



EUROPEAN COMMISSION

Brussels,
C(2013) 5730 final

Dear President,

The Commission would like to thank the Vouli ton Ellinon for its Reasoned Opinion on the proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing {COM(2013) 151 final}.

This proposal aims at increasing the EU competitiveness in attracting the brightest talents, and thereby contributes to smart, substantial and inclusive growth, in line with the objectives of the Europe 2020 Strategy. It also aims at increasing people-to-people contact, mobility, transfers of skills and know-how, while at the same time providing for safeguards ensuring fair treatment of third-country nationals.

The Commission takes good note of the observations of the Vouli ton Ellinon and would like to make the following comments in response.

The Vouli ton Ellinon holds the view that making rules for entry and residence mandatory under the proposal for those categories of third country nationals that are optional within the existing legal framework would be in contradiction with the provisions of paragraph 5 of the Article 79 of the Treaty on the Functioning of the European Union (TFEU) that enables Member States to determine volumes of admission of third country nationals coming from third countries to their territory in order to seek work.

The Commission acknowledges the above-mentioned rights of Member States as defined in Article 79 (5) TFEU. However, the principle of volumes of admission should not apply to this proposal, as the main purposes for entering and staying in the territory of Member States of the groups covered by the proposal are not employment-related. The proposal aims to facilitate the admission of young and talented people from third countries for reasons of exchange of knowledge, skills and culture. All parties involved - sending and receiving societies and migrants themselves - are set to benefit from this. The majority of the groups covered by the proposal - such as school pupils, unremunerated trainees or au pairs - do not carry out an economic activity during their stay in the Member State. In case of students, although there is a possibility provided in the proposal to work during studies, the main reason of admission remains linked to study-related purposes, not employment. This is the reason why the right to work is qualified by the option for Member States to set certain time limits in order to ensure that the studies are not jeopardised by the economic activity of the student. In addition, the provision on the right to stay in a Member State for job searching

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purposes after studies does not provide an automatic access to the labour market of the Member State concerned, as Member States maintain their right to apply the relevant authorisation procedures. The same applies to the job-searching opportunities for third-country national researchers. For the latter category, while it could indeed be argued that they come to the EU to work, as the EU is in need of highly-qualified researchers carrying out research projects in agreement with research organisations, the application of quotas to this particular group would run counter to the interests of the EU. As regards remunerated trainees, the proposal provides that Member States may ask the employer of a remunerated trainee for confirmation that the remunerated trainee does not fill a job vacancy. This safeguard aims to ensure that third-country national remunerated trainees do not interfere with competition on the labour market as such. Rather their presence is linked to training purposes.

In the light of the above, the Commission considers that the proposal is not in breach of the subsidiarity principle.

Regarding the comments made by the Vouli ton Ellinon on the two new categories included in the proposal - remunerated trainees and au pairs - the Commission shares the view that these can be considered vulnerable groups subject to the risk of abuse and exploitation. In the light of that, the Commission notes that ensuring legal rights and protection for these two groups of migrants is one of the main objectives of the proposal. A common legal framework at European Union level setting a minimum uniform level of protection and rights of these groups can serve as solid safeguard against exploitation and therefore justifies action at EU level. The Commission has included several elements in the proposal to prevent abuse regarding these two, as well as other, groups of third country nationals, such as: common and clear definitions; specific conditions for admission including, where appropriate, requirement for and content of the agreement between the third country nationals and the host entity defining rights and obligations; the responsibility of the host entity; admission conditions related to age, accommodation, health care and subsistence; certain equal treatment rights and procedural guarantees.

The Commission confirms its readiness to discuss the proposal in-depth with both the European Parliament and the Council, in order to address all potential issues of concern, including those raised by the Vouli ton Ellinon.

The Commission hopes that these clarifications address the concerns expressed by the Vouli ton Ellinon and looks forward to continuing our political dialogue in the future.

Yours faithfully,

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Vice-President*