

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) - 25/02/2014 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 578 votes to 79 with 21 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing (recast).

Parliament's position adopted at first reading under the ordinary legislative procedure amended the Commission's proposal as follows:

Fees: Parliament considered that Member States should consider waiving fees for entry and residence of third-country nationals for the purposes of this Directive. Should Member States require third-country nationals to pay fees, those should be **proportionate** to the purpose of the stay and should not constitute an obstacle to the objectives of the Directive. Parliament also considered that where the third-country national pays those fees, that third-country national should be entitled to be reimbursed by the host entity or the host family respectively.

Information to be provided to applicants: Parliament asked that Member States inform third-country nationals of the rules applicable to their particular case so as to ensure transparency and legal certainty and thus encourage them to come to the Union.

Third-country nationals should be provided with all the information that is relevant to the procedure, including general documentation about studies, exchange or research programmes but also specific information about applicants' rights and obligations, in a manner that is easily accessible and understandable.

New definitions: host entity and host family: Parliament added two new definitions:

- 'host entity' means the educational establishment, research organisation, enterprise or vocational training establishment, organisation operating pupil exchanges or organisation responsible for the voluntary service scheme to which the third-country national is assigned;
- 'host family' means the family temporarily receiving the au-pair and letting him/her share its daily family life in the territory of a Member State on the basis of an agreement concluded between the host family and the au-pair.

More favourable provisions: Parliament extended the scope of the clause on more favourable provisions to **all the articles of the proposed directive**, with the exception of those relating to general and specific conditions, so as to avoid non-harmonised conditions throughout the European Union.

Adequate resources: Parliament supported the Commission's proposal whereby a third country national would have to provide evidence that s/he has sufficient resources to cover subsistence, training and return travel costs. Members consider, however, that it should not be necessary to provide such evidence **if the third-country national concerned can prove that he/she is in receipt of a grant or scholarship**, that he /she has received an undertaking of sponsorship from a host family or a firm offer of work or that an organisation operating pupil exchanges or the voluntary service scheme declares itself responsible for the subsistence of the pupil or the volunteer throughout the period of his/her stay.

No limits on exchanges: Parliament deleted the Commission's text proposing that Member States may confine the admission of school pupils participating in an exchange scheme to nationals of third countries which offer the same possibility for their own nationals. Likewise, Members deleted a provision in the Commission's proposal requiring a trainee to prove that they have previous relevant education or qualifications or professional experience to benefit from the work experience.

Maternity costs: Parliament considered that requiring an au-pair to provide extra separate evidence that the host family will cover costs related to maternity seems excessive.

Accreditation procedure: Parliament added a provision that after successful authorisation and grant of a visa, the host entity should be registered with an accreditation system, in order to facilitate future application procedures.

Validity of authorisations: Parliament considered that Member States should issue an authorisation for students which shall be for a period of at least one year or, when the duration of their studies is longer than one year, for the whole duration of their studies. This would also be the case for au pairs who would be authorised to remain for the entire pupil exchange programme.

Reasons for refusal of authorisations: Parliament listed the reasons for which Member States might be able to refuse an authorisation:

- where the host entity has been sanctioned in accordance with national law for undeclared work and /or illegal employment;
- where the host family, or, if applicable, any intermediary organisation involved in the placement of the au-pair, has been sanctioned in accordance with national law for breach of the conditions and /or objectives of au-pair placements and/or illegal employment;
- where the host entity or educational establishment was established for the sole purpose of facilitating entry.

Member States should **not renew an authorisation** for the same reasons, but also:

- where the host family has been sanctioned for breach of the conditions and/or objectives of au-pair placements and/or for illegal employment;
- where the third-country national is residing for purposes other than those for which he/she was authorised to reside;
- when the maximum periods of access to the labour market are not respected;
- **where the student does not make acceptable progress** in the relevant studies in accordance with national legislation or administrative practice. The Member State concerned may withdraw or

refuse to renew an authorisation on this ground only by a decision stating specific reasons based on the evaluation of the educational establishment, which shall be consulted on the student's progress;

- for reasons of public policy, public security or public health. Public policy or public security grounds shall be based exclusively on the personal conduct of the third-country national concerned.

When a Member State withdraws an authorisation on one of the grounds cited above, the third-country national shall be entitled to stay on the territory of that Member State if he/she **finds another host entity or host family in order to finish his/her studies** or research or for another purpose for which the authorisation was granted.

Equal treatment: Parliament suggested that trainees and au-pairs should enjoy equal treatment rights with nationals of the host Member State as regards the rights related to the Single Permit to work and reside on the territory of a Member State. The situation of the labour market in the host Member State should be taken into account, but not in a systematic manner which could result in students being excluded from the labour market.

Staying on the territory of a Member State after finalisation of research or studies: Parliament suggested that after finalisation of research or studies in the Member State, third-country nationals should be entitled to stay on the territory of the Member State for a period of **18 months** (instead of 12) in order to look for work or set up a business. In a period of more than six and less than nine months (instead of 3 and 6), third-country nationals could be requested to provide evidence that they continue to seek employment or are in the process of setting up a business. After a period of nine months, third-country nationals could additionally be requested to provide evidence that they have a genuine chance of being engaged or of launching a business.

Family reunification: Parliament called for measures on family reunification for researchers to be extended to students.

Mobility rights between Member States: Parliament extended the measures proposed by the Directive as regards mobility between Member States to **volunteers**, as well as researchers, students, and trainees. Mobility measures provided for researchers in the framework of the European programmes should also be extended to **volunteers and trainees** whether they are remunerated or not.

Delay for the authorisation procedure: Parliament called on the competent authorities of the Member States to decide on the complete application for an authorisation and should notify the applicant in writing, as soon as possible and at the latest **within 30 days (the Commission proposed 60 days) from the date on which the application was lodged**. In the event that their national law provides for the possibility of an appeal before an administrative authority, the competent authorities of the Member States shall decide on the appeal at the latest within 30 days from the date on which the appeal was lodged.

Fast-track procedure: the current Students Directive includes an article on fast-track-procedure for issuing residence permits or visas and Parliament re-included this fast-track procedure for **students and school pupils and extending it to researchers**.

Application procedure: lastly, Parliament provided for a measure allowing Member States to facilitate the application procedure by allowing third-country nationals to apply and to be able to complete the procedure for any Member State in the embassy or consulate of the Member State which is most convenient for the applicant.