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

2002/0242(CNS) - 13/12/2004 - Final act

PURPOSE : to determine the rules concerning the procedures for admitting third country nationals to the territory of the Member States for study purposes.

LEGISLATIVE ACT : 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.

CONTENT : The purpose of this Directive is to determine:

- the conditions for admission of third-country nationals to the territory of the Member States for a period exceeding three months for the purposes of studies, pupil exchange, unremunerated training or voluntary service;

- the rules concerning the procedures for admitting third country nationals to the territory of the Member States for those purposes.

The Directive applies to four types of third-country national:

- students accepted by an establishment of higher education and admitted to the territory of a Member State to pursue as his/her main activity a full-time course of study;

- school pupils following a recognised programme of secondary education in the context of an exchange scheme operated by an organisation recognised for that purpose;

- unremunerated trainees coming for a training period without remuneration;

- volunteers who apply to be admitted to a voluntary service scheme

The Directive will not apply to:

- asylum-seekers, those under subsidiary forms of protection, or under temporary protection schemes;

- third-country nationals whose expulsion has been suspended for reasons of fact or of law;

- third-country nationals who are family members of Union citizens who have exercised their right to free movement within the Community;

- those who enjoy long-term resident status in a Member State in accordance with Council Directive

2003/109/EC and exercise their right to reside in another Member State in order to study or receive vocational training;

- third-country nationals considered under the national legislation of the Member State concerned as workers or self employed persons.

Conditions of admission: the Directive sets out several general conditions of admission for third-country nations entering the EU for the above purposes:

- a valid travel document as determined by national legislation.

- a parental authorisation for the planned stay, if the national is a minor;

- sickness insurance in respect of all risks normally covered for its own nationals in the Member State

concerned;

- not be regarded as a threat to public policy, public security or public health;

- proof, if the Member State so requests, that he/she has paid the fee for processing the application.

Other conditions are imposed for each category:

- Students : students must have been accepted by an establishment of higher education to follow a course of study; during his/her stay he/she must have sufficient resources to cover his/her subsistence, study and return travel costs; the student must have sufficient knowledge of the language of the course to be followed by him/her; and be able to provide evidence that he/she has paid the fees charged by the establishment. It should be noted that students who satisfy the necessary conditions have the right of free movement to another Member State if he or she is participating in a Community or bilateral exchange programme or has been admitted as a student in a Member State for no less than two years.

- School pupils: a third-country national who applies to be admitted in a pupil exchange scheme shall not be below the minimum age nor above the maximum age set by the Member State concerned; provide evidence of acceptance by a secondary education establishment; also provide evidence of participation in a recognised pupil exchange scheme programme operated by an organisation recognised for that purpose; provides evidence that the pupil exchange organisation accepts responsibility for him/her throughout his/her period of presence in the territory of the Member State

concerned, in particular as regards subsistence, study, healthcare and return travel costs; and finally, be accommodated throughout his/her stay by a family meeting the conditions set by the Member State concerned. It should be noted 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.

- Unremunerated trainees: the person concerned must have signed a training agreement for an unremunerated placement with a public or private-sector enterprise or vocational training establishment recognised by the Member; provide the evidence requested by a Member State that during his/her stay he /she will have sufficient resources to cover his/her subsistence, training and return travel costs; receive, if the Member State so requires, basic language training so as to acquire the knowledge needed for the purposes of the placement.

- Volunteers: the person concerned must not be below the minimum age nor above the maximum age set by the Member State concerned; produce an agreement with the organisation responsible in the Member State concerned for the voluntary service scheme in which he/she is participating, giving a description of tasks, the conditions in which he/she is supervised in the resources available to cover his travel, subsistence, accommodation costs and pocket money throughout his/her stay and, if appropriate, the training he will receive to help him/her perform his/her service; provide evidence that the organisation responsible for the voluntary service scheme in which he/she is participating has subscribed a third-party insurance policy and accepts full responsibility for him/her throughout his/her stay, in particular as regards

his/her subsistence, healthcare and return travel costs; and, if the host Member State specifically requires it, receive a basic introduction to the language, history and political and social structures of that Member State.

Resident permits: as well as setting out the provisions relating to the conditions of admission specific to each of the four categories, the directive sets out the rules on obtaining residence permits by each of the four categories of third-country nationals.

Students: period of at least one year and renewable if the holder continues to meet the conditions. Where the duration of the course of study is less than one year, the permit shall be valid for the duration of the course. Renewal of a residence permit may be refused or the permit may be withdrawn if the holder does not respect the limits imposed on access to economic activities or does not make acceptable progress in his /her studies in accordance with national legislation or administrative practice.

School pupils: these will be issued for a period of no more than one year.

Unremunerated trainees: residence permits must correspond to the duration of the placement or shall be for a maximum of one year. In exceptional cases, it may be renewed, once only and exclusively for such time as is needed to acquire a vocational qualification recognised by a Member State.

Volunteers: normally, residence permits will be issued for a period of no more than one year. In exceptional cases, if the duration of the relevant programme is longer than one year, the duration of the validity of the residence permit may correspond to the period concerned.

There are provisions for the withdrawal or non-renewal of residence permits if it has been fraudulently acquired or wherever it appears that the holder did not meet or no longer meets the conditions for entry and residence laid down in the Directive. It should be noted that the Directive does not contain Parliament' s amendments on the renewal of residence permits for students and volunteers.

Economic activities by students: Outside their study time and subject to the rules and conditions applicable to the relevant activity in the host Member State, students are entitled to be employed and may be entitled to exercise self-employed economic activity. The situation of the labour market in the host Member State may be taken into account.

Where necessary, Member States will grant students and/or employers prior authorisation. Each Member State shall determine the maximum number of hours per week or days or months per year allowed for such an activity, which shall not be less than 10 hours per week, or the equivalent in days or months per year. Member States may require students to report, in advance or otherwise, to an authority designated by the Member State concerned, that they are engaging in an economic activity. Their employers may also be subject to a reporting obligation, in advance or otherwise.

Contrary to the wishes of the European Parliament, access to economic activities for the first year of residence may be restricted by the host Member State. Also, trainees may not be authorised to work.

The Directive has in place certain provisions on procedural guarantees and transparency.

Periodically, and for the first time by 12 January 2010, the Commission will on the application of this Directive in the Member States and propose amendments if appropriate.

Finally, the United Kingdom and Ireland, and Denmark are not taking part in the adoption of this Directive.

ENTRY INTO FORCE: 12.01.2005.

DATE OF TRANSPOSITION 12.01.2007. By way of derogation, for a period of up to two years after this date Member States are not obliged to issue permits in accordance with this Directive in the form of a residence permit.