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**Proposal for a
COUNCIL ACT**

establishing the Convention on rules for the admission of
third-country nationals to the Member States

(presented by the Commission pursuant to Article K.3(2)(c)
of the Treaty on European Union)

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INTRODUCTORY STATEMENT

The Commission has always wanted the immigration rules to be within the Community ambit. It accordingly welcomes the results of the Intergovernmental Conference and the prospects opened up by the Amsterdam Treaty. That Treaty has not yet been signed, let alone ratified, but it would be a mistake to postpone consideration of the subject-matter of this proposal until it has entered into force. In the current situation the Commission can make proposals only on the legal bases available in Title VI of the Treaty on European Union. Once the new Treaty has entered into force, however, the Commission will obviously present a new draft in the form of a directive. This will preserve the fruits of the previous deliberations on the substance but in the context of the new legal basis. This technique, incidentally, was used for the adjustment of the original draft Convention on the crossing of external frontiers (1991) to the new conditions created by the entry into force of the Treaty on European Union in 1993.

This Commission option has two consequences:

- in using the existing legal instruments, the Commission is complying with the formal rules governing the presentation of proposals;
- since certain components would be out of place in a directive, or would have to be seriously amended, they have been presented between square brackets. There is, of course, no need for a commentary on the Articles in brackets.

I. EXPLANATORY MEMORANDUM

A. THE CASE FOR A PROPOSAL ON ADMISSION

1. The aim of the proposal

Europe needs a comprehensive approach for dealing with immigration policy issues. Some important first steps have already been taken to build a common strategy in this area and this proposal from the Commission aims to develop these efforts further. On the one hand, the Convention sets out common rules for the initial admission of third-country nationals to the territory of a Member State for the purposes of employment, self-employed activity, study and training, non-gainful activity and family reunification. On the other hand, the Convention sets out basic rights for long-term residents, including provisions related to the possibility of accepting employment in another Member State. It involves a broad, integrated approach to admission, based on the consideration of political coherence. Indeed, to be effective, the Union's immigration policy must be comprehensive; an immigration policy can be coherent and effective only if admission is considered from every angle.

2. The balanced approach sought by the Convention

The economic circumstances which once pushed the Member States to encourage a steady, regular inflow of immigrant workers and their settlement on the territory of the Union no longer apply. Member States have therefore adopted selective policies on admission for paid employment and self-employed activity. In the Commission's view, the current economic and labour market situation does not permit those policies to be abandoned, though there can be no question of imagining a zero immigration target. Moreover, it would appear that the same restrictive policies do not need to be applied in the case of admission for temporary work, such as seasonal work and frontier work. These activities can contribute to economic and social development and good relationships with neighbouring countries and can dampen down long-term migratory pressures.

As regards admission for study purposes, the Commission believes that admitting students encourages better mutual understanding and reflects the tradition of openness in European culture while promoting the dissemination of knowledge. An effective policy must, however, also seek to prevent the entry rules from being undermined and ensure that students leave the territory of the Member States after completing their studies. This is also important in order to ensure that countries of origin do not experience a "brain-drain" effect.

Unlike admission for employment, family reunification is a matter of fulfilling international obligations and implementing individual rights to which all the Member States subscribe. This is an important factor for the success of any coherent and effective policy of integration. Legal certainty is essential in order to guarantee respect for the right to family life.

The Convention includes a specific title dealing with the legal situation of third-country nationals resident on a long-term basis. Although long-term residence is distinct from initial admission, the provision of rights in this area is an integral part of this proposal and ensures its political balance. The Union must encourage the integration of legally resident migrants. Guaranteeing their security of residence is a vital prerequisite. In its 1991 communication, the Commission had already stated that "security of stay and permanent residence for all those satisfying the stability criteria constitute the fundamental prerequisite for any successful integration"¹. The integration of migrants is an imperative dictated by the democratic and humanitarian tradition of the Member States and constitutes a fundamental aspect of any immigration policy. The integration of immigrants is essential to safeguard equilibrium in our societies.

3. Controlling migratory flows

Controlling migratory flows is a major issue. Achieving control depends in part on cooperation with countries of origin to influence the push factors which cause the emigration of third-country nationals, and in part on action in relation to the pull factors which encourage people to enter the territory of Member States. The first of these areas lies outside the scope of the present Convention. In relation to the second, it has to be borne in mind that differences between Member States' legislation can work as pull factors towards certain Member States. Measures adopted in one Member State can directly affect migratory movements towards other States, especially the neighbouring ones. Faced with growing migratory pressure, Member States should tackle the problem with a common legal framework of rules governing admission.

A second major issue in controlling migratory flows is the abolition of checks at internal borders. Already in its communication on immigration of 11 October 1991 to the Council and Parliament, the Commission put the case for closer alignment of the conditions governing the entry of third-country nationals into the Member States, to make control on immigration possible².

4. Taking into account the results achieved in the recent past

In introducing this proposal, the Commission has taken account of the decisions previously adopted by the Council on the harmonization of migration policies. Already in their report on immigration policy of 3 December 1991, approved by the Maastricht European Council, the Ministers responsible for immigration recognized the need for closer alignment of immigration policies. Among the priority issues that needed to be dealt with, the report identified:

- the harmonization of policy on admission for purposes such as family reunification, self-employed activity or employed work;
- the harmonization of policies on the admission of students and trainees;
- the harmonization of admission on humanitarian grounds;
- the harmonization of the legal provisions governing persons admitted as residents.

¹ SEC(91) 1855 final, 11 October 1991, point 60, p. 22.

² SEC(91) 1855 final, 11 October 1991, point 12, p. 6.

The report also recommended looking into the possibility of granting certain rights to third-country nationals who were long-term residents in a Member State.

Since then, the following decisions in the area of admission policy have been adopted:

- the Resolution on family reunification was adopted by the Immigration Ministers in Copenhagen in June 1993³;
- three Resolutions on the admission of third-country nationals to the territory of the Member States for employment, for the purpose of pursuing activities as self-employed persons and for study purposes were adopted by the Council in 1994⁴;
- a Resolution on the status of third-country nationals residing on a long-term basis in the territory of the Member States was adopted by the Council in 1996⁵.

These texts are political rather than legal, and have no legally binding effect. This applies both to the Resolutions adopted before the Maastricht Treaty entered into force, and to those adopted after the Treaty on European Union took effect. All the Resolutions in question include many exceptions and frequent references to specific national factors. Their interpretation, and the procedures for "transposing" them into national legislation, are left entirely to the Member States' discretion. The result tends to be an image of the differences which already exist from one Member State to another, rather than a first step in developing a common approach. The Commission takes the view that as regards immigration, the Union needs to have a legally binding instrument. The European Union, as a union of states governed by the rule of law, should clearly spell out to what extent and under what legal conditions admission is possible.

In the resolution of 18 October 1996 laying down priorities until June 1998⁶, the Council called for two issues to be examined:

- the legal status of third-country nationals residing legally in a Member State, and
- family reunification.

An exercise of this kind can be carried out on a broader basis, considering also other categories of third-country nationals who may seek to be admitted to a Member State. For that reason, the Commission proposes a comprehensive approach to the phenomenon of immigration.

³ Resolution on the harmonization of national policies on family reunification, SN2828/1/93 WGI 1497 REVI.

⁴ Resolution of 20 June 1994 on limitations on admission ... for employment, OJ No C 274, 19.9.1996, p. 3; Resolution of 30 November 1994 on limitations on ... admission ... for the purpose of pursuing activities as self-employed persons, OJ No C 274, 19.9.1996, p. 7; Resolution of 30 November 1994 on ... admission ... for study purposes, OJ No C 274, 19.9.1996, p. 10.

⁵ OJ No C 80, 18.3.1996, p. 2.

⁶ OJ No C 319, 26.10.1996, p. 1.

This is also consistent with previous relevant initiatives taken by the Commission in the field of migration policy. In its February 1994 communication on immigration and asylum, the Commission announced that it intended to draw up a Convention on family reunification, and to continue work on the admission of workers, the self-employed and students, as well as on the rights of third-country nationals legally resident in the Union⁷. The Commission included the presentation of a Convention on the admission of third-country nationals in its work programme for 1996.

