

**Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities**

(2001/C 332 E/08)

(Text with EEA relevance)

COM(2001) 386 final — 2001/0154(CNS)

*(Submitted by the Commission on 5 September 2001)*

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(a) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Having regard to the opinion of the Committee of the Regions,

Whereas:

- (1) With a view to the progressive establishment of an area of freedom, security and justice, Article 63(3)(a) of the Treaty provides that the Council is to adopt measures on immigration policy relating to the conditions of residence, and standards on procedures for the issue by Member States of residence permits.
- (2) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, acknowledged the need for approximation of national legislation on the conditions for admission and residence of third-country nationals and it requested to this end rapid decisions by the Council, on the basis of proposals by the Commission.
- (3) Regulation of immigration for the purpose of exercising activities as an employed or self-employed person is a cornerstone of immigration policy and the development of a coherent Community immigration policy could not succeed without specifically addressing this issue at Community level.
- (4) All Member States have regulated access of third-country nationals to work with detailed national administrative rules. If it is to operate successfully, a Community policy in this field should be put in place progressively. As a first step the aim should be to lay down certain common definitions, criteria and procedures, which give a common legal frame to the discretion of Member States.
- (5) The newly established Community rules should be based on concepts, which have already been successfully applied in Member States.
- (6) In an increasingly global labour market and faced with shortage of skilled labour in certain sectors of the labour market the Community should reinforce its competitiveness to recruit and attract third-country workers, when needed. This should be facilitated by administrative simplification and by facilitating access to relevant information. Transparent and harmonised rules on the conditions under which third-country nationals may enter and stay in the Community to pursue economic activities, and their rights, should be laid down.
- (7) Provision for a single national application procedure leading to one combined title, encompassing both residence and work permit within one administrative act, should contribute to simplifying and harmonising the diverging rules currently applicable in Member States.
- (8) The chief criterion for admitting third-country nationals to activities as an employed person should be a test demonstrating that a post cannot be filled from within the domestic labour market. The chief criterion for admitting third-country nationals to activities as a self-employed person should be a test demonstrating an added value for employment or the economic development of the host Member State.
- (9) Several ways and options for verifying fulfilment of these criteria in the form of individual or horizontal assessments should provide a flexible frame allowing all interested parties including Member States to react flexibly to changing economic and demographic circumstances.
- (10) Member States should be allowed to apply horizontal measures, such as ceilings or quotas, limiting the admission of third-country nationals.
- (11) Whenever Member States adopt national provisions as provided for by this Directive, they should comply with certain procedural and transparency requirements and in particular an obligation to notify their provisions to the Commission, in order to allow for an exchange of views, further consideration and complementary action within the context of an open coordination mechanism on Community immigration policy.

- (12) Member States should lay down rules on penalties applicable to infringements of the provisions of this Directive and ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive.
- (13) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (14) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of the proposed action, namely the determination of a harmonised legal framework at Community level concerning the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities and of the procedures for the issue by Member States of the relevant permits cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effect of the action, be better achieved by the Community. This Directive confines itself to the minimum required to achieve those objectives and does not go beyond what is necessary for that purpose,

HAS ADOPTED THIS DIRECTIVE:

#### CHAPTER I

#### GENERAL PROVISIONS

##### Article 1

The purpose of the Directive is:

- (a) to determine the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities and
- (b) to determine standards on procedures for the issue by a Member State of permits to third-country nationals to enter and reside in its territory and to exercise activities as an employed or self-employed person.

##### Article 2

For the purposes of this Directive:

- (a) 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty, including stateless persons;
- (b) 'activity as an employed person' means any remunerated economic activity for and under the direction of another person;
- (c) 'activity as a self-employed person' means any remunerated economic activity, which is not accomplished for and under the direction of another person;
- (d) 'residence permit — worker' means a permit or authorisation issued by the authorities of a Member State allowing a third-country national to enter and reside in

its territory and to exercise activities as an employed person;

