

Third-country nationals: conditions of entry and residence for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing.

Recast

2013/0081(COD) - 25/03/2013 - Legislative proposal

PURPOSE: to lay down the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing.

PROPOSED ACT: Directive of the European Parliament and of the Council (recast of Directives 2005/71/EC and 2004/114/EC).

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the European Union's working age population has practically stopped growing and over the next couple of years it will start shrinking. The EU is also facing a situation of 'innovation emergency'. Europe is spending 0.8% of GDP less than the US and 1.5% less than Japan every year on Research & Development (R&D). In addition, thousands of the best researchers and innovators have moved to countries where conditions are more favorable.

To counterbalance this lack of manpower, immigration from outside the EU is one source of highly skilled people, and third-country national students and researchers in particular are groups which are increasingly sought after and which the EU needs to actively attract.

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.

However, in the absence of a clear legal framework, there is also a risk of exploitation to which trainees and au-pairs are particularly exposed, with the subsequent risk of unfair competition on the labour market.

With a view to better optimising those benefits and properly tackling those risks, and taking account of the similarities of the challenges faced by these categories of migrants, this proposal amends [Council Directive 2004/114/EC](#) ("Students' Directive") on the conditions of admission of third country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service:

- extending its scope to remunerated trainees and au-pairs and
- making mandatory provisions on unremunerated trainees that are currently discretionary, as well as
- [Council Directive 2005/71/EC](#) on a specific procedure for admitting third-country nationals for the purposes of scientific research ("Researchers' Directive").

The proposal seeks to remedy the shortcomings highlighted in the implementation reports of the two Directives [see [COM\(2011\)901](#) and [587](#)] on the conditions of admissions in particular (visas, mobility aspects...) and procedural safeguards.

IMPACT ASSESSMENT: the following options were considered:

- *Option 1 (baseline)*: the Member States would continue to apply different and diverging rules with respect to admission conditions (e.g. the granting of visas);
- *Option 2*: Increased communication efforts (in particular in case of researchers), and strengthened enforcement of the current rules;
- *Option 3*: Improvement of admission conditions, rights and procedural guarantees whereby Member States would be obliged to (i) grant the requisite visas to the third-country national (students and other categories) who has submitted an application and (ii) introduce a compulsory deadline for decisions on an application (60 days); (iii) provide for the right of students to work during their period of study for a minimum of 15 hours per week;
- *Option 4*: Further improvement of admission conditions, rights also on intra-EU mobility and procedural guarantees: (i) access to job-seeking following completion of studies or research project; (ii) **extended scope to au-pairs and remunerated trainees**; (iii) possibility to issue long-stay visas or residence permits; (iv) increased intra-EU mobility for researchers, students and remunerated trainees; (v) specific, more favorable rules applicable to beneficiaries of EU programmes (e.g. Erasmus Mundus or Marie Curie); (vi) right of students to work for a minimum of 20 hours per week as of the first year of residence ; (vii) after finalization of their studies/research, students and researchers would be allowed to stay on the territory to identify work opportunities for a period of 12 months; (viii) decisions on applications within 60 days (all groups), and within 30 days for Erasmus Mundus and Marie Curie fellows.

Option 4 appears to be the most cost-effective option to meet the key objectives and brings about positive economic and social impacts. The main disadvantage of legislative changes would be the costs involved: Member States would have to make modifications to their legislative frameworks.

LEGAL BASIS: Article 79(2) points (a) and (b) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the proposal's overall objective is to support social, cultural and economic relationships between the EU and third countries, foster the transfer of skills and know-how and promote competitiveness while, at the same time, provide for safeguards ensuring fair treatment of these groups of third-country nationals.

Chapter I – General provisions: the proposal has two specific objectives:

- to set out the conditions of entry and residence of third-country nationals to the territory of the Member States for **a period exceeding three months** for the purposes of research, studies, pupil exchange, **remunerated and unremunerated training**, voluntary service and **au pairing**;
- to set out the conditions of entry and residence of third-country national students and remunerated trainees in Member States other than the Member State which first grants the third-country national an authorisation.

Scope: the proposal extends the scope of the “Student” Directive to include **remunerated trainees and au-pairs**. The proposal would not, however, apply to third-country nationals who are EU long-term residents given their more privileged status and their specific type of residence permit, or refugees, those residing in a Member State on a strictly temporary basis in accordance with Union legislation.

Member States may grant **more favourable conditions** for the persons to whom the proposal for Directive applies, however only in relation to certain specific provisions that concern family members of researchers, rights to equal treatment, economic activities and procedural safeguards.

Chapter II – Admission:

General principle: an applicant who satisfies all the general and specific conditions for admission shall be granted a residence permit or a long-stay visa by the Member State where the application has been made. The proposal lays down the general conditions that applicants must fulfil in order to be admitted to a Member State, besides the specific conditions that apply to the different categories of third-country nationals laid down in the proposal. The general conditions are very much in line with those developed in the existing acquis on legal migration, and include valid documents, sickness insurance and minimum resources.