5. The reasons for a Commission proposal

In the light of the introductory statement above and its conclusions regarding the effects of the Council Resolutions set out at point 4, the Commission sees a need for a mandatory legal instrument clearly establishing the conditions of admission and the rights of third-country nationals admitted to the territory of Member States and thus contributing firmly to certainty in the law applicable to them. In the areas covered by Title VI the Commission has a right of initiative shared with the Member States (first indent of Article K.3(2)). It made use of that power just eleven weeks after the Treaty on European Union came into force, when it presented to the Council a draft Convention on controls on persons crossing external frontiers⁸. In March 1997, a proposal for a joint action on temporary protection of displaced persons was presented to the Council⁹. With the present Convention, the Commission is confirming its intention of making use of the legal instruments currently available to it. At the same time, it is implementing a specific commitment made in its 1996 work programme.

6. Article K.1 in Title VI of the Treaty on European Union refers to immigration policy as one of the "matters of common interest", without prejudice to the powers of the European Community. Article K.1(3) on immigration gives a precise definition of the term. Three points justify the choice of this legal basis:

- first, the very heading of paragraph 3 refers not only to "immigration policy", in other words the mere fact of immigration into a Member State, but more generally to "policy regarding nationals of third countries"; this shows that the authors of the Treaty specifically intended that this matter of common interest should cover the position of third-country nationals in general, extending beyond the conditions for their entry into a Member State;
- second, the wording of subparagraph (a), which refers to conditions of entry;
- finally, subparagraph (b), concerning conditions of residence, which explicitly refers to family reunion and access to employment.

Article K.1(3) accordingly states in general and explicit terms that questions concerning the residence and access to employment of third-country nationals legally admitted to stay in a Member State of the Union fall within the scope of cooperation on justice and home affairs, notwithstanding Article 2(3) of the Agreement on Social Policy¹⁰.

⁷ COM(94) 23 final, 23 February 1994, points 72-79, pp. 21-23, and points 124-125, p. 35.

⁸ Proposal for a Council Decision establishing the Convention on controls on persons crossing [the] external frontiers [of the Member States], OJ No C 11, 15.1.1994, p. 6.

⁹ OJ No C 106, 4.4.1997, p. 13.

¹⁰ Annexed to Protocol No 14 to the Treaty on European Union, on Social Policy.

7. Furthermore, the proposed instrument makes it possible to satisfy two fundamental imperatives:

- legal certainty: a Convention has unambiguously binding legal force, like a directive;
- democratic transparency: a proposal of this kind is clearly a matter concerning one of "the principal aspects of activity" in the field of cooperation on justice and home affairs, as it involves the adoption of a vital measure for controlling migratory flows; consultation of Parliament by the Presidency as provided for in the second paragraph of Article K.6 is therefore fully justified. At all events, the Commission would argue that this be done, as in the case of the draft convention on crossing external frontiers.

The Commission is presenting this proposal for a Convention to the Council as provided for in Article K.3(2), second indent, subparagraph (c) of the Treaty.

B. ARTICLE-BY-ARTICLE COMMENTARY

Article 1 - Definitions

This Article defines the terms used in the Convention. It also serves to make clear the links with other instruments already in force or in preparation, such as the visa Regulations adopted under Article 100c of the EC Treaty or the draft Convention on controls on persons crossing external frontiers of the Union.

- (a) Admission is taken to mean any case involving entry and a stay of more than three months; stays of three months or less are covered by the other regulations. It is clearly stated that admission is a conditional possibility for third-country nationals who seek it, not an automatic right.
- (b) Residence authorization. A distinction needs to be made between authorization, which is the decision conferring the right to stay, and the material form this authorization takes, i.e. the existence or otherwise of a residence permit, stamp in a person's passport, etc.

Article 2 - Scope

- 1. At a time when the Union is embarking on a harmonization exercise in respect of the admission rules, it must stand by the existing set of bilateral or multilateral international agreements, be they of Community or hybrid status. This would ensure that international commitments entered into by the Community and its Member States in the WTO context were observed.

2. Provision is made for three specific exceptions:
 - asylum-seekers whose status is covered by other specific instruments, in particular the 1951 Geneva Convention. So that recognized refugees are not treated unfairly by comparison with other third-country nationals staying in the Member States, the provisions of Chapter VIII of this Convention concerning long-term residents will apply to them, provided they satisfy the requirements of Article 32;
 - displaced persons granted admission to a Member State for temporary protection; by definition, their position will change and they will return to their country of origin once the grounds on which they were granted protection cease to apply. For the moment this is to be taken as a reference to differing national schemes, but in future, if the Commission proposal is adopted, the reference would be to a temporary protection scheme flowing from a common approach;
 - persons permitted to stay for humanitarian reasons; their admission is limited to the territory of a single Member State on the basis of a decision taken by that Member State alone.
3. The Convention does not apply to persons covered by Community law. Consequently, neither Union citizens within the meaning of Article 8 of the Treaty on European Union nor their family members possessing third-country nationality and enjoying the right of entry and residence in a Member State by virtue of legislation enacted under the Treaty establishing the European Community are affected. Nor are third-country nationals who, by virtue of agreements between the European Community and its Member States and third countries, enjoy rights of entry and residence identical to those enjoyed by citizens of Union Member States and their family members possessing third-country nationality who are entitled to enter and reside in a Member State by virtue of such agreements. The reference here is particularly to nationals of States party to the EEA Agreement. And the Convention is not applicable to workers having third-country nationality who are "posted" by an EC firm to another Member State.

Article 3 - Examination of initial applications for admission

1. The first principle is that an initial application for admission under the Convention cannot be examined if the applicant is already on the territory of a Member State, except in the cases referred to in Article 31. At this point it is necessary to take account of the fact that the rules authorizing stays of short duration are not a matter for this convention, and that stays of short duration (three months maximum) are not for the purpose of enabling longer term stays. In addition, to use this short term period of legal residence to apply for admission by virtue of this convention, would have the effect of diverting these short stays from their purpose, and would amount to an incentive to stay, albeit illegally, beyond the end of the short stay. One should note that a significant proportion of persons who are currently present illegally entered the Member States legally, precisely on the pretext of a short stay. Applicants will therefore have to submit their applications

from a non-member country and will not be allowed to enter the Member State until notified that their application has been granted.

2. The decision whether to grant or refuse admission rests, of course, with the Member State to which the application is made. However, there should be common rules for the examination of applications in order to guarantee applicants that their situation will be examined thoroughly and also to assure Member States that applications are examined uniformly so that no pull factor is generated towards one or other of them.

Article 4 - Travel documents

1. It would be hard to accept that a Member State, after authorizing the admission of a third-country national, should not be able to authorize that person to enter its territory. The issue of visas must therefore be made as easy as possible. Nevertheless, the Member State retains the option of checking that no new factors have arisen between the time when admission was authorized and the time when the person comes to enter its territory that might entail refusing them entry.
2. The same facilities must be granted to allow persons, if necessary, to travel through the territory of a Member State other than that which authorized admission. The possible risk to the Member State of transit is offset by the existence of readmission procedures between Member States.

Article 5 - Permitted absences

1. Generally speaking, third-country nationals seeking admission to a Member State are expected to remain there on a regular basis for a substantial period. It is therefore reasonable that if they leave the territory of that Member State, they should be required to observe certain conditions in order to retain their right to stay. Compelling them to reside there permanently would run counter to the Union's professed goals of freedom and would infringe the rights of the individual. They must therefore be allowed the opportunity to leave for a period at least equal to the statutory minimum holiday plus a further period (set at thirteen weeks) for other purposes connected with their private life. The reference to statutory holidays, a standard reference in the context of employees' rights, is used here on a *mutatis mutandis* basis, being applicable to other categories (e.g. self-employed persons and students). In addition to absences for private purposes, provision must be made for other cases where the person may need to leave for reasons directly connected with residence in the Member State (as where a student needs to visit another country for research purposes or where an employed person is sent to another country by the employer). In such cases, the limit as to duration would not apply.
2. Persons who enjoy long-term resident status within the meaning of Articles 32 and 33 and are granted special residence facilities are subject to constraints comparable to those existing in Community law.