- (e) 'residence permit — self-employed person' means a permit or authorisation issued by the authorities of a Member State allowing a third-country national to enter and reside in its territory and to exercise activities as a self-employed person;
- (f) 'seasonal workers' means third-country nationals who retain their legal domicile in a third country but are employed in the territory of a Member State in a sector of activity dependent on the passing of the seasons, under a fixed-term contract for a specific job;
- (g) 'transfrontier workers' means third-country nationals resident in the frontier zone of a neighbouring country who are employed in the frontier zone of an adjacent Member State and who return to the frontier zone of the neighbouring country each day or at least once a week;
- (h) 'intra-corporate transferees' means third-country nationals working within a single legal entity and being temporarily transferred into the territory of a Member State, either to the principal place of business or to an establishment of that legal entity, provided that they have worked for the legal entity concerned for at least the 12-month period immediately preceding the transfer;
- (i) 'trainees' means third-country nationals whose presence in the territory of a Member State is strictly limited in duration and is closely connected with increasing their skills and qualifications in their chosen profession before returning to their own country to pursue their career.

##### Article 3

1. The provisions of this Directive shall apply to third-country nationals, except where provisions that are more favourable apply under:

- (a) bilateral or multilateral agreements concluded between the Community, or the Community and its Member States, on the one hand, and third countries on the other hand;
- (b) bilateral or multilateral agreements concluded between one or more Member States and third countries.

2. The provisions of this Directive shall not apply to the exercise of activities which are directly linked to the supply of goods or services from third countries to the Community, as long as third-country nationals carrying out these activities do not stay for more than three months in the Community.

3. The provisions of this Directive shall not apply to:

- (a) third-country nationals established within the Community who are posted to another Member State for the purpose of providing cross-border services or who provide cross border services;

- (b) third-country nationals staying in a Member State as applicants for asylum, under subsidiary forms of protection or under temporary protection schemes;
- (c) third-country nationals whose residence is not legal and whose deportation has been suspended for factual or legal reasons;
- (d) third-country nationals who are family members of citizens of the Union who have exercised their right to free movement within the Community;
- (e) third-country nationals staying in a Member State under family reunification rules.

4. In the absence of specific provisions of Community law, Member States may maintain or introduce more favourable provisions regarding the following categories of person:

- (a) researchers and academic specialists;
- (b) priests and members of religious orders;
- (c) sport professionals;
- (d) artists;
- (e) journalists;
- (f) representatives of non-profit-making organisations.

## CHAPTER II

### ENTRY AND RESIDENCE FOR THE PURPOSE OF PAID EMPLOYMENT

#### Section 1

##### *General rules*

###### *Article 4*

1. Member States shall only authorise third-country nationals to enter and reside in their territory for the purpose of exercising activities as an employed person where a 'residence permit — worker' has been issued by the competent authorities of the Member State concerned in accordance with this Directive.
2. A 'residence permit — worker' shall only be issued if, after verification of the particulars and documents, it appears that the applicant fulfils the requirements for obtaining a 'residence permit — worker' in accordance with Articles 5 and 6, subject to any limitations imposed by a Member State in accordance with Articles 26, 27 and 28.
3. When handling an application, the competent authorities shall comply with the procedural safeguards provided for in Article 29.

###### *Article 5*

1. In order to obtain a 'residence permit — worker', a third-country national intending to exercise activities as an employed person in a Member State shall apply to the competent authority of the Member State concerned. The future employer of a third-country national shall have the right to submit an application on behalf of the third-country national applicant.
2. Applications for a 'residence permit — worker' shall be submitted via the representation of a Member State competent for the country of legal residence of the applicant or directly in the territory of the Member State concerned, if the applicant is already resident or legally present there.
3. The application shall be accompanied by the following particulars and documents:
  - (a) name and address of the applicant and the employer;
  - (b) a valid work contract or a binding offer of work in the Member State concerned, covering the term of the residence permit applied for;
  - (c) description of the envisaged activities as an employed person in the Member State concerned;
  - (d) appropriate evidence of fulfilment of the requirement laid down in Article 6(1) as provided for in paragraphs 2 to 5 there;
  - (e) if required by the Member State concerned, a certificate or adequate proof of good character and conduct and a health certificate;
  - (f) valid passport or equivalent travel documents and, if appropriate, evidence of valid residence title;
  - (g) documents proving the skills which are necessary for the performance of the envisaged activities and evidence of fulfilment of all the conditions applicable to nationals of the Member State concerned for the exercise of the relevant activity as an employed person;
  - (h) evidence of having sufficient resources to support the applicant and his/her family members so as to avoid becoming a burden on the social assistance system of the host Member State for the duration of their stay and of having a sickness insurance covering all risks in the host Member State. Those resources shall be deemed sufficient where they are at, or above, the threshold below which the host Member State may grant social assistance to its nationals. Where this criterion is not applicable, the applicant's resources shall be deemed sufficient where they are no less than the amount of the minimum social security pension paid by the host Member State;
  - (i) proof of payment of the fee for handling the application.

