

Procedure file

| Basic information | |
|---------------------------------------------------------------------------------------------------------|---------------------------------------|
| CNS - Consultation procedure Directive | 2002/0242(CNS) Procedure completed |
| Third-country nationals: migration for the purpose of studies, vocational training or voluntary service | |
| Repealed by 2013/0081(COD) | |
| Subject 7.10 Free movement and integration of third-country nationals 7.10.08 Migration policy | |

| Key players | | | | |
|-------------------------------|---------------------------------------------------------------------|-----------------------------------------------|------------|--|
| European Parliament | Committee responsible | Rapporteur | Appointed | |
| | LIBE Citizens' Freedoms and Rights, Justice and Home Affairs | | 11/11/2002 | |
| | | PSE ROURE Martine | | |
| | Committee for opinion | Rapporteur for opinion | Appointed | |
| | JURI Legal Affairs and Internal Market | | | |
| | EMPL Employment and Social Affairs | | 23/10/2002 | |
| | | ELDR SBARBATI Luciana | | |
| | CULT Culture, Youth, Education, Media and Sport | The committee decided not to give an opinion. | | |
| | PETI Petitions | | 23/01/2003 | |
| | | ELDR SBARBATI Luciana | | |
| Council of the European Union | Council configuration | Meeting | Date | |
| | General Affairs | 2630 | 13/12/2004 | |
| | Justice and Home Affairs (JHA) | 2574 | 30/03/2004 | |
| | Justice and Home Affairs (JHA) | 2455 | 14/10/2002 | |
| European Commission | Commission DG | Commissioner | | |
| | Justice and Consumers | | | |

| Key events | | | |
|------------|--------------------------------------------|-------------------------------|---------|
| 07/10/2002 | Legislative proposal published | COM(2002)0548 | Summary |
| 14/10/2002 | Debate in Council | 2455 | |
| 24/10/2002 | Committee referral announced in Parliament | | |
| 23/04/2003 | Vote in committee | | Summary |
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|------------|-----------------------------------------------------------------|-------------------------------------------------------------------------------------|---------|
| 23/04/2003 | Committee report tabled for plenary, 1st reading/single reading | A5-0137/2003 | |
| 03/06/2003 | Debate in Parliament |  | |
| 03/06/2003 | Decision by Parliament | T5-0235/2003 | Summary |
| 13/12/2004 | Act adopted by Council after consultation of Parliament | | |
| 13/12/2004 | End of procedure in Parliament | | |
| 23/12/2004 | Final act published in Official Journal | | |

Technical information

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|----------------------------|--------------------------------------------|
| Procedure reference | 2002/0242(CNS) |
| Procedure type | CNS - Consultation procedure |
| Procedure subtype | Legislation |
| Legislative instrument | Directive |
| | Repealed by 2013/0081(COD) |
| Legal basis | EC Treaty (after Amsterdam) EC 063 |
| Stage reached in procedure | Procedure completed |
| Committee dossier | LIBE/5/16784 |

Documentation gateway

| | | | | |
|-----------------------------------------------------------------|-----------------------------------------------------------------------------------|------------|------|---------|
| Legislative proposal | COM(2002)0548 OJ C 045 25.02.2003, p. 0018-0041 E | 07/10/2002 | EC | Summary |
| Economic and Social Committee: opinion, report | CES0403/2003 | 26/03/2003 | ESC | |
| Economic and Social Committee: opinion, report | CES1251/2002 OJ C 133 06.06.2003, p. 0029-0033 | 26/03/2003 | ESC | |
| Committee report tabled for plenary, 1st reading/single reading | A5-0137/2003 | 23/04/2003 | EP | |
| Text adopted by Parliament, 1st reading/single reading | T5-0235/2003 OJ C 068 18.03.2004, p. 0024-0107 E | 03/06/2003 | EP | Summary |
| Committee of the Regions: opinion | CDR0002/2003 OJ C 244 10.10.2003, p. 0005-0010 | 09/10/2003 | CofR | |
| Follow-up document | COM(2011)0587 | 28/09/2011 | EC | Summary |

Additional information

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|---------------------|-------------------------|
| European Commission | EUR-Lex |
|---------------------|-------------------------|