Provision must also be made for a specific situation. Where persons recognized as long-term residents in a Member State wish to change Member State of residence, it may turn out that they wish to return to the first Member State without having their status recognized in the second; in such a situation, the period of absence set by paragraph 2 might be exceeded.

3. It is also necessary to make provision for cases where third-country nationals know in good faith that they will have to be absent for longer than the authorized period or where they are obliged to prolong their absence once already outside the Member State where they normally reside, especially for health reasons, for example. In cases such as these, the period of absence could be extended, provided the grounds cited are among those included in the list to be drawn up under measures implementing the Convention, the aim being to avoid discrepancies between the Member States.

Article 6 - Renewal of residence authorization

1. The normal rule laid down here is that third-country nationals whose residence authorization expires may apply locally for renewal, provided they still satisfy the requirements for being granted admission.
2. The second principle enshrined in this Article, which ties in with Article 3, is that residence authorizations cannot be renewed on the spot for reasons other than those giving rise to the initial authorization, the only exception being the cases provided for in Article 31. Anyone who wishes to remain in a Member State under another heading must therefore return to a non-member country and submit a fresh application from there. To prevent any abuses, the person concerned will not only have to be in a non-member country to submit this fresh application but will have to await notification of a favourable decision there before returning to a Member State to be admitted again.
3. There may be situations in which the need to leave the territory of a Member State to present an application for authorization with a different status turns out to be an excessively bureaucratic measure. Such might be the case of an employed person who becomes owner or shareholder of the company for which he works. The interruption provided for by the procedure of paragraph 2 might then jeopardize the business activity, and the job with it. Provision consequently needs to be made for exceptions for clearly defined categories of persons admitted for employment purposes. On the other hand, these exceptions should be set within an exhaustive list, to be prepared by way of implementing measures, to avert the risk of unnecessarily depriving the general principle established by the Article of its proper impact.
4. For persons recognized as long term residents, the residence authorization is no longer issued for a specific category of admission, it being understood that they are allowed to have access to any form of employment, to study, or to remain for other purposes. In addition, the renewal of their residence authorization may be granted, even if the reason for their residence has changed, without their having to leave the territory of the Member States in order to submit a new application for admission.

Article 7 - Principles

1. Since the current state of the labour market makes it impossible to abandon a selective approach to admission for the purposes of paid employment, this Article spells out the conditions for the approval of applications. The twofold aim is to avoid making it more difficult for businesses to meet their requirements and at the same time to avoid increasing the labour force available in a Member State when there is unemployment among those already legally present there. Admission may be granted only if a vacancy cannot be filled in the short term by either a citizen of the Union or a third-country national who is already resident in the Member State where the vacancy arises and is on the regular labour market there, or a third-country national who is recognized as a long-term resident. The last instance reflects one of the rights acquired by long-term residents in other Member States.
2. Since the Convention constitutes a legal framework of rules on admission, the detailed rules for applying the first paragraph will be laid down by implementing measures. These will deal in particular with the compulsory procedure to be followed for filling a vacancy so as to ensure that the practical conditions specified in Article 7(1) are not satisfied. What this provision imposes, therefore, is not so much an obligation as to the result to be attained by the authorities responsible for examining applications as an obligation as to the manner in which they proceed. When implementing measures are adopted, the existing Community provisions (under Regulation (EEC) No 1612/68) will have to be taken into account so as to avert the risk of duplication.

Article 8 - Procedure

1. This Article rules out admission being granted for third-country nationals to seek work on the spot. Admission for the purposes of employment is possible only if the person concerned already has an employment contract and authorization to take the job. The original employment contract giving rise to initial admission cannot run for less than one year. To ensure that the initial admission is given on terms that are propitious to longer-term integration, the initial residence authorization will be for at least one year. As a general rule, the residence authorization matches the duration of the work contract, which gives legal security to the employee and to his employer. The Member State should not, however, be able to seem bound by the existence of a long term contract (or by a contract which is not of fixed duration) to be obliged to issue a residence authorization which corresponds to the duration of the contract. That is why, for the first admission, a fixed limit of four years has been established.
2. This paragraph provides for residence authorizations to be renewed and allows applications to be submitted on the spot. However, for renewal to be granted, the same conditions as specified in Article 7(1) must be satisfied.

Article 9 - Seasonal workers

1. Seasonal work is a real factor in several economic sectors (hotel trade, agriculture), and specific rules are needed to allow third-country nationals to engage in such activity while preventing them from staying for longer than necessary. Seasonal work is characterized by a personal element (the legal domicile does not change) and a material element (the type of activity carried out).
2. Admission is granted for a more limited length of time than for other kinds of employment giving rise to admission: it may not exceed six months per calendar year.
3. This paragraph provides for extension only if the initial authorization was granted for a period of less than six months and spells out the conditions for the submission of extension applications (submission of extension applications on the spot by the employer, adequate grounds). The maximum length of a seasonal worker's stay over a calendar year remains six months.
4. Although a worker's stay is strictly limited to six months per calendar year, it can be repeated from one year to the next. This paragraph stipulates that when applications for admission are submitted, third-country nationals who have already done seasonal work on the territory of the Member State will be given priority over third-country nationals who have never done work of this kind before. This provision should help to counter the risk that seasonal workers may try to stay on illegally in the Member State in question after the six-month limit.

Article 10 - Transfrontier workers

1. This provision is intended to encourage contacts and links in border areas between Member States and non-member countries. The concept of border area is used in the meaning given to it in existing bilateral conventions between the States concerned. Rules derogating from the principles of Article 7 are laid down for transfrontier workers, whose situation is characterized by a personal element (not only does their legal domicile remain unchanged, but they return every day or once a week to the non-member country where they reside).
2. Where they may work, however, is restricted: it does not include all the territory of a Member State, but only places in the border area of the neighbouring State. On the other hand, there are no restrictions on the type of activity they may engage in.

Article 11 - Definition

This Article defines admission for the purposes of independent economic activity, the key feature being the absence of any subordinate relationship with an employer. It must be clear that this definition is applied first and foremost for the possibility of such a person being admitted to the territory of a Member State. It covers two situations: where the person establishes himself in the host Member State for the purposes of his activity and where he pursues his activity without establishing himself there, in particular where he enters to provide a service either as a natural person or for a company established outside the Union.

Article 12 - Conditions of admission

This Article, and the one following it, apply to the first of the situations referred to in the commentary on Article 11. Admission for the purposes of independent economic activity is subject to two conditions. Before entering the territory of the Member State, third-country nationals must have sufficient resources to embark on the activity for which they request admission. This is meant to ensure that they genuinely intend to engage in the activity for which they seek admission and have the economic capacity to do so. The second, purely economic, condition is designed to ensure that the admission of third-country nationals brings in value added for the economy of the country where they settle. It should be seen in the most objective light possible. Influence on the employment situation is one of the least arbitrary criteria. Consequently, if within the two years corresponding to the minimum residence authorization available, at least one other person is recruited, whether full-time or part-time, or use is made of service companies (accounting, data-processing or maintenance services), or work is regularly given to subcontractors, there will be practical evidence for assessing value added in terms of employment.

It is obvious, also, that when pursuing their activity in the host Member State the third-country national must comply with all relevant local regulations. The implementing provisions provided for by the second subparagraph might determine the list of authorized activities.

Article 13 - Residence authorization

1. Residence authorization is granted for at least two years. This meets the double concern of harmonizing the initial authorization period for first-time immigrants entering for employment purposes and of allowing the self-employed time to develop their business. Applications for renewal may only be submitted on the spot if they concern the same activity or a continuation or development of it.
2. Further conditions are imposed for the renewal of residence authorizations. The applicant must actually have engaged in the activity (this involves checking that the initial admission was actually used for its declared purpose; the aim is to prevent abuse of the rules on initial admission). Applicants for renewal should be able to continue their activity in future. The third and final condition consists in checking the beneficial effect on the employment market in the Member State.

Article 14 - Supply of services

The second situation described in the commentary on Article 11 is where services are provided without establishment in the territory of a Member State. Given that this covers a wide range of individual situations and that there is an abundance of multilateral international agreements, such as the GATT, GATS and the like, the conditions for the exercise of this kind of activity should be left for the implementing provisions, subject to Article 59(2) of the EC Treaty.