4. Third-country nationals who have been legally resident in a Member State and who have legally exercised activities there as an employed person for more than three years over the preceding five years shall not be required to provide evidence of fulfilment of the requirement laid down in Article 6(1) when submitting an application for a 'residence permit — worker' in that Member State.

#### Article 6

1. When submitting an application in accordance with Article 5, it must be demonstrated that a job vacancy in that Member State cannot be filled in the short term by any of the following categories:

- (a) citizens of the Union;
- (b) third-country nationals who are family members of citizens of the Union who have exercised their right to free movement within the Community;
- (c) third-country nationals already enjoying full access to the national labour market concerned under the agreements referred to in Article 3(1);
- (d) third-country nationals already enjoying access to the national labour market concerned under existing national legislation or under Community legislation;
- (e) third-country nationals who are legally resident in a Member State and who are and have been legally exercising activities as an employed person in that Member State for more than three years; or
- (f) third-country nationals who have been legally resident in that Member State and who have legally exercised activities as an employed person in that Member State for more than three years over the preceding five years.

2. The requirement laid down in paragraph 1 shall be deemed to be fulfilled if a specific job vacancy has been made public via the employment services of several Member States for a period of at least four weeks, and in particular, when appropriate, by means of the European Employment Services (EURES) network established by Commission Decision 93/569/EEC<sup>(1)</sup>, and if no acceptable job application has been received from persons listed in paragraph 1 or from third-country nationals who are citizens of countries with which accession negotiations have been started. The published job vacancy shall contain realistic, reasonable and proportionate requirements for the offered post. This shall be checked and scrutinised by the competent authorities when evaluating an application for a residence permit submitted in accordance with Article 5.

3. Member States may adopt national provisions according to which the requirement laid down in paragraph 1 is deemed to be fulfilled for a specific number of jobs, in a specific sector, for a limited time-period and, if appropriate, in a specific

region without the need for an individual assessment. The national provisions shall lay down in detail the criteria according to which applications for work permits shall be ranked when the number of applications received outnumber the published number of jobs. Member States shall consider in the first place applications from citizens of countries with which accession negotiations have been started.

4. Member States may adopt national provisions according to which the requirement laid down in paragraph 1 is deemed to be fulfilled if the annual income offered to a third-country national exceeds a defined threshold.

5. Member States may adopt national provisions according to which the requirement laid down in paragraph 1 is deemed to be fulfilled for a specific third-country national, if a defined amount of money has been paid by the future employer of that person to the competent authorities. The money received from the employer shall be spent for measures promoting the integration of third-country nationals or for vocational training purposes.

#### Article 7

1. A 'residence permit — worker' shall be issued for a predetermined period. The initial 'residence permit — worker' granted shall be valid for a period of up to three years to be determined in accordance with national legislation. It shall be renewable for periods of up to three years, to be determined in accordance with national legislation, on application by the holder, to be submitted at least three months before the expiry date and after consideration by the competent authority of a file containing updated information on the items enumerated in Article 5(3) and in particular detailed information on the activities exercised as an employed person.

2. Applicants for renewal who have been holding a 'residence permit — worker' in the Member State concerned for more than three years shall not be required to provide evidence of fulfilment of the requirement laid down in Article 6(1).

#### Article 8

A 'residence permit — worker' shall initially be restricted to the exercise of specific professional activities or fields of activities. It may also be restricted to the exercise of activities as an employed person in a specific region. After three years, it shall not be subject to these restrictions.

