

Third-country nationals: migration for the purpose of studies, vocational training or voluntary service

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In accordance with Council Directive 2004/114/EC on the conditions of admission of third country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, the Commission presents a report giving an overview of how the Directive has been transposed and implemented by Member States and identifies possible problematic issues. The directive was the third legislative instrument in the field of legal migration to be adopted following the Treaty of Amsterdam and the Tampere Conclusions of the European Council. The report is based on a study carried out for the Commission and on other sources, including ad-hoc enquiries made through the European Migration Network, complaints, questions and petitions sent by private individuals and discussions with Member States on practical issues arising from the application of the Directive. The Directive was adopted on 13 December 2004. Denmark, Ireland and the United Kingdom are not bound by it.

Findings: the report notes that attracting third country national students to the EU is a fundamental objective of EU immigration policy, stressed again under the Stockholm Programme. In 2009, more than 200 000 third country nationals entered the EU for the purpose of this Directive. The Directive is key to contributing to mutual enrichment for the migrants concerned, their country of origin and the host Member State .

However, the report suggests that the potential of this EU instrument is not being fully exploited. In particular, the level of harmonisation achieved by the Directive, adopted under the unanimity rule, is rather weak, since only a few provisions of the Directive are legally binding and many provisions do not contain specific obligations for Member States.

The report also reveals a crucial need for amendments to the Directive.

Reinforcement of procedural guarantees (such as the specific deadlines for handling applications, obligation on Member States to give reasons for refusals). From the many complaints received by the Commission, it seems that in practice procedures are often long and the timeframe is unclear. The time taken to process applications ranges from 7 working days to 6 months. No specific deadlines are set in Belgium, Cyprus, Germany, Finland and Sweden.

In addition, from the numerous complaints and queries brought to the attention of the Commission it appears that Member States' visas rules often nullify the transparency guarantees required by the Directive. Laws in Bulgaria and Italy appear to make no reference to provisions on notification procedures or provisions giving the applicant the right to legally challenge a rejection.

Strengthening of mobility clauses: student mobility benefits global economic development by promoting the circulation of knowledge and ideas. However, from the queries submitted to the Commission it appears that additional rules on visas often make it difficult for third country students to effectively exercise their right to mobility. Furthermore, not all Member States have transposed the provisions which require them to facilitate the admission of third-country nationals participating in EU Programmes that enhance mobility towards and within the Union. Belgium, Bulgaria, Estonia, Germany, Italy and Romania

do not appear to have transposed this provision, and the other Member States appear simply to be calling for such facilitation rather than translating it into specific rules on (for example) lower fees or faster procedures. Thus the transposition of this important provision is not yet satisfactory.

Personal scope: the Directive stipulates which categories of third-country nationals must and may be covered by the provisions transposing the Directive into the laws of Member States. Those who must be included are third-country nationals who apply to be admitted to the territory of a Member State for the purpose of studies. The provisions may also cover third-country nationals who apply to be admitted for the purposes of pupil exchange, unremunerated training or voluntary service. Altogether 10 Member States decided to apply the Directive to all three of these optional categories (school pupils, unpaid trainees and volunteers), and a further 5 Member States decided to apply it to one or two of these categories. A total of 9 Member States transposed only the provisions relating to students.

If Member States choose to apply the Directive to any of these three categories (other than students), the choice they make obliges them to transpose the relevant provisions of the Directive — unless the provisions are left to the Member State's discretion. It seems, however, that Member States have sometimes disregarded this general rule.

More favourable provisions: a small number of Member States have bilateral agreements with third countries that include more generous provisions than those laid down in the Directive. In addition, outside the context of bilateral or multilateral agreements, Member States may adopt or maintain more favourable provisions than the ones laid down in the Directive. However, Member States sometimes appear to have misunderstood this and to have disregarded the Directive's compulsory provisions, such as the requirement to have a training agreement for unremunerated trainees. More favourable provisions are allowed as long as they do not water down the level of rights already granted to third-country nationals by the Directive. These provisions cannot undermine the purpose of the Directive, which is to provide for a certain level of harmonisation of the admission and residence conditions for third-country students, with a view to setting up a transparent common scheme at EU level.

The report notes that allowing third-country nationals to acquire skills and knowledge through a period of training in Europe encourages “brain circulation” and supports cooperation with third countries in the field of human capital and employment, which benefits both the sending and the receiving countries. Therefore, without impinging on the power of Member States to determine the volumes of migrants, **the issue of access to work for third-country national students at the end of the studies could be specifically addressed**, as this seems to be a decisive factor in students' choice of a destination country and an issue of common interest in the context of a declining working-age population and a global need for highly-qualified workers.

In order to ensure that the Directive is correctly transposed and implemented across the EU, the Commission will use fully its powers under the Treaty and launch infringement proceedings when necessary. The Commission will also continue working at technical level with the Member States. The relevant Contact Committee will continue to identify difficulties and facilitate an exchange of views on the interpretation of the Directive. Some legal and technical issues could be further discussed and clarified, such as **more favourable provisions; sickness insurance; publication of information relating to students; mobility of students.**

The Commission intends to offer information and assistance to both Member States and third-country nationals, making the best use of the internet, mainly through the future Immigration Portal.