Article 15 - Admission for study purposes

Admission is permitted only if the candidate provides documentary evidence of admission to an establishment which must be either public or officially approved, in order to avoid enrolment at "institutions of convenience". The types of study giving a right to admission are defined clearly and exhaustively in order to cover every possibility available under the Member States' higher education systems.

Article 16 - Residence authorization

1. The main point here is to ensure that the length of a student's stay strictly depends on the length of the course; residence authorizations issued will therefore be calculated on the basis of a course's duration. To ensure that the person admitted actually follows the courses, residence authorizations will be valid for the same period as the most recent university enrolment.
2. The same logic applies to the renewal of residence authorizations. It is for authorization holders to prove that they have actually followed the course (attendance certificates, examination pass certificates, etc.). There will have to be a certain margin as regards the total time taken to complete a course, so as to allow for failures and a right to repeat periods of study: since this right cannot be extended unduly without undermining the aim of admission for study purposes, the permitted margins will be laid down through implementation measures. Clearly the burden of proof, as well as the means of verification, must not be excessive as compared to those normally required of students who are community citizens.
3. Lastly, to avoid discrimination and reflect the reality of courses, allowance has to be made for the fact that the first year of study (except in the case of courses followed after the initial course) is often an orientation year. It is therefore quite possible that at the end of this first year a new line of study may be chosen, and students can obtain authorization on the spot to begin a new course of study. Of course any such change is allowed only once and a fresh request for authorization has to be made in accordance with Article 3.
4. Detailed rules for applying this Article will have to be laid down through implementing measures.

Article 17 - Employment authorization for students

This Article also builds on the Resolution on admission for study purposes. The general principle is that admission for study must not become a disguised form of admission for other purposes, in particular for employment. The types of paid employment which students may engage in must therefore satisfy two requirements: the income they provide should be supplementary and the duration and intensity of the work should not be such as to impair students' proper pursuit of their studies.

Article 18 - Completion of study

1. There is a clear link of continuity between the categories of studies defined in subparagraphs (a), (b) and (c) of Article 15. It is therefore reasonable for students who have successfully completed a course referred to in Article 15(a) to go on to take a course of the kind referred to under (b) and then (c). But compelling them to comply with the renewal procedure provided for in Article 3 would effectively prevent them from re-enrolling from one year to the next, because of the time involved in examining applications. In this case, then, and in this case alone, they will be allowed to request an extension of their residence authorization on the spot in order to complete a new course of study. By the same token, taking up studies at a lower level should not be treated similarly. On the other hand, research activity of the kind referred to in (d) (study grant in a laboratory or research centre, etc.) may well come just after the end of another course of study. It is therefore quite consistent for activities to which point (d) applies to be authorized after an application made locally.
2. Once study has been completed, students must leave the territory of the Member State. Students are not allowed to return to the territory of the Member States in another category unless they apply for admission in that category under the normal procedures, in particular those of Article 3.

Article 19 - Trainees

1. This Article was included here for the sake of consistency, since vocational training, which is primarily continuing training, comes after initial training. Trainees, then, are people already engaged in working life who want to improve their qualifications through further, primarily work-related, training. Under this Article, trainees may be admitted to a Member State only if there is a clear and obvious link between the professional curriculum and the contents of the training they will undergo in a Member State and if the training cannot be done in their country of origin because of the level or specialization of the training involved.
2. The situation of applicants for admission as trainees must therefore be such that their presence does not have any impact on the Member States' social welfare expenditure and does not constitute a disguised form of admission for employment. They must produce evidence of enrolment in the form of an agreement or contract with a duly approved vocational training establishment, fixing the remuneration during the period of training. They will also have to furnish proof that they have social welfare insurance against the risks they may run in the Member State where they will be staying.
3. The same principle of ensuring the closest possible correspondence between the period covered by the residence authorization and the length of the training has to be applied here, as throughout this Title. Observation of further training in practice shows that this type of training seldom runs for longer than a year, which will therefore be the normal stay authorized initially. Annual extensions will be permitted for continuation of the same training, but for no other reason.

Article 20 - Specific programmes

1. It should be recalled that through its budget the Community conducts cooperation programmes to raise the level of qualifications among nationals of certain non-member countries. It therefore seems logical and coherent to facilitate the admission of such students, trainees and researchers.
2. The implementing provisions might establish practical rules here (expedited procedures, cost reductions, etc.).

Article 21 - Limit of scope

The scope of admission for study purposes is strictly limited to higher education, in line with the Council Resolution on this subject. Primary and secondary education are covered by the rules governing family reunification. Although apprenticeship is not covered as such by the convention, it is covered in practice by some of its provisions; members of a regrouped family may be eligible for apprenticeship schemes if they are of the relevant age; where apprenticeships are organized by establishments of higher education or the like, it will be part of the standard curriculum; and the rules governing traineeships can also apply to apprentices.

Article 22 - Conditions of admission

The different titles of this proposal extensively cover the categories of persons entitled to apply for admission. But there are people who do not fall under those provided for in this Convention, but who cannot *a priori* be denied the possibility of staying in a Member State: pensioners, people living on their capital incomes, writers receiving royalties and young people with *au pair* status are some examples. Since, in particular, these are people who are not seeking to join the labour market but do clearly represent consumers and investors for the Member State where they are seeking admission, it would seem quite reasonable to consider their applications favourably, provided they satisfy certain clear conditions.

These conditions, which will have to be laid down in detail under implementing measures, will be designed to ensure that their presence entails no new burden on the host Member State, in particular in terms of social expenditure.

Article 23 - Residence authorization

- 1, Residence authorizations are granted for at least one year.
2. After that, Member States will be able to renew their residence authorizations either annually or for longer. Of course, renewal will require that the conditions specified in Article 22 are satisfied, in particular as regards the production of any evidence requested.

Article 24 - Principles

The right to family reunification derives from the right to respect for family life that is enshrined in international law, in particular in the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950. This Title is intended to establish the necessary conditions for the exercise of this right, in accordance with the decisions of the European Court of Human Rights. This entails combining observance of the right to family reunification with the powers of Member States to check the entry of third-country nationals to their territory.

1. This paragraph spells out the essential conditions required for the exercise of the right to family reunification: first, legal residence in the Member State to which application is made for reunification; second, a certain length of residence. The length of residence required was chosen to ensure applicants' previous stability (at least one year's residence) and their prospects of future stability (hence the condition that they have a right of residence valid for at least two more years).
2. Studies may take several years to complete, therefore students cannot be denied the right to family life. The conditions applying to this category must also be established. It is provided that students may apply for family reunification if they have been resident for more than two years in all (stability of residence condition) and hold an authorization for at least one year ahead (prospect of future stability).

Article 25 - Members of families of Union citizens not exercising the right to freedom of movement

The proposal governs admission of third-country nationals into the Member States. Community law governs the admission of third-country nationals who, being members of the families of Union citizens, are admitted on the family reunification principle and exercise the right to freedom of movement. There is consequently a lacuna as regards family reunification in the case of persons not exercising that right. National law covers the situation in some cases, but generally on a restrictive basis (age of children, rights of relatives in the ascending line). As Union citizenship is a single citizenship, the gaps in the current situation should be filled in by a provision for equal treatment of all Union citizens.

Article 26 - Categories of persons entitled to be reunited

1. This Article defines those eligible for reunification as the members of the nuclear family, in other words the spouse and children. The marriage must, of course, be compatible with the fundamental principles of the legal system of the state to which application is made. This means that reunification of same-sex spouses or of spouses in the case of polygamous marriages is not normally allowed. There is no discrimination against adopted children; however, if the adoption decision was not taken by the authorities of the Member State concerned, it must be recognized by the competent authority there. In the case of children where only one of the spouses is the natural parent, rather than both (point (c)), more detailed conditions are laid down, with no distinction between children from the present marriage or from previous marriages; this means checking that the parent seeking to bring in a child has sole parental authority and legal custody, in order to ensure that reunification does not result in *de facto* denial of the custody rights of the other parent.

