

# **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) - 05/04/2016 - Commission communication on Council's position

The Commission stated that, despite the changes that the Common position has introduced, the text of the Common position still meets the Commission's original objective to make the EU more attractive for the categories concerned, and to make the legal framework governing their entry and residence more clear and transparent.

The Commission recalled the **main differences** between the Common Position and the original Commission proposal:

### **Scope:**

- the Common position limits the scope of the mandatory rules to researchers, students, trainees and volunteers covered by the European Voluntary Service. Rules for school pupils, volunteers not covered by the European Voluntary Service and au pairs are optional;
- regarding trainees, the Common position abolishes the distinction between remunerated and unremunerated trainees.

### **General admission conditions:**

- the Common position gives Member States the possibility to require the applicant to provide the address where he or she will be residing on its territory;
- it makes it obligatory for Member States to examine applications also when the third-country national concerned is already residing in that Member State.

### **Approval of research organisations:**

- the Common position makes the approval procedure for research organisations optional, and introduces an optional approval procedure for higher education institutions, education establishments, organisations responsible for a voluntary service scheme or entities hosting trainees.

### **Specific conditions for trainees:**

- the Common position introduces the limitation that applicants must have obtained a higher education degree within the two years preceding the date of application or be pursuing a course of study that leads to a higher education degree;
- it also allows Member States to require the traineeship to be in the same field and at the same qualification level as the higher education degree obtained or the course of study being pursued.

### **Duration of authorisations:**

- a duration of authorisations for students and researchers covered by programmes of a minimum of two years (instead of one year for those not covered by programmes) has been provided.

### **Grounds for rejection:**

- the Common position, to a great extent, aligns the grounds for rejection to those of the [Intra Corporate Transferee Directive](#) (ICT Directive);
- it adds a ground which allows Member States to reject an application where the Member State has evidence or serious and objective grounds to establish that the third-country national would reside for purposes other than those for which he or she applies to be admitted (Article 20(2)(f) of the Directive)

The European Parliament and the Commission understand point (f) of Article 20(2) of this Directive as allowing Member States to **reject an application only on a case-by-case basis** and taking into account the specific circumstances of the third-country national and the principle of proportionality and **on the basis of evidence or serious and objective reasons**. They consider that the inclusion of this provision in this Directive should not constitute a precedent for future legal migration instrument.

### **Grounds for withdrawal or non-renewal of an authorisation:**

- the Common position, to a great extent, aligns the grounds for withdrawal or non-renewal to those of the ICT Directive.

### **Equal treatment:**

- the Common position provides Member States with the possibility to make the granting of family benefits to researchers dependent on a minimum length of stay. Overall, it still reflects the objective of the Commission proposal to make more transparent which equal treatment rights, based on the [Single Permit Directive](#), the various categories covered by the recast are entitled to.