE

on the right of residence for students

(presented by the Commission)

## EXPLANATORY MEMORANDUM

On 26 June 1989 the Commission sent to the Council a proposal for a Directive on the right of residence for students<sup>1</sup> based on the second paragraph of Article 7 of the Treaty, which provides for a cooperation procedure with Parliament. After a tortuous legislative procedure, the Council finally adopted on the basis of Article 235 Directive 90/366/EEC on the right of residence for students.<sup>2</sup>

The Commission opposed the change in the legal basis.

Parliament took the view that the change in the legal basis had failed to respect its prerogatives and initiated annulment proceedings in respect of Directive 90/366/EEC (Case C-295/90). The Commission, in its capacity as intervener in the proceedings, supported Parliament.

In its ruling of 7 July 1992, the Court of Justice upheld Parliament's appeal. It annulled Directive 90/366/EEC, ruling that "the effects of the annulled Directive shall continue to have force until the entry into force of a directive adopted on the appropriate legal basis".

The purpose of this proposal is to set in motion the procedure that will result in a new directive on the right of residence for students being adopted on the appropriate legal basis.

### Substance of the proposal

1. In essence, the attached proposal reproduces the version of the Directive as adopted by the Council, and not the substance of the Commission's initial proposal.

The reasons for this are the following:

- Parliament, through its appeal, intended simply to secure acknowledgment that the procedure followed had failed to respect its prerogatives;
  - the actual substance of the Directive was not challenged; in this respect, the Court notes that the essential normative content of the Directive has not been challenged by the institutions or by the Member States;
  - the Court has maintained the effects of the Directive, which has already been transposed into national law by Denmark, Spain, Greece, Ireland, Italy, Luxembourg, the Netherlands and Portugal.
2. However, the text of the Directive 90/366/EEC needs to be adapted in two respects:

1 OJ NO C 191 of 28 July 1989, p. 2.

2 OJ No L 180 of 13 July 1990, p. 30.

- in order to take account of the ruling of 7 July 1992, in which the Court of Justice acknowledged that "the Council was competent to adopt the contested directive pursuant to the second paragraph of Article 7 of the Treaty and that it was accordingly not justified in basing itself on Article 235": the first citation in Directive 90/366/EEC is amended so as to refer to the second paragraph of Article 7 of the Treaty while the last recital, which refers to Article 235, is deleted. A new recital is added in order to include a reference to the annulment of that Directive by the Court of Justice; and
- In order to take account of the ruling given by the Court of Justice on 26 February 1992 in Raulin (C-357/89): the proposed wording of the third recital and of Article 1 is similar to the wording of the initial proposal for a Directive dated 26 June 1989 since the Court of Justice endorsed the Commission's analysis on which the initial wording was based. A fourth recital is inserted in order to underscore the merits of the Directive as an instrument setting out the framework within which the right of residence will be exercised.

3. In view of the fact that the ruling given by the Court of Justice on 7 July 1992 maintained the effects of the annulled Directive until the entry into force of a directive adopted on the appropriate legal basis, it is not possible to set for a new directive a date for the expiry of the transposition deadline later than that specified in the annulled Directive since this would run counter to the Court's ruling by granting Member States that had not as yet transposed Directive 90/366/EEC into national law an extension of the transposition deadline.

## Proposal for a Council Directive on the right of residence for students

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the second paragraph of Article 7 § 2 thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas Article 3 (c) of the Treaty provides that the activities of the Community shall include, as provided in the Treaty, the abolition, as between Member States, of obstacles to freedom of movement for persons;

Whereas Article 8a of the Treaty provides that the internal market must be established by 31 December 1992; whereas the internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty;

Whereas, as the Court of Justice has ruled, Articles 128 and 7 of the Treaty prohibit any discrimination between nationals of the Member States as regards access to vocational training in the Community and whereas access by a national of one Member State to vocational training in another Member State implies, for that national, a right of residence in that other Member State;

Whereas, accordingly, in order to guarantee access to vocational training, the conditions likely to facilitate effective exercise of that right of residence should be laid down;