2. The child must be a minor, in other words younger than the age of legal majority in the Member State where the application for reunification is made. The 1993 Resolution stated that this age must be between 16 and 18. The choice of the age of legal majority as the anchor point stems from the very definition of a minor as someone who is not yet legally and economically independent of the nuclear family. Use of this criterion allows the admission rules to be harmonized while still respecting the principle of subsidiarity, since setting the age of legal majority is a matter solely of national law. The second condition laid down in this Article is that the child must not be married. Together, these two conditions ensure that reunification involving children is possible when they are still dependent, *de jure* and *de facto*, on the applicant.
3. Reunification involving dependent relatives in the ascending line is not an obligation under the Convention. The Member States retain a power of discretion regarding family reunification in this case. However, such applications must be considered favourably in principle. The same applies to relatives in the descending line who, irrespective of their age, remain dependent on their parents (e.g. seriously disabled persons). Here the conditions laid down in Article 28 (accommodation and means of subsistence) must be satisfied.

Article 27 - Fraud

To prevent abuses from occurring in an attempt to circumvent the admission rules, provision therefore has to be made for penalties to counter attempts to misuse the possibility of family reunification.

1. The first possibility covered by this Article is fraud or falsification: in the event of either being discovered, the penalty is refusal of admission where it has not yet been authorized or the withdrawal of the residence authorization granted.
2. Besides fraud or falsification, another possible form of abuse involves marriage or adoption for the sole purpose of obtaining admission under the heading of family reunification. Where this is proved to be the case, Member States have the option of refusing admission or withdrawing the residence authorization. They are left with some room for discretion in assessing such cases, as they are generally difficult to prove.

Article 28 - Accommodation and means of support

1. Anyone wishing to exercise the right to family reunification must apply to the State where they reside. This Article details the material conditions (in terms of accommodation and financial means) which applicants must satisfy if their request is to be accepted. They must have sufficient financial and material means to support their family so that their exercise of the right to reunification does not place a burden on the Member State in terms of expenditure. According to the provisions of Article 24, the third-country national may only enjoy his right of family reunification after he has legal resided in a Member State for one year. This means that family members may only enter the European Union at the earliest one year after the arrival of the applicant. However, if the applicant waits a year in order to make his application, the arrival of the family could take more than a year

from the arrival of the applicant, due to administrative processing. Consequently, the third-country national, if he has a right of residence which is valid for at least a year, may submit his application for reunification six months after his arrival. In this way, due to the shortened application processing, the arrival of the family would be effective within one year.

2. The Convention sets out the fundamental principles governing admission, while detailed conditions regarding financial means and accommodation will be laid down through implementing measures. It already includes the provision that there must be suitable accommodation and adequate means of support.

Article 29 - Residence authorization

Under this provision, those admitted under the family reunification arrangements are granted residence authorizations. These are valid for the period that the initial applicant's residence permit still has to run. The aim is to ensure, in the period immediately following a person's initial admission for the purposes of family reunification, that the period of validity of the initial applicant's residence permit is exactly the same as that of the person admitted.

Article 30 - Employment of persons admitted for purposes of family reunification

This Article bars family members admitted for reunification from taking employment or engaging in self-employed activity for six months. Admission is granted on the basis of human rights considerations (the right to live with family, guaranteed by international law) rather than economic ones. In any case, third-country nationals who decide to exercise their right to family reunification must already have sufficient means to support their family when they apply for admission. This provision in no way rules out the possibility of engaging in gainful activity after a period of six months. But unforeseen events can always occur in terms of family composition (need to receive an orphan) or of income (loss of job). Other family members should therefore be given the right to work without awaiting the end of the six-month period.

Article 31 - Acquisition of separate status by persons admitted for purposes of family reunification

1. As a general rule the residence permit of family members admitted for family reunification is closely tied to the residence permit of the person who applied for their admission. However, human situations arise where, for reasons of legal certainty, it will be appropriate to grant them residence authorization in their own right. With minors this would apply in the event of the death of their parents or when they reach the age of legal majority, while with adults it would occur following a change in marital status through widowhood, divorce or legal separation. Otherwise, unbending adherence to the principle that residence permits for all family members should run in parallel would lead to the paradoxical situation where widowhood, divorce or legal separation obliged a person to leave the country where they had been legally resident, sometimes for many years. For these reasons anyone in such circumstances can apply on the spot, by way of exception to the rule laid down in Article 3(1).

2. A three-month time-limit is set for the submission of applications (three months before expiry of the residence permit issued to the person under the family reunification arrangements). This time-limit may be required in the case of minors who reach the age of majority; in the other cases referred to in the preceding paragraph, the administrative procedures should take account of the demands of fundamental humanity, allowing the time-limit to be extended up to a total of three months. To avoid any *vacuum legis*, a provisional residence authorization will be issued while applications are being examined, pending notification of the final decision.

Article 32 - Definition

This Article enshrines the principle that third-country nationals legally resident in the territory of the Union on a long-term basis should be accorded specific rights. Such rights represent a source of stability for those concerned and thus serve as an effective integration factor, along the lines advocated by the Commission in its 1994 communication on immigration and asylum.

The conditions for acquiring these rights involve two factors:

- the length of effective, regular and legal residence within the meaning of the Convention, as a positive indication of the person's integration in the Member State in question. The five-year minimum set here is considered long enough for a proper assessment of a third-country national's long-term intentions and degree of integration;
- the period of validity of the residence authorization granted, which should be such that on its expiry the holder will have resided ten years in the Member State since his or her initial admission.

The acquisition of the rights conferred on long-term residents thus rests on two principles: real and effective residence and enjoyment of the right of residence for an effective total of ten years since arrival in the Member State.

Article 33 - Residence authorization

Since long-term resident status generates certain rights, the situation of persons recognized as such should take some physical form so that recipients could easily produce proof that they possess this status. This is best done in such a way as to encourage a uniform approach, along the same lines as for the adoption of a standard format for visas. Above all, the first effect of long-term residents' rights will be that when a person's residence permit (which enabled them to meet the condition of point (b) of Article 32) expires, they will be granted a residence permit for the maximum period available in the Member State where they reside; this period may be unlimited and must not be less than ten years in any event.

Article 34 - Rights in the Member State of residence

The second effect is the acquisition of a number of rights in the Member State where the person resides. Persons recognized as long-term residents no longer need to show good cause for admission for a specific purpose as their legal status automatically entitles them to work in an employed or a self-employed capacity, or to engage in studies, or to reside for family reunification or other purposes. These rights essentially reflect the principle of non-discrimination between third-country nationals who are long-term residents and citizens of the Union. Long-term residents also enjoy greater protection as regards the circumstances in which they can be expelled. Because of the wide range of possible situations, the precise nature of such rights will have to be laid down through implementing measures.

Article 35 - Rights in other Member States

The last effect is the gradual acquisition of rights in the other Member States besides that where the person was initially admitted.

1. Subject to the general principles governing admission to paid employment, long-term residents will be able to apply for any vacancies that come to their notice, in particular through published advertisements. This possibility will not increase pressure on the Member States' labour markets since the total number of immigrants in the Union will remain unchanged. Furthermore, long-term residents seeking integration not only in a Member State but within the frontier-free area of the Union as a whole should be able to benefit from the possibility of studying in one or more other Member States rather than only where they reside. This will also have the effect of preventing discrimination between Union citizens and long-term resident third-country nationals in terms of access to Community education programmes. The consequence of granting these rights is that, without prejudice to the usual provisions as regards public order and safety, long-term residents seeking admission to Member States under this Article will be issued with the necessary authorizations for entry, if necessary, and residence.
2. Since those with long-term residents' rights are allowed, for example, to take employment in another Member State and therefore also to remain there, it would be somewhat illogical to regard them as new arrivals there. Consequently, they must be allowed, if they wish, to have their rights as long-term residents recognized in the new Member State of residence. Such recognition would become effective only after a two-year probationary period, allowing those in question to take a clear decision about whether they wish to settle in the new Member State on a long-term basis and have the benefit of long-term residents' rights "transferred".
3. Third-country nationals cannot be recognized as long-term resident in more than one Member State at the same time. They may have this status recognized successively if they transfer their permanent residence to another Member State, but after any new recognition they will lose their rights as long-term resident in their previous Member State of residence. Anyone who subsequently wishes to return to a Member State where they were previously so recognized will have to meet the requirements of paragraph 2.