Final act

[Directive 2004/114](#)
[OJ L 375 23.12.2004, p. 0012-0018](#) Summary

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

PURPOSE : to determine the conditions for entry and residence of third-country nationals in the territory of the Member States for study purposes. **CONTENT** : the background to this proposal is the EU's desire to promote the Member States together as a world centre for excellence in education. The number of students on international exchanges is greater than ever, and demand for student mobility is growing constantly. These are the main points of the Commission's proposal are as follows. This proposal distinguishes between four categories of third-country nationals: students, school-pupils, unremunerated trainees and volunteers. Admission for study purposes mainly concerns higher education. This where international mobility is most common. Apart from the general conditions for admission, the proposal lays down the specific conditions for admission of each of the four categories. The main criterion for admission of third-country nationals for purposes of study, vocational training or voluntary service must be, apart from an assurance that they have adequate resources to cover their needs during their stay, admission to an educational establishment, participation in a pupil exchange programme, a vocational training contract or participation in a voluntary service scheme, as the case may be. As regards the resources criterion, it is proposed that for students and trainees, Member States should publish the minimum monthly financial resources required. The resources of school pupils and volunteers are a matter of their host family or volunteer service organisation which must meet their needs. Mobility of students between Member States must be encouraged so that the EU can reflect the growing internationalisation of education. The proposal deals with the situation of third-country nationals admitted to the EU for the purpose of studies. Once they have been admitted for a time to the Member State, they have the right to reside in another Member State to pursue part of the course they have started or to take a further course, provided that they meet specific conditions. This proposal contains no provisions for third-country nationals who already reside in the EU. To reflect the cost of training and the fact that more and more people have to work to pay for it, students and unremunerated trainees have limited access to the employment market upto a maximum number of weekly hours to be set by each Member State at between 10 and 20 hours. Member States may insist that those concerned make a declaration of their working activity so that compliance with this limit may be monitored. There are procedural provisions. In particular, the proposal allows applicants other than holders of short-stay visas, to apply for their residence permits locally. Apart from the maximum time allowed for issuing residence permits and visas, which is 90 days, the proposal provides a basis for the good practices of certain Member States that expedite the procedures for admitting students. These may be spread across the EU by means of agreements to be concluded between Member States' immigration authorities and educational establishments. Member States are asked to make efforts at transparency so as to ensure that third-country nationals have access to information in their countries of origin about educational and vocational training establishments in Member States, and conditions of entry to the territory. It must be noted that many conditions, such as proof of payment of fees and language skills, have been left to the discretion of Member States.?

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

The committee adopted the report by Martine ROURE (PES, F) amending the proposal under the consultation procedure, as follows: - the scope of the directive should be extended to cover researchers and not just students and trainees; - educational establishments attended by students should be legally recognised to ensure that students do not apply to "phantom" establishments which may serve as a gateway for illegal entry; - to ensure that enterprises are not able to act as "front organisations" allowing unpaid trainees to enter legally and then be used or exploited in irregular economic activities, host enterprises or establishments should be required to provide proof that they have the means to guarantee the training and that it corresponds to the basic training of the trainee. Moreover, trade union representatives should be informed by the employer of the presence of unremunerated trainees; - "pupil exchange" residence permits should be issued for a renewable period, just like "student" residence permits, provided the pupils continue to meet the requirements of the directive; - the provision allowing Member States to set a maximum age limit should be deleted on the grounds that this would run counter to the principles championed by the EU as regards lifelong learning and vocational training; - Member States should ensure that their national legislation enables third country nationals to be admitted under the same conditions as European students; - when assessing the application of the directive, the Commission should look at its effect on controlling the skills drain from less developed third countries; - Member States should send the Commission an annual statistical breakdown by sex and country of origin of the students, trainees and researchers concerned.?

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

The European Parliament adopted a resolution drafted by Martine ROURE (PES, France) making several amendments to the Commission's proposal. (Please see the document dated 23/04/03.) Parliament inserted a definition for "unremunerated" researcher, and laid down specific conditions for the issue of residence permits to such researchers. Decisions to withdraw residence permits or visas must be in writing with reasons. Decisions on applications for admission or renewal must be notified to applicants within 60 days rather than 90 days. Finally, Parliament inserted a provision that trade union representatives must be informed by the employer of the presence of unremunerated trainees and the content of the training offered.?

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

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 nationals 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.

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

In accordance with 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, the Commission presents a report giving an overview of how the Directive has been transposed and implemented by Member States and identifies possible problematic issues. The directive was the third legislative instrument in the field of legal migration to be adopted following the Treaty of Amsterdam and the Tampere Conclusions of the European Council. The report is based on a study carried out for the Commission and on other sources, including ad-hoc enquiries made through the European Migration Network, complaints, questions and petitions sent by private individuals and discussions with Member States on practical issues arising from the application of the Directive. The Directive was adopted on 13 December 2004. Denmark, Ireland and the United Kingdom are not bound by it.

