

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) - 11/03/2016 - Council position

The Council adopted its position at first reading with a view to the adoption of 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, training, voluntary service, pupil exchange schemes or educational projects and au pairing (recast).

The proposed Directive aims to:

- improve the legal framework applicable to the categories of third-country nationals covered by 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 and Directive 2005/71/EC on the conditions of admission of third-country nationals for the purposes of scientific research;
- the scope of the directive to new categories of third-country nationals (remunerated trainees and au-pairs).

Scope: in the Council's position only researchers, students, trainees and volunteers in the European Voluntary Service appear as mandatory categories. The categories of pupils, other volunteers and au-pairs are optional in the Council's position.

Regarding trainees, the Council decided to do away with the distinction between remunerated and unremunerated trainees. On the other hand, the category of volunteers has been split into those volunteers participating in the European Voluntary Service and others.

More favourable provisions: Member States may either adopt or maintain more favourable provisions.. Member States are also given the possibility to provide for authorisations with a longer duration than what is provided for in the Directive.

Principles: the Council position enables Member States to require the applicant to present the documentary evidence required under this Directive for the purposes of admission, either in an official language of the Member State concerned or in any official language of the EU as determined by the Member State concerned.

Volumes of admission: the Council reiterates the principle set out in Article 79(5) TFEU concerning the right of Member States to determine the volumes of admission of third-country nationals coming to their territory for the purpose of work. The Council clarifies that this principle can only apply if the specific category of third-country nationals is considered to be in an employment relationship in the Member State concerned. It, furthermore, explicitly mentions that the volumes of admission can never be applied to students, even if they are allowed to work during their studies, as by definition they apply to be admitted for the purpose of study.

General conditions for admission: the Council position lists, in addition to the valid travel document, all possible documents that can be required for entry purposes, depending on the specific national system or the specific situation of the third-country national. It also inserts a new provision enabling Member States to indicate a reference amount which they regard as constituting "sufficient resources" as well as a provision enabling Member States to require the applicant to provide the address of the third-country national concerned in its territory.

In addition, the Council position:

- states that applications shall also be considered and examined when the third-country national is already residing in that Member State as holder of a valid residence permit or long-stay visa;
- inserts a new paragraph stating that third-country nationals who are considered to pose a threat to public policy, public security or public health shall not be admitted under this Directive.

Approval of host entities: Member States shall be free to decide whether they will require that admission under this Directive will take place through approved host entities or not.

The category of researchers: the definition of researchers is enlarged by adding that, in addition to holding a degree giving access to doctoral programmes, they can also be holders of a doctoral degree. The Council position:

- adds a clarification that the financial responsibility of the research organisation is limited until the starting date of the permit for job-searching or entrepreneurship issued;
- adds a requirement for the hosting agreement to contain information on the intended mobility in second Member States in case that is known at the time of application in the first Member State.

The category of students: the Council adds a specification that the full-time course of study in the EU, for which the student is admitted, can also include a period of training as part of these studies.

In order to allow students to cover part of the cost of their studies they shall be entitled to have access to the labour market of the Member State where the studies are undertaken. The Council modifies the Commission proposal by setting the minimum amount of hours that students are allowed to work per week at 15, a balanced compromise taking into account the different national practices.

The Council position explains that access of students to the labour market should be the general rule and Member States should take the situation in their labour markets into account only in exceptional circumstances.

Authorisations to be granted under this Directive: the Council adds further details to the initial Commission proposal concerning the various terms to be entered on the authorisations.

The period of validity of an authorisation for researchers shall be at least one year, or for the duration of the hosting agreement where this is shorter.

Member States may allow for the renewal of the authorisations of school pupils and au-pairs under certain conditions. In addition, the Council position provides that the duration of the authorisation for researchers and students, who are covered by Union or multilateral programmes that comprise mobility measures, shall be at least two years or equal to the duration of the hosting agreement or studies in case this is shorter (provided certain conditions are met).

As far as trainees are concerned, the Council set out that the duration of the authorisation shall be for a maximum period of six months. Member States may, however, provide for a longer duration corresponding to the duration of the training agreement in accordance with national law.

Grounds for rejection of an authorisation: the Council position converts a number of the mandatory grounds for rejection into optional ones. The wording in some of those provisions has, however, been aligned with the one in the corresponding provisions of the [ICT](#) and [Seasonal Workers' Directives](#).

The Council also inserts several new optional grounds for rejection. It deems important that Member States are able to reject an application: (i) if the host entity or the host family does not meet the terms of employment as provided for by applicable laws, collective agreements or practices of the Member State concerned; (ii) where it establishes that the third-country national would reside for purposes other than for which he or she applies to be admitted.

Any decision to reject an application shall take account of the specific circumstances of the case and respect the principle of proportionality.

Right to equal treatment: the rights set out in the [Single Permit Directive](#) together with the possible restrictions provided therein apply to researchers and students, as well as trainees, volunteers and au-pairs when they are considered to be in an employment relationship in the Member State concerned

Stay for the purpose of job-searching or entrepreneurship: the Council position provides for the possibility for researchers and students to stay on the territory of the Member State that had issued them an authorisation under this Directive, to seek employment or set up a business for a period of at least 9 months.

The period after which the Member State concerned may require third-country nationals to prove that they have a genuine chance of being engaged or of launching a business is a minimum of 3 months.

The Council also enables Member States to set a minimum level of degree (which cannot be higher than a Master's degree or the equivalent) that students must have achieved in order to benefit from this right.