Article 38 - Relations with third countries

1. Over the years Member States have maintained special relationships with various non-member countries, whether for historical reasons or owing to geographical proximity. Article 2 of the Convention provides safeguards covering the substance of bilateral agreements already in force.

Once the Convention is approved, the negotiation and conclusion of subsequent bilateral agreements between a Member State and one or more non-member countries could prejudice the common rules on admission in practice. To rule out this danger, while still retaining a certain measure of flexibility, any Member State intending to conduct negotiations with a non-member country on favourable admission rules is obliged to inform the other Member States and the Commission in advance.

2. The second paragraph stipulates that such agreements cannot be concluded without the prior approval of the Council. This system should allow Member States to maintain exceptions without harming the interests of the other Member States in the area of admission policy.

[II. PROPOSAL FOR A

COUNCIL ACT

**establishing the Convention on rules for t
third-country nationals to the Member States**

THE COUNCIL OF THE EUROPEAN UNION,

**Having regard to the Treaty on European Union, and in particular Article K.3(2),
first indent, point (c) thereof,**

Having regard to the proposal from the Commission¹¹,

Having regard to the opinion of the European Parliament of ...¹²,

**Considering that for the purposes of achieving the objectives of the European Union, the
Member States regard immigration policy and in particular the conditions of residence by
third-country nationals on the territory of the Member States, including family
reunification and access to employment, as a matter of common interest falling within the
scope of cooperation as laid down in Title VI of the Treaty;**

**Has decided to establish the Convention the text of which is attached, signed this day by
the Representatives of the Governments of the Member States of the European Union;**

**Recommends its adoption by the Member States in accordance with their respective
constitutional rules.**

Done at Brussels,

For the Council
The President]

¹¹ OJ No ...

¹² OJ No ...

**CONVENTION ON RULES FOR THE ADMISSION OF
THIRD-COUNTRY NATIONALS TO THE MEMBER STATES
OF THE EUROPEAN UNION**

[THE HIGH CONTRACTING PARTIES to this Convention, Member States of the European Union,

REFERRING to the Act of the Council of the European Union of ...;

1. **CONSIDERING** that under Article K.1(3)(a) and (b) of the Treaty on European Union and without prejudice to the powers of the European Community, immigration policy and in particular the conditions of residence by third-country nationals on the territory of the Member States, including family reunion and access to employment, are a matter of common interest falling within the scope of cooperation as laid down in Title VI of the Treaty,]
2. **CONSIDERING** that rules governing the conditions of residence and access to employment for citizens of the Union and other persons covered by Community law fall under the Treaty establishing the European Community; whereas this Convention lays down rules applicable to persons not covered by Community law;
3. **CONSIDERING** that resolutions on rules of admission and on the status of third-country nationals residing in the Member States on a long-term basis have already been adopted; whereas this established policy approach may usefully be enhanced by closer cooperation leading to the laying-down of common legal rules governing immigration policy, subject to the requirements of law and order and of public security;
4. **CONSIDERING** that those rules should, in particular, lay down conditions of admission for the purposes of paid employment and the pursuit of independent economic activities, taking due account of the interests of all the Member States;
5. **CONSIDERING** that the rules laid down are also intended to underpin the Member States' openness to the rest of the world and their level of exchanges with other countries, especially in the cultural, scientific and economic spheres, through common provisions on admission for the purposes of education and vocational training;
6. **CONSIDERING** that those rules should allow families to exercise their right to live together, by laying down arrangements for families to be reunited;
7. **CONSIDERING** that the common rules should also define the rights of third-country nationals residing legally in a Member State, especially those who are resident on a long-term basis, and the conditions under which they may enjoy those rights in a Member State other than the Member State where they have acquired the status of long-term residents;

8. **CONSIDERING** that these common rules should accord with their common international undertakings, in particular the European Convention on the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967, and with more favourable constitutional provisions on asylum;
9. **CONSIDERING** that these common rules on admission, with the exception of the rules concerning family reunification together with those applying to persons recognized as long-term residents, confer no right of residence and that the Member States retain their discretionary powers to take actual decisions as to the admission of nationals of non-member countries,

HAVE AGREED AS FOLLOWS:

CHAPTER I DEFINITIONS AND SCOPE

Article 1 Definitions

For the purposes of this Convention:

- (a) **“admission”** means permission for a third-country national to enter the territory of a Member State in order to reside there for longer than three months;
- (b) **“residence authorization”** means decision taken by a Member State in whatever form is provided by its own legislation to permit a person to reside in its territory for a period of more than three months; this does not include temporary authorizations which may be issued by Member States in certain cases.

Article 2 Scope

1. The provisions of this Convention shall apply to nationals of third countries, except where more favourable provisions apply under:
 - (a) bilateral or multilateral agreements concluded between the Community, or the Community and its Member States, of the one part, and third States of the other part, which entered into force before this Convention was signed;
 - (b) agreements concluded between one or more Member States and third countries which entered into force before this Convention was signed.
- It shall not apply to:
- (a) persons who have applied in a Member State for recognition of refugee status under the terms of the 1951 Geneva Convention;
 - (b) displaced persons granted admission to stay for temporary protection in a Member State;
 - (c) persons granted exceptional authorization to stay in the territory of a Member State, particularly on humanitarian grounds.
2. The provisions of this Convention shall not apply to citizens of the Union or to nationals of third countries enjoying a right of residence in a Member State by virtue of Community law.

CHAPTER II GENERAL RULES

Article 3

Examination of initial applications for adm

1. An initial application by a third-country national for admission to a Member State may be considered by the competent authorities only if the applicant is outside the territory of the Member States when the application is made and remains so until notified of the decision reached.
2. The Member State to which application is made shall examine applications carefully, having regard among other things to considerations of public policy, public security and health. Common rules on the examination of applications shall be laid down in accordance with the procedure under Article 36.

Article 4

Travel documents

Third-country nationals must have the necessary travel documents in order to enter the territory of the Member State to which they have been granted admission. The Member State shall issue any visas required.

Other Member States shall issue any transit visas necessary to enable such third-country nationals to travel to the Member State to which they have been granted admission.

Article 5

Permitted absences

1. Third-country nationals admitted to a Member State shall be permitted to leave that Member State for reasons other than those for which they were admitted to it, for a period not exceeding 13 full weeks in any full calendar year plus statutory holidays.

Where the absence is for the same reasons as those which justified their admission, the limit as to duration contained in the first subparagraph shall not apply.

2. By way of derogation from paragraph 1, third-country nationals recognized as long-term residents in accordance with Articles 32 and 33 may leave the Member State where they have been recognized as long-term residents for a period not exceeding 26 consecutive weeks. This period may be exceeded where they leave the Member State to change their Member State of residence in accordance with Article 35.
3. Longer authorized periods of absence than those provided for by paragraphs 1 and 2 may be permitted:
 - (a) provided that a request based on cogent grounds is submitted by the person concerned before leaving and receives approval;

- (b) provided that a request based on exceptional grounds is submitted by the person concerned after leaving and receives approval.

A list of such grounds shall be defined in accordance with the procedure laid down in Article 36.

Article 6 **Renewal of residence authorization**

1. Without prejudice to the provisions of the 1951 Geneva Convention, third-country nationals may, when their authorized period of residence expires, apply locally for the renewal of their residence authorization if the conditions which justified the granting of admission are still met.
2. Without prejudice to the provisions of Article 31, third-country nationals may only submit an application for admission on a different ground from that on which admission was previously granted if they are outside the territory of the Member States. Fresh applications of this kind may be considered only if the applicant is staying outside the territory of the Member States when the application is made and remains so until notified of the decision reached.
3. By way of derogation from paragraph 2, applications for admission made locally on a different ground from that on which admission was previously granted shall be permitted, but only in circumstances strictly set out in accordance with the procedure under Article 36, for the following persons:
 - (a) persons admitted pursuant to Article 7 or 8 and wishing to reside pursuant to Chapter IV;
 - (b) persons admitted pursuant to Chapter IV and wishing to reside pursuant to Article 7 or 8.
4. By way of derogation from paragraphs 2 and 3, third-country nationals who have been recognized as long-term residents under Articles 32 and 33 shall not be required to leave the territory of the Member States in order to submit an application for renewal of their residence authorization.