Findings: the report notes that attracting third country national students to the EU is a fundamental objective of EU immigration policy, stressed again under the Stockholm Programme. In 2009, more than 200 000 third country nationals entered the EU for the purpose of this Directive. The Directive is key to contributing to mutual enrichment for the migrants concerned, their country of origin and the host Member State .

However, the report suggests that the potential of this EU instrument is not being fully exploited. In particular, the level of harmonisation achieved by the Directive, adopted under the unanimity rule, is rather weak, since only a few provisions of the Directive are legally binding and many provisions do not contain specific obligations for Member States.

The report also reveals a crucial need for amendments to the Directive.

Reinforcement of procedural guarantees (such as the specific deadlines for handling applications, obligation on Member States to give reasons for refusals). From the many complaints received by the Commission, it seems that in practice procedures are often long and the timeframe is unclear. The time taken to process applications ranges from 7 working days to 6 months. No specific deadlines are set in Belgium, Cyprus, Germany, Finland and Sweden.

In addition, from the numerous complaints and queries brought to the attention of the Commission it appears that Member States' visas rules often nullify the transparency guarantees required by the Directive. Laws in Bulgaria and Italy appear to make no reference to provisions on notification procedures or provisions giving the applicant the right to legally challenge a rejection.

Strengthening of mobility clauses: student mobility benefits global economic development by promoting the circulation of knowledge and ideas. However, from the queries submitted to the Commission it appears that additional rules on visas often make it difficult for third country students to effectively exercise their right to mobility. Furthermore, not all Member States have transposed the provisions which require them to facilitate the admission of third-country nationals participating in EU Programmes that enhance mobility towards and within the Union. Belgium, Bulgaria, Estonia, Germany, Italy and Romania do not appear to have transposed this provision, and the other Member States appear simply to be calling for such facilitation rather than translating it into specific rules on (for example) lower fees or faster procedures. Thus the transposition of this important provision is not yet satisfactory.

Personal scope: the Directive stipulates which categories of third-country nationals must and may be covered by the provisions transposing the Directive into the laws of Member States. Those who must be included are third-country nationals who apply to be admitted to the territory of a Member State for the purpose of studies. The provisions may also cover third-country nationals who apply to be admitted for the purposes of pupil exchange, unremunerated training or voluntary service. Altogether 10 Member States decided to apply the Directive to all three of these optional categories (school pupils, unpaid trainees and volunteers), and a further 5 Member States decided to apply it to one or two of these categories. A total of 9 Member States transposed only the provisions relating to students.

If Member States choose to apply the Directive to any of these three categories (other than students), the choice they make obliges them to transpose the relevant provisions of the Directive unless the provisions are left to the Member State's discretion. It seems, however, that Member States have sometimes disregarded this general rule.

More favourable provisions: a small number of Member States have bilateral agreements with third countries that include more generous provisions than those laid down in the Directive. In addition, outside the context of bilateral or multilateral agreements, Member States may adopt or maintain more favourable provisions than the ones laid down in the Directive. However, Member States sometimes appear to have misunderstood this and to have disregarded the Directive's compulsory provisions, such as the requirement to have a training agreement for unremunerated trainees. More favourable provisions are allowed as long as they do not water down the level of rights already granted to third-country nationals by the Directive. These provisions cannot undermine the purpose of the Directive, which is to provide for a certain level of harmonisation of the admission and residence conditions for third-country students, with a view to setting up a transparent common scheme at EU level.

The report notes that 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 in the field of human capital and employment, which benefits both the sending and the receiving countries. Therefore, without impinging on the power of Member States to determine the volumes of migrants, the issue of access to work for third-country national students at the end of the studies could be specifically addressed, as this seems to be a decisive factor in students' choice of a destination country and an issue of common interest in the context of a declining working-age population and a global need for highly-qualified workers.

In order to ensure that the Directive is correctly transposed and implemented across the EU, the Commission will use fully its powers under the Treaty and launch infringement proceedings when necessary. The Commission will also continue working at technical level with the Member States. The relevant Contact Committee will continue to identify difficulties and facilitate an exchange of views on the interpretation of the Directive. Some legal and technical issues could be further discussed and clarified, such as more favourable provisions; sickness insurance; publication of information relating to students; mobility of students.

The Commission intends to offer information and assistance to both Member States and third-country nationals, making the best use of the internet, mainly through the future Immigration Portal.