#### Article 9

1. After a 'residence permit — worker' has been issued, its holder shall notify to the competent authorities any changes to the information provided in accordance with Article 5(3). If these changes relate to points (b) or (c) of Article 5(3) they shall be subject to the approval of the competent authority of the Member State concerned.

<sup>(1)</sup> OJ L 274, 6.11.1993, p. 32.

2. During the period of validity of a 'residence permit — worker', competent authorities shall not consider changes that relate to Article 5(3)(d).

#### Article 10

1. The competent authorities shall revoke a 'residence permit — worker' which has been fraudulently acquired.

2. The competent authorities may suspend or revoke a 'residence permit — worker' where the particulars supporting the application as provided for in Article 5 are incorrect or have not been amended in accordance with Article 9. The competent authorities may also suspend or revoke a 'residence permit — worker' when such measure is considered necessary for reasons of public policy or public security by the Member State concerned in accordance with Article 27.

3. Unemployment in itself shall not constitute a sufficient reason for revoking a 'residence permit — worker' unless the period of unemployment exceeds the following duration:

- (a) three months within a 12-month period, for holders of a 'residence permit — worker' who have legally exercised activities as employed or self-employed persons in the Member State concerned for less than two years;
- (b) six months within a 12-month period, for holders of a 'residence permit — worker' who have legally exercised activities as employed or self-employed persons in the Member State concerned for two years or more.

#### Article 11

1. During the period of its validity, a 'residence permit — worker' shall entitle its holder at a minimum to the following:

- (a) entry to the territory of the Member State issuing the 'residence permit — worker';
- (b) re-entry to the territory of the Member State issuing the 'residence permit — worker' after temporary absence;
- (c) passage through other Member States in order to exercise the rights under points (a) and (b);
- (d) residence in the Member State issuing the 'residence permit — worker';
- (e) exercise of the activities authorised under the 'residence permit — worker';
- (f) enjoyment of equal treatment with citizens of the Union at least with regard to:

(i) working conditions, including conditions regarding dismissals and remuneration;

(ii) access to vocational training necessary to complement the activities authorised under the residence permit;

(iii) recognition of diplomas, certificates and other qualifications issued by a competent authority;

(iv) social security including healthcare;

(v) access to goods and services and the supply of goods and services made available to the public, including public housing;

(vi) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations.

2. Member States may restrict the rights conferred under paragraph 1(f)(ii) to third-country nationals who have been staying or who have the right to stay in their territory for at least one year.

They may restrict the rights conferred under paragraph 1(f)(v) with respect to public housing to third-country nationals who have been staying or who have the right to stay in their territory for at least three years.

3. After the expiry of a 'residence permit — worker' and following their return to a third country, former holders of a 'residence permit — worker' shall have the right to request and obtain the payment of the contributions made by them and by their employers into public pension schemes during the period of validity of the 'residence permit — worker,' provided that:

(a) the applicant cannot or will not obtain payment of a Member State pension under national law or under the agreements referred to in Article 3(1), when residing in a third country;

(b) the applicant is unable, under national law or the agreements referred to in Article 3(1), to transfer pension rights to a scheme of the third country where the applicant resides;

(c) the applicant formally waives all rights/claims acquired under the national pension scheme concerned;

(d) the application is submitted from a third country.

## Section 2

**Rules for specific categories**

## Article 12

1. Seasonal workers may be granted a 'residence permit — seasonal worker' for up to six months in any calendar year, after which they shall return to a third country.

The provisions of Section 1 shall apply *mutatis mutandis* to such permit.

A 'residence permit — seasonal worker' shall not be extended to cover a total period exceeding the six-month period. Member States may issue up to five 'residence permits — seasonal worker' covering up to five subsequent years within one administrative act ('multi-annual residence permit — seasonal worker').

2. Member States may ask applicants or their future employers to deposit a security, which shall be repayable on the return of the seasonal worker to a third country.

## Article 13

Transfrontier workers may be granted a 'permit — transfrontier worker'.

The provisions of Section 1, with the exception of Article 11(1)(d), shall apply *mutatis mutandis* to such permit.