Whereas the right of residence for students forms part of a set of related measures designed to promote vocational training;

Whereas beneficiaries of the right of residence must not become an unreasonable burden on the public finances of the host Member State,

Whereas, in the present state of Community law, assistance granted to students, as established by the case law of the Court of Justice, does not fall within the scope of the Treaty within the meaning of Article 7 thereof;

Whereas the right of residence can only be genuinely exercised if it is granted to the spouse and their dependent children;

Whereas the beneficiaries of this Directive should be covered by administrative arrangements similar to those

laid down in particular in Directive 68/360/EEC <sup>(1)</sup> and Directive 64/221/EEC <sup>(2)</sup>;

Whereas this Directive does not apply to students who enjoy the right of residence by virtue of the fact that they are or have been effectively engaged in economic activities or are members of the family of a migrant worker;

whereas, by its ruling of 7 July 1992 in Case C-295/90, the Court of Justice annulled Council Directive 90/366/EEC of 28 June 1990 on the right of residence for students, while maintaining the effects of the annulled Directive until the entry into force of a directive adopted on the appropriate legal basis.

HAS ADOPTED THIS DIRECTIVE:

### Article 1

Member States shall take the measures necessary to facilitate exercise of the right of residence in order to guarantee access to vocational training in a non-discriminatory manner. To that end, they shall recognize the right of residence to any student who is a national of a Member State and who does not enjoy this right under other provisions of Community law, and to the student's spouse and their dependent children, where the student assures the relevant national authority, by means of a declaration or by such alternative means as the student may choose that are at least equivalent, that he has sufficient resources to avoid becoming a burden on the social assistance system of the host Member State during their period of residence, provided that the student is enrolled in a recognized educational establishment for the principal purpose of following a vocational training course there and that they are covered by sickness insurance in respect of all risks in the host Member State.

### Article 2

1. The right of residence shall be restricted to the duration of the course of studies in question.

The right of residence shall be evidenced by means of the issue of a document known as a 'Residence permit for a national of a Member State of the EEC', the validity of which may be limited to the duration of the course of studies or to one year where the course lasts longer; in the latter event it shall be renewable annually. Where a member of the family does not hold the nationality of a Member State, he or she shall be issued with a residence document of the same validity as that issued to the national on whom he or she depends.

<sup>(1)</sup> OJ No L 257, 19. 10. 1968, p. 13.

<sup>(2)</sup> OJ No 56, 4. 4. 1964, p. 850/64.

For the purpose of issuing the residence permit or document, the Member State may require only that the applicant present a valid identity card or passport and provide proof that he or she meets the conditions laid down in Article 1.

2. Articles 2, 3 and 9 of Directive 68/360/EEC shall apply *mutatis mutandis* to the beneficiaries of this Directive.

The spouse and the dependent children of a national of a Member State entitled to the right of residence within the territory of a Member State shall be entitled to take up any employed or self-employed activity anywhere within the territory of that Member State, even if they are not nationals of a Member State.

Member States shall not derogate from the provisions of this Directive save on grounds of public policy, public security or public health: in that event, Articles 2 to 9 of Directive 64/221/EEC shall apply.

*Article 3*

This Directive shall not establish any entitlement to the payment of maintenance grants by the host Member State on the part of students benefiting from the right of residence.

*Article 4*

The right of residence shall remain for as long as beneficiaries of that right fulfil the conditions laid down in Article 1.

*Article 5*

The Commission shall, not more than three years after the date of implementation of this Directive, and at three-

yearly intervals thereafter, draw up a report on the application of this Directive and submit it to the European Parliament and the Council.

The Commission shall pay particular attention to any difficulties to which the implementation of Article 1 might give rise in the Member States; it shall, if appropriate, submit proposals to the Council with the aim of remedying such difficulties.

*Article 6*

Member States shall bring into force the law, regulations and administrative provisions necessary to comply with this Directive not later than 30 June 1992. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

*Article 7*

This Directive is addressed to the Member States.

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# DOCUMENTS

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