CHAPTER III **ADMISSION FOR THE PURPOSES OF PAID EMPLOYMENT**

Article 7 **Principles**

1. A third-country national may be granted admission to the territory of a Member State for the purposes of paid employment where a job vacancy in a Member State cannot be filled in the short term:

- (a) by citizens of the Union; or
 - (b) by a third-country national who is legally resident in the Member State and already forms part of the regular labour market in that Member State; or
 - (c) by a third-country national who has been recognized as a long-term resident.
2. Measures for the implementation of paragraph 1 shall be adopted under the procedure laid down in Article 36.

Article 8
Conditions of admission

1. On their initial admission for the purposes of paid employment, third-country nationals must already have obtained a work contract of not less than one year's duration and authorization to take up that employment in the territory of the Member State concerned. Once these conditions are satisfied, and admission is granted, third-country nationals shall be issued with a residence authorization for a period at least equivalent to the duration of the work contract. The first residence authorization, however, is limited to a period of four years.
2. A residence authorization granted for the purposes of paid employment may be renewed if the conditions of Article 7(1) are still satisfied when the application for renewal is made.
3. Measures for the implementation of paragraph 2 shall be adopted under the procedure laid down in Article 36.

Article 9
Seasonal workers

1. For the purposes of this Convention "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.
2. Third-country nationals may be admitted as seasonal workers for up to six months in any calendar year, after which they must return to a third country.
3. Where residence authorization has been granted for less than six months, this may be extended at the place of employment to allow seasonal workers to complete the work for which they were originally granted admission. The employer must submit the extension request, duly substantiated, at least one month before expiry of the initial authorization.
4. In admitting seasonal workers, a Member State shall give third-country nationals who have previously performed seasonal work in that State preference over third-country nationals making their first application for admission for the purposes of seasonal work.

Article 10
Transfrontier workers

1. For the purposes of this Convention, “transfrontier workers” means third-country nationals resident in the frontier zone of a third country who are employed in the frontier zone of an adjacent Member State and who return to the frontier zone of that third country each day or at least once a week.
2. Transfrontier workers who are nationals of third countries may be admitted for the purposes of paid employment in the frontier zone of an adjacent Member State notwithstanding the principles set out in Article 7 of this Convention.

CHAPTER IV
ADMISSION FOR THE PURPOSES OF
PURSUING AN INDEPENDENT ECONOMIC ACTIVITY

Article 11
Definition

For the purposes of this Convention, “admission for the purposes of pursuing an independent economic activity” means the entry into the territory of a Member State of a natural person who is a third-country national in order to pursue in that Member State an economic activity involving no subordinate relationship to an employer.

Article 12
Conditions of admission

Third-country nationals wishing to establish themselves in a Member State in order to pursue an independent economic activity may be admitted to the territory of that Member State on condition that they comply with the rules governing the exercise of the activity concerned, namely if:

- (a) they have sufficient resources to undertake, in the relevant Member State, the activity for which they submit their admission application; and
- (b) the business generated by the person admitted will have, during the period of validity of the initial residence authorization, a beneficial effect on employment in the Member State in which he resides.

Measures for the implementation of the first paragraph shall be adopted in accordance with the procedure laid down in Article 36.

Article 13
Residence authorization

1. The residence authorization granted to third-country nationals to pursue an independent economic activity referred to in Article 12 shall be issued for at least two years.

2. Applications for renewal may be made in the host Member State for the same activity as that for which initial authorization was given or for an activity which is a continuation or development of it.

When the application for renewal is submitted, third-country nationals must:

- (a) have actually pursued the activity for which admission was authorized;
- (b) be able to guarantee that they can continue to pursue that activity lawfully and regularly;
- (c) satisfy the conditions set out in point (b) of Article 12.

Article 14 . Provision of services

The admission of third-country nationals to the Member States to pursue activities involving the supply of services shall, without prejudice to Community law, be governed by the procedure laid down in Article 36.

CHAPTER V ADMISSION FOR THE PURPOSES OF STUDY AND VOCATIONAL TRAINING

Article 15 Admission for study purposes

Third-country nationals may be granted admission to the territory of a Member State for study purposes if they have been admitted to a State or State-recognized establishment of higher education in order to:

- (a) attend preparatory courses for a specific course of study in higher education;
- (b) pursue a course of study;
- (c) prepare a doctoral thesis;
- (d) pursue research activity as part of a basic or advanced vocational education after obtaining a degree or higher education diploma, where that activity is not primarily intended to secure an income.

Article 16 Residence authorization

1. The period of residence shall be limited to the length of the course of study chosen. The duration of the residence authorization issued shall be the same as the duration of enrolment at the establishment attended.

2. Residence authorizations may be renewed annually. They shall be renewed if the applicants produce evidence that they continue to satisfy the requirements set for the issuance of the initial authorization and that they have taken any tests required by the higher education establishment which they attend.
3. Students may not change their course of study after the first year. If they do change course after that time, they shall make a fresh admission application for study purposes.
4. Measures for the implementation of paragraphs 1, 2 and 3 shall be adopted in accordance with the procedure laid down in Article 36.

Article 17

Employment authorization for students

Third-country nationals admitted to the territory of a Member State for study purposes are not authorized to engage in a gainful occupation, whether in paid employment or in a self-employed capacity. Subsidiary or short-term work such as, by way of derogation from Article 9, seasonal work shall continue to be open to them provided that this does not interfere with their studies.

Article 18

Completion of study

1. Third-country nationals who have completed one of the categories of study as defined in Article 15, and who wish to continue studying under another category, may apply for a new authorization in the host Member State.
2. Third-country nationals who wish to remain in a Member State for another purpose after completing their studies must go through the initial admission procedure.

Article 19

Trainees

1. For the purposes of this Convention, "trainees" means workers whose presence in the territory of a Member State is closely linked to their wish to improve their skills and qualifications in their chosen occupation in order to pursue it in a third country.
2. Third-country nationals seeking admission to the territory of a Member State as trainees must satisfy the following requirements:
 - (a) they shall hold a training agreement with a host establishment, guaranteeing them sufficient remuneration to support themselves; and
 - (b) they shall enjoy social security cover for risks that may arise in the host Member State.

3. Residence authorizations granted to trainees shall be limited to one year. -If the time required to obtain a vocational qualification is more than one year, the authorization may be extended annually. In no circumstances may an extension be granted to allow the person concerned to take up employment.

Article 20
Specific programmes

Member States shall facilitate the admission of third-country nationals as students, trainees or researchers, under cooperation programmes that receive Community funding.

To that end, implementing measures shall be laid down in accordance with the procedure under Article 36.

Article 21
Limits of scope

The provisions of this Chapter shall not apply to:

- (a) pupils in primary and secondary education;
- (b) apprentices.

CHAPTER VI
ADMISSION FOR OTHER PURPOSES

Article 22
Conditions of admission

Third-country nationals to whom the provisions of Chapters III, IV, V or VII do not apply may be granted admission to the territory of a Member State if they satisfy the following requirements:

- (a) they shall have sufficient means to support themselves without engaging in any of the gainful activities referred to in Chapters III and IV; and
- (b) they shall enjoy social security cover that is valid in the Member State to which they are seeking admission; and
- (c) they shall be able to show the lawful origin of their means of support; and
- (d) they shall have accommodation in the Member State to which application is made.

Measures for the implementation of the first paragraph shall be adopted in accordance with the procedure laid down in Article 36.

Article 23
Residence authorization

1. The initial residence authorization granted to a third-country national shall be issued for at least one year.
2. Residence authorizations may be extended for at least one year. Third-country nationals must show that they continue to satisfy the requirements laid down in Article 22 when they apply for an extension.

CHAPTER VII
ADMISSION FOR THE PURPOSES OF FAMILY REUNIFICATION

Article 24
Principles

1. Third-country nationals may exercise their right to family reunification provided that they have been legally resident in a Member State for at least one year and have the right of residence in that Member State for at least one year on the date when they submit the application provided for in Article 28.
2. By way of derogation from paragraph 1, third-country nationals enjoying the provisions of Article 15 may submit the application provided for in Article 28 when they have been legally resident in a Member State for at least two years and have the right of residence in that Member State for one more year.