## Article 14

1. Intra-corporate transferees may be granted a 'residence permit — intra-corporate transferee'.

The provisions of Section 1 shall apply *mutatis mutandis* to such permit. However, applicants for a 'residence permit — intra-corporate transferee' shall not be required to provide evidence of fulfilment of the requirement laid down in Article 6(1). Instead, applicants shall demonstrate that they fulfil the criteria set out in paragraph 2 of this Article.

2. Intra-corporate transferees shall either be:

(a) 'key personnel', that is to say persons working in a senior management or executive position within a legal entity, receiving general supervision or instructions principally from the board of directors or stockholders of the business or their equivalent. The functions of key personnel can include: directing the establishment or a department or sub-division of the establishment; supervising and controlling the work of other supervisory, professional or managerial employees; and/or having the authority personally to engage and dismiss personnel, or to recommend such engagement or dismissal, or other personnel actions; or

(b) 'specialists', that is to say persons possessing uncommon knowledge essential to the establishment's service, research equipment, techniques or management. In assessing such knowledge, account will be taken not only of knowledge specific to the establishment, but also of whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge.

3. The initial period of validity of the 'residence permit — intra-corporate transferee' shall be equal to the duration applied for, subject to a maximum period of validity of five years.

## Article 15

1. Trainees may be granted a 'residence permit — trainee'.

The provisions of Section 1 shall apply *mutatis mutandis* to such permit. However, applicants for a 'residence permit — trainee' shall not be required to provide the evidence of fulfilment of the requirement laid down in Article 6(1). Instead, applicants shall demonstrate that the envisaged activity is strictly limited in duration and is closely connected with increasing their skills and qualifications.

2. The overall validity of a 'residence permit — trainee' shall not exceed one year. This period may be extended exclusively for the time needed to obtain a professional qualification recognised by the Member State concerned in the sphere of activity of the trainee.

## Article 16

1. Third-country nationals pursuing activities as an employed person in the context of youth exchange or youth mobility schemes, including 'au pairs', may be granted a 'residence permit — youth exchange/au pair'.

The provisions of Section 1 shall apply *mutatis mutandis* to such permit. However, applicants for a 'residence permit — youth exchange/au pair' shall not be required to provide evidence of fulfilment of the requirement laid down in Article 6(1). Instead, applicants shall demonstrate that the envisaged activity is strictly limited in duration and connected with a youth exchange or youth mobility scheme officially recognised by the Member State concerned.

2. The overall validity of a 'residence permit — youth exchange/au pair' shall not exceed one year. This period may be extended exceptionally if a youth exchange or youth mobility scheme officially recognised by a Member State provides for that possibility.

3. Member States may ask applicants or their future employers to deposit a security, which shall be repayable on the return to a third country.

## CHAPTER III

**ENTRY AND RESIDENCE FOR THE PURPOSE OF EXERCISING  
SELF-EMPLOYED ECONOMIC ACTIVITIES***Article 17*

1. Member States shall only authorise third-country nationals to enter and reside in their territory for the purpose of exercising activities as self-employed persons where a 'residence permit — self-employed person' has been issued by the competent authorities of the Member State concerned in accordance with this Directive.

2. A 'residence permit — self-employed person' shall only be issued if, after verification of the particulars and documents, it appears that the applicant fulfils the requirements for obtaining a 'residence permit — self-employed person' in accordance with Articles 18 and 19, subject to any limitations imposed by a Member State in accordance with Articles 26, 27 and 28.

3. When handling an application, the competent authorities shall comply with the procedural safeguards provided for in Article 29.

*Article 18*

1. In order to obtain a 'residence permit — self-employed person', a third-country national intending to exercise activities as a self-employed person in a Member State shall apply to the competent authority of the Member State concerned.

2. Applications for a 'residence permit — self-employed person' shall be submitted via the representation of a Member State competent for the country of legal residence of the applicant or directly in the territory of the Member State concerned, if the applicant is already resident or legally present there.