Specific conditions:

- the specific conditions of admission for **researchers** which already exist in the Researchers' Directive are maintained. The proposal lists the elements that should be contained in the hosting agreement: title and purpose of the research project, the confirmation of the organisation that it is hosting the researcher so that he or she can complete the research project, the start and end date of the research project, etc. For researchers to be aware of research organisations that can enter into hosting agreements, emphasis is placed in the proposal on the need for the list of approved organisation to be publicly available and updated regularly;

- for **students**, the specific conditions are those in the “Students’ Directive”;

- for pupils, remunerated and unremunerated **trainees**, volunteers and **au-pairs**, the specific conditions are that these persons are required **to show evidence of the organisation** that is responsible for their exchange, training or, volunteering.

- for **au-pairs**: in addition, there needs to be evidence that the host family accepts responsibility for example as far as subsistence and accommodation are concerned. The au-pair stay also needs to be based on an agreement between the au-pair and the host family defining his/her rights and obligations;
- for **remunerated trainees**, the training programme, its duration, conditions of supervision and working conditions need to be specified. In order to avoid situations in which trainees are used as 'cheap labour', the host entity may be obliged to declare that the third-country national is not filling a job.

Chapter III – Authorisations and duration of residence: a series of provisions set out the information that should be included on the third-country national's residence permit or long-term visa. For **researchers and students** an authorisation should be granted for **at least one year**. For all other groups, the authorisation is limited to **one year as a rule**, with the possibility for exceptions.

Chapter IV – Grounds for refusal, withdrawal or non-renewal of authorisations: the provisions lay down the mandatory and possible grounds for refusing, withdrawing or not renewing an authorisation, such as the general and specific conditions for admission no longer being met, false documents etc., which are standard conditions under the existing migration Directives.

Chapter V – Rights:

to ensure the fair treatment of third-country nationals falling under the scope of the Directive, a new provision entitles them to **equal treatment** under the [Single Permit Directive](#). More favourable rights to equal treatment with nationals of the host Member State as regards branches of social security as defined in [Regulation No 883/2004](#) on the coordination of **social security schemes** are maintained for third-country national researchers, without the possibility for the limitations laid down by the Single Permit Directive. Furthermore, school pupils, volunteers, unremunerated trainees and au-pairs will benefit from equal treatment rights with nationals of the host Member State as regards **access to goods and services**

and the supply of goods and services made available to the public **independently on whether Union or national law gives them access to the labour market.**

Right to work: provisions exist in the proposal whereby researchers and students are given the right to work, with Member States being able to **set certain limits**. Researchers, as was the case under Directive 2005/71, are allowed to teach in accordance with national legislation. Regarding **students**, whereas under Directive 2004/114/EC students were allowed to work for a minimum of 10 hours per week, this period has been increased to **20 hours**. With respect to students' access to economic activities, Member States may continue take into consideration their labour market situation but this should be done in a **proportionate way** in order not to systematically endanger the right to work.

The proposal introduces the possibility for students and researchers, if they fulfil the general admission conditions of the proposal (except for the condition on being a minor), to stay in the Member State **for 12 months upon finalisation of their studies/research in order to look for work or set up a business**. This provision has the potential to make the Member States more competitive in the search for talents on a global stage. It would however not be an automatic work permit. In a period of more than 3 and less than 6 months, Member States could ask the third-country nationals to provide documentation that they are genuinely seeking for a job (for example, copies of the letters and CVs sent to employers) or are in the process of setting up a business. After 6 months, they could also ask third- country nationals to provide evidence that they have a genuine chance of being engaged or of launching a business.

The proposal includes specific provisions on the admission and access to the labour market of researchers' family members in derogation to [Directive 2003/86/EC](#) with a view to increasing the EU's attractiveness to third-country national researchers.

Chapter VI – Mobility between Member States: a series of articles set out the conditions under which researchers, students and trainees can move between the Member States, in order to facilitate such mobility:

- **for researchers**, under Directive 2005/71/EC, the period for which they are allowed to move to a second Member State on the basis of the hosting agreement concluded in the first Member State has been extended from 3 to **6 months** (N.B. in line with the provisions of the [Blue Card Directive](#), researchers' family members can move between Member States together with the researcher).
- **for students**, provisions would also allow them to move to a second Member State for a period of **up to 6 months** on the basis of the authorisation granted by the first Member State . Specific rules apply to third country nationals who come under EU mobility programmes, for example the current Erasmus Mundus or Marie Curie programmes, in order to simplify the exercise of mobility.

Chapter VII – Procedure and transparency: the proposal introduces a **time-limit** that obliges Member States to decide on the complete application for an authorisation and notify the applicant in writing within **60 days** (applying for all groups), and **within 30 days** for Union programmes including mobility measures. Procedural guarantees include the possibility of a legal challenge against a decision rejecting an application as well as the requirement for the authorities to give reasons for such decisions in writing, and ensuring respect for the right to a legal remedy.

Provisions are also included in regard to communication: the Member States would be required to make information available on the entry and residence conditions as set by this proposal, including on approved research organisations and on fees.

Taxes and fees: Member States may charge fees for the processing of applications. However, the amount of such fees should not endanger the fulfilment of the Directive's objectives.

Chapter VIII - Final provisions: Member States would be required to establish national contact points to exchange information on third-country nationals covered by the proposal who move between Member States. Such national contact points already exist in relation to certain existing migration Directives such as the Blue Card Directive. Member States would be required to communicate to the Commission statistics on the numbers of third-country nationals granted authorisations.

BUDGETARY IMPLICATION: the proposal has no implications for the EU's budget.