Article 25
**Members of families of Union citizens not exercising
the right to freedom of movement**

By way of derogation from this Chapter, family reunification of nationals of non-member countries who are members of the family of a Union citizen who resides in the Member State of which he is a national shall be subject to the same conditions as are imposed by Articles 10, 11 and 12 of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community¹³ and by all other relevant provisions of Community law.

Article 26
Categories of persons entitled to be reunited

1. The following persons shall be admitted for the purposes of family reunification, provided that the marriage is compatible with the fundamental principles of the law of the Member State:

¹³ OJ No L 257, 19.10.1968, p. 2.

- (a) the resident's spouse;
 - (b) children of the resident and his or her spouse, including children adopted in accordance with a decision by the authority responsible in the Member State or a decision recognized by that authority;
 - (c) children, including adopted children, of the resident or his or her spouse where one or other of them has sole parental authority over those children, has been given custody of them, and is *de facto* responsible for them.
2. To qualify for admission for the purposes of family reunification, children shall be below the age of legal majority in the Member State concerned and shall be unmarried.
3. Member States shall give favourable consideration to family reunification involving dependent relatives in the ascending line as well as other dependent relatives in the descending line, provided that the conditions laid down in Article 28 are met.

Article 27

Fraud

1. Member States shall refuse to admit a spouse or a child for the purposes of family reunification, or shall withdraw their residence authorization, if it is found that fraud or forgery has been used.
2. Member States may refuse to admit a spouse or an adopted child for the purposes of family reunification or may withdraw their residence authorization, if it is found that the sole purpose of the marriage or adoption was to enable such person to be admitted to a Member State.

Article 28

Accommodation and means of support

1. To exercise their right to family reunification, a third-country national shall submit an application in the Member State where he is resident and at the same time furnish proof that he has suitable accommodation and adequate means to support his family when reunited. This application may be submitted six months after his entry into the Member State where he is resident.
2. The conditions of paragraph 1 shall be laid down in detail by implementing measures adopted in accordance with the procedure provided for in Article 36.

Article 29

Residence authorization

Once a Member State has approved an application for family reunification, it shall issue residence authorizations to the family members to be reunited, which shall be valid for the remaining duration of the current residence authorization of the person with whom they are being reunited.

Article 30

Employment of persons admitted for the purposes of family reunification

1. Persons admitted for the purposes of family reunification shall not be authorized to take up employment or pursue an independent economic activity until a period of six months from the date of their arrival has elapsed.
2. By way of derogation from paragraph 1, the six-month period shall not be mandatory where there are unforeseen changes in the composition or income of the family that generate a need for the persons admitted for the purposes of family reunification to be allowed to pursue an activity.

Article 31

Acquisition of separate status by persons admitted for the purposes of family reunification

1. Where persons admitted for the purposes of family reunification are widowed, divorced or legally separated, lose their parents through death or reach the age of majority, they may submit an application for residence authorization in another capacity. This application shall be examined in the Member State to which they were admitted.
2. The persons concerned must submit their application no later than three months before their residence authorization expires. However, if the residence authorization expires less than three months after the circumstances justifying admission have ceased to apply, this deadline shall be extended to a total of three months.

Where necessary, the Member State concerned shall issue them with a provisional residence authorization for the period during which their application is being considered until they are notified of the decision reached.

CHAPTER VIII

THIRD-COUNTRY NATIONALS WHO ARE LONG-TERM RESIDENTS

Article 32

Definition

Third-country nationals shall be recognized as long-term residents in a Member State if they satisfy the following requirements:

- (a) they shall have been legally resident on a regular basis in a Member State for at least five years; and
- (b) they shall hold an authorization which permits residence for a total period of at least ten years from their first admission.

Article 33
Residence authorization

1. Once third-country nationals acquire recognition as long-term residents, this shall be shown by a specific entry on their residence authorization document.
2. When their residence authorization referred to in point (b) of Article 32 expires, third-country nationals who are long-term residents shall be entitled to a residence authorization for the maximum period allowed in the Member State where they reside, and in any event for not less than ten years.

Article 34
Rights in the Member State of residence

1. In the Member State in which they are long-term residents and without prejudice to Community law, third-country nationals recognized as long-term residents shall:
 - (a) have access to the entire territory of that Member State;
 - (b) be authorized to exercise all activities referred to in Chapters III, IV and V;
 - (c) be authorized to reside for all the purposes referred to in Chapters VI and VII;
 - (d) be afforded increased protection against expulsion, subject to the requirements of law and order and of internal security;
 - (e) enjoy the same treatment as citizens of the Union with regard to:
 - (i) access to employment or self-employment;
 - (ii) vocational training;
 - (iii) trade union rights;
 - (iv) the right of association;
 - (v) access to housing, whether in the private, public or para-Statal sector;
 - (vi) social welfare;
 - (vii) schooling.
2. Measures for the implementation of paragraph 1 shall be defined in accordance with the procedure laid down by Article 36.

Article 35
Rights in other Member States

1. A third-country national recognized as a long-term resident may:
 - (a) apply for employment in another Member State by answering a vacancy known to him, subject to compliance with the principles laid down in Article 7;
 - (b) apply to pursue a course of study as defined in Article 15 in another Member State.

In the cases shown in the first subparagraph, if the person obtains a work contract or enrolment in an establishment of higher education, the Member State concerned shall admit the third-country national concerned and shall issue him with the necessary authorizations, including those relating to residence.

2. A third-country national settled in accordance with paragraph 1 in a Member State other than that which has recognized him as a long-term resident shall be recognized as such likewise in his new Member State of residence, after a period of two years' residence. This shall be shown by the issue of a residence authorization for a period equal to that which enabled him to be recognized as a long-term resident in his previous Member State of residence.
3. A third-country national recognized as a long-term resident of a Member State shall cease to be recognized as such in that Member State once he is recognized as a long-term resident of another Member State in accordance with paragraph 2.

CHAPTER IX
FINAL PROVISIONS

[Article 36

Procedure for the adoption of implementing measures

1. Subject to paragraphs 2 and 3, implementing measures provided for in this Convention shall be adopted within the Council by a two-thirds majority of the High Contracting Parties.
2. The implementing measures referred to in Articles 6(3), 7(2), 8(3), 12, and 34 shall be adopted by common accord amongst the High Contracting Parties within two years of publication of the act establishing this Convention in the *Official Journal of the European Communities*.

After the period set out in the first subparagraph, the implementing measures shall be adopted in accordance with paragraph 1.

3. The implementing measures referred to in Articles 14 and 22 and any implementing measures not expressly provided for in this Convention shall be adopted by common accord amongst the High Contracting Parties.

4. The implementing measures referred to in paragraphs 1, 2 and 3 shall be published in the *Official Journal of the European Communities*.

Article 37

Jurisdiction of the Court of Justice of the European Communities

1. Any dispute between Member States or between a Member State and the Commission as to the interpretation or application of this Convention shall first be considered by the Council with a view to reaching an settlement. If no solution is found within six months, the matter shall be referred to the Court of Justice of the European Communities by any party to the dispute.
2. The Court of Justice shall have jurisdiction to give preliminary rulings on the interpretation of this Convention. Any court or tribunal of a Member State against whose decisions there is no judicial remedy under national law shall request the Court of Justice to give a preliminary ruling on a question raised in a case pending before it concerning the interpretation of this Convention, if it considers that a decision on that question is necessary to enable it to give judgment.]

Article 38

Relations with third countries

Any Member State which intends to conduct negotiations with a third country to lay down more favourable rules for the admission of nationals of that State shall inform the other Member States and the Commission in good time.

No Member State may conclude such agreements with one or more third countries without the prior approval of the Council.

[Article 39

Safeguard clause

The provisions of this Convention shall not preclude derogations from its clauses by a Member State under the provisions of Article K.2(2) of the Treaty on European Union. Such derogations may be made only in exceptional cases and shall be confined to such period as is strictly necessary.

A Member State availing itself of this option shall, in so doing, take into account the interests of the other Member States and keep both them and the Commission closely informed.

Article 40

Reservations

Reservations shall not be permissible in respect of this Convention.