3. The application shall be accompanied by the following particulars and documents:

- (a) name and address of the applicant and of the location of exercise of the envisaged activities as a self-employed person;
- (b) detailed business plan covering the time-period for which a 'residence permit — self-employed person' is requested;
- (c) evidence that the applicant has sufficient financial means, including own resources, in accordance with the business plan and, if applicable, evidence of investment of the required minimum investment sum including financial guarantees;
- (d) appropriate evidence of fulfilment of the requirement laid down in Article 19(1);

(e) if required by the Member State concerned, a certificate or adequate proof of good character and conduct and a health certificate;

(f) valid passport or equivalent travel documents and, if appropriate, evidence of valid residence title;

(g) documents proving the skills which are necessary for the performance of the envisaged activities and evidence of fulfilment of all the conditions applicable to nationals of the Member State concerned for the exercise of the relevant activity as a self-employed person;

(h) evidence of having sufficient resources to support the applicant and his/her family members so as to avoid becoming a burden on the social assistance system of the host Member State for the duration of their stay and of having a sickness insurance covering all risks in the host Member State. Those resources shall be deemed sufficient where they are at, or above, the threshold below which the host Member State may grant social assistance to its nationals. Where this criterion is not applicable, the applicant's resources shall be deemed sufficient where they are no less than the amount of the minimum social security pension paid by the host Member State;

(i) proof of payment of the fee for handling the application.

4. Third-country nationals who have been legally resident in a Member State and who have legally exercised activities there as a self-employed person for more than three years over the preceding five years shall not be required to provide evidence of fulfilment of the requirement laid down in Article 19(1) when submitting an application for a 'residence permit — self-employed person' in that Member State.

*Article 19*

1. When submitting an application in accordance with Article 18, it must be demonstrated that the envisaged activities as a self-employed person will create an employment opportunity for the applicant and will have a beneficial effect on employment in the Member State concerned or on the economic development of that Member State.

2. Member States may adopt national provisions according to which the requirement laid down in paragraph 1 is deemed to be fulfilled, or not fulfilled, for specific activities as a self-employed person in specific sectors and, if appropriate, in a specific region without the need for an individual assessment.

3. Member States may adopt national provisions according to which the requirement laid down in paragraph 1 is deemed to be fulfilled for specific activities as a self-employed person in specific sectors and, if appropriate, in a specific region if an applicant invests a defined minimum amount of own resources.

#### Article 20

1. A 'residence permit — self-employed person' shall be issued for a predetermined period. The initial 'residence permit — self-employed person' granted shall be valid for a period of up to three years to be determined in accordance with national legislation. It shall be renewable for periods of up to three years, to be determined in accordance with national legislation, on application by the holder, to be submitted at least three months before the expiry date and after consideration by the competent authority of a file containing updated information on the items enumerated in Article 18(3), and in particular detailed information on the activities exercised as a self-employed person.

2. Applicants for renewal who have been holding a 'residence permit — self-employed person' in the Member State concerned for more than three years shall not be required to provide evidence of fulfilment of the requirement laid down in Article 19(1).

#### Article 21

A 'residence permit — self-employed person' shall initially be restricted to the exercise of specific activities as a self-employed person or to specific fields of activities. It may also be restricted to the exercise of activities as a self-employed person in a specific region. After three years it shall not be subject to these restrictions.

#### Article 22

1. After a 'residence permit — self-employed person' has been issued, its holder shall notify to the competent authorities any changes to the information provided in accordance with Article 18(3). If these changes relate to points (b) or (c) of Article 18(3) they shall be subject to the approval of the competent authority of the Member State concerned.

2. During the period of validity of a 'residence permit — self-employed person', competent authorities shall not consider changes that relate to point (d) of Article 18(3).

#### Article 23

1. The competent authorities shall revoke a 'residence permit — self-employed person' which has been fraudulently acquired.

2. The competent authorities may suspend or revoke a 'residence permit — self-employed person' where the particulars supporting the application as provided for in Article 18 are incorrect or have not been amended in accordance with Article 22. The competent authorities may also suspend or revoke a 'residence permit — self-employed person' when such measure is considered necessary for reasons of public policy or public security by the Member State concerned in accordance with Article 27.

3. Commercial difficulties shall not constitute a sufficient reason for revoking a 'residence permit — self-employed person' unless the period during which the holder is not able to meet the costs of living in accordance with Article 18(3)(h) exceeds the following period:

(a) three months within a 12-month period, for holders of a 'residence permit — self-employed person' who have legally exercised activities as employed or self-employed persons in the Member State concerned for less than two years;

(b) six months within a 12-month period, for holders of a 'residence permit — self-employed person' who have legally exercised activities as employed or self-employed persons in the Member State concerned for two years or more.

#### Article 24

The rules set out in Article 11 shall also apply to holders of a 'residence permit — self-employed person'.

### CHAPTER IV

#### HORIZONTAL PROVISIONS

#### Article 25

Member States may request applicants to pay fees for handling applications in accordance with this Directive. The level of fees shall be proportionate and may be based on the service actually provided.

#### Article 26

Member States may decide to adopt national provisions limiting the issuing of permits in accordance with this Directive to a set ceiling or suspending or halting the issuing of these permits for a defined period, taking into account the overall capacity to receive and to integrate third-country nationals on their territory or in specific regions thereof. These national provisions shall state in detail which groups of persons are covered by, or exempted from, the measure. If these national provisions impose ceilings, they shall lay down in detail the criteria according to which applications for permits in accordance with this Directive shall be ranked when the number of applications received exceeds the set ceilings.

#### Article 27

Member States may refuse to grant or to renew, or may revoke, permits in accordance with this Directive on grounds of public policy, public security or public health. The grounds of public policy or public security shall be based exclusively on the personal conduct of the third-country national concerned. Public health shall not be invoked by Member States as a reason for revoking or not renewing a residence permit solely on the ground of illness or disability suffered after the issue of the residence permit.

#### Article 28

This Directive is without prejudice to the application of national legislation regulating the access of third-country nationals to employment in the public service or to activities which in that Member State are connected, even occasionally, with the exercise of official authority.

## CHAPTER V

## PROCEDURE AND TRANSPARENCY

## Article 29

1. Member States shall ensure that a decision to grant, modify or renew a permit in accordance with this Directive, is adopted and communicated to the applicant at the latest within 180 days after receipt of the application. Decisions on an application submitted in accordance with Articles 14, 15 and 16 shall be adopted and communicated to the applicant within 45 days after its receipt.

2. Every Member State shall make public the average time necessary for its authorities to issue, modify or renew permits in accordance with this Directive and inform applicants thereof upon receipt of an application.

3. If the information supporting the application is inadequate, the competent authorities shall notify the applicant of the additional detailed information that is required. The period referred to in paragraph 1 shall be suspended until the authorities have received the additional information required.

4. Any decision not to grant, modify or renew a permit in accordance with the application and any decision suspending or withdrawing a permit shall contain a statement of reasons based upon objective and verifiable criteria on which the decision is based. The person concerned shall have the right to apply to the courts of the Member State concerned and shall be informed of the time limits allowed for applying for such remedies.

## Article 30

When Member States choose to adopt national measures in accordance with Article 6(3), (4) or (5); Article 19(2) and (3), or Article 26, the following rules shall apply:

- (a) the Member State shall base its national provisions on the criteria listed in the relevant provisions of this Directive;
- (b) the national provisions shall include a statement of reasons based upon objective and verifiable criteria;
- (c) the national provisions shall be subject to regular review at national level to ascertain whether it is justifiable under this Directive that the national provisions be maintained unchanged;
- (d) the national provisions shall be made public in advance of their entry into force;
- (e) the Member State shall notify the national provisions to the Commission and they shall submit to the Commission an annual report on the application of those national provisions.

## Article 31

Each Member State shall ensure that an exhaustive and regularly updated set of information concerning the conditions

of entry and stay of third-country nationals to its territory for the purpose of pursuing activities as an employed or self-employed person is made available to the general public.

## CHAPTER VI

## FINAL PROVISIONS

## Article 32

The Member States shall give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.

## Article 33

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the date specified in Article 35 at the latest and shall notify it without delay of any subsequent amendment affecting them.

## Article 34

By 31 December 2007 at the latest, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and propose amendments if appropriate.

## Article 35

Member States shall adopt and publish, before 1 January 2004, the provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

They shall apply those provisions from 1 January 2004.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

## Article 36

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

## Article 37

This Directive is addressed to the Member States.