The Students & Researchers Directive

Central Themes, Problem Issues and Implementation in Selected Member States

Tesseltje de Lange & Paul Minderhoud (eds)

STUDENTS & RESEARCHERS DIRECTIVE

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Introduction

*Paul Minderhoud & Tesseltje de Lange**

On 23 May 2018 the deadline for the transposition of Directive 2016/801 on the conditions of entry and residence of third-country nationals (TCN) for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing expired. This new Directive repealed and replaced the Students Directive 2004/114 and the Researchers Directive 2005/71, which was unclear in certain aspects and had a number of shortcomings. The Directive applies to TCNs who apply or have been admitted to an EU Member State for purpose of research, studies, training or voluntary service in the European Voluntary Service. Member States have discretion to decide whether they want to apply the Directive to TCNs for the purpose of pupil exchange scheme or education project, voluntary service other than the European Voluntary Service or au pairing. Where all the general conditions and relevant specific conditions provided by the Directive are fulfilled, the third country national shall be entitled to an authorization. Authorised researchers are entitled to equal treatment with nationals of the host Member State in a number of areas such as working conditions, social security benefits, recognition of professional qualifications and access to goods and services. One of the important rights conferred on students is the right to work in the territory of the host Member State for at least 15 hours per week, or the equivalent in days or months per year (whereas the situation at the labour market may be taken into account here). Another important novelty is that the Directive obliges the Member States to entitle students and researchers who have completed their studies/research to stay on the territory of the Member State where they did their studies/research for at least nine months in order to seek employment or set up a business there. Contrary to most of the EU legal migration Directives, the Students and Researchers Directive regulates not only the issuance of residence permits, but also of long-stay visas.

This book is a result of seminar organized at 15 November 2019 at the Radboud University Nijmegen as part of the Jean Monnet Centre of Excellence program of the Centre for Migration Law. It highlights the central themes, problem issues and implementation in selected Member States of this Students & Researchers Directive.

The book starts with a contribution by *Matthieu Chavrier & Paulina Bury* of the Legal Service of the Council of the EU on the negotiations in the Council. They point out that the following issues that became the most contentious during the negotiations within the Council: the scope, intra-EU mobility, and rights given to different categories of third-country nationals. The rights debated included equal treatment, economic activities by students, stay for the purpose of job-searching or entre-

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preneurship for researchers and students, and the rights of family members. Their chapter discusses the Council negotiations according to those issues. The chapter first elaborates on the timeline of the negotiations within the Council, taking into account the specificity of the procedure in the politico-institutional context. It then tackles the problem of scope in the light of the principle of subsidiarity and the controversies it has raised among Member States. Finally, the discussions on rights, such as intra-EU mobility and economic activity, are briefly described.

Hélène Calers of the European Commission, subsequently discusses the transposition of the Directive from the perspective of the European Commission. She concludes that this Directive includes a number of improvements compared to the Students Directive and the Researchers Directive, and provides for more precise and detailed rules than the previous Directives, making it the longest (43 Articles) and most complex EU Directive on legal migration at the moment. In her contribution she presents the main features of the Directive and the first identified implementation challenges, based notably on the discussions of the Contact Group on Legal Migration. She discusses the scope, admission conditions, the grounds for rejection, withdrawal and non –renewal as well as the procedures for the processing of applications, for approval of host entities and for authorisations. She ascertains that there are relatively few compulsory grounds for rejection/withdrawal/non-renewal ("shall clauses"), but a longer list of optional grounds ("may clauses"), which endangers the harmonisation effect of the Directive. Then the rights of the TCNs during their stay (equal treatment rights, economic activities rights for students and rights of family reunification for researchers) is described. Also intra-EU mobility and the possibility to stay for job-searching or entrepreneurship are addressed. She ends her contribution with the observation that The complexity and length of the Directive, the delays in transposition by Member States and the lack of statistics do not yet allow to draw general conclusions on the transposition of the Directive and its application.

Next, *Jo Antoons & Ana Correia Horta* of Fragomen Global Llp Brussels give a comparative overview of Member States' policies on attracting and retaining foreign talent across the EU. This contribution outlines the practical impact Directive 2016/801 had on foreign students, researchers and trainees in the EU by focusing on the admissibility criteria and benefits foreseen for each of these categories. Throughout the sub-sections, practical examples on the implementation of specific legal provisions have been included, as well as comparative overviews on member states' policies. The information with regard to the implementation of the Directive has been limited to the following member states: Austria, Czech Republic, France, Germany, Italy, Luxembourg, Netherlands, Poland, Spain, Malta and Portugal. Their conclusion is that while Directive 2016/801 brings several new benefits to foreign researchers, students and trainees in the EU, an overall conservative approach towards the implementation of the Directive has unfortunately been adopted by the member states.

The section which goes into more detail in selected Member States starts with a contribution by *Louisa Borg Haviaras* with empirical findings from Cyprus on the mobility of third country national researchers in the European Research Area (ERA). It provides a very insightful account of Cyprus in the EU in general and more specifically of the interaction with ERA soft law and the lack of researcher mobility into Cyprus. It explores the challenges to scientific migration affecting TCN and Cypriot scientists and researchers, arising from the domestic research environment (Cyprus).

Her contribution stresses the role of the home country scientific/research environment as this determines the safeguarding of TCN scientists' and researchers' rights: the right to entry, right to family reunification, right to work, mobility rights and opportunities to remain or not. She also considers the weaknesses and improvements between the old and the new Directive on TCN Researchers and their family members at an EU level.

The next country to be discussed is the Netherlands. *Arno Overmars* analyses the policy and challenges regarding the topic of international students in higher education. He outlines the regulation regarding the recruitment, selection and admission of international students and researchers, and the influence of higher education and migration policy on the possibilities for high-quality knowledge workers to work in the Netherlands. He advocates more cooperation between higher education institutions, but realizes that the Corona crisis, and the global immobility it likely brings, might put the development of such co-operations on hold. In his opinion higher education institutions should focus more on the legal position of the non-EU/EEA students, He also points at the existence of a Code of Conduct (which contains a complaint procedure) but observes that framework is rather unknown.

Ingeborg Spiegeler Castañeda discusses subsequently the experience in Germany. Her chapter is divided in six key themes; the first theme explains the legal framework in which the Directive was transposed. The second theme defines the role of the Federal Office for Migration and Refugees as the national contact point. In this context, the mobility notification procedure and the relevance of a safe data exchange will be described. Additionally, the third and fourth themes show statistics on the mobility of international students and researchers. The fifth theme covers some of the challenges faced so far and the respective solutions applied in the implementation of the Directive in regards to mobility in Germany. Finally, the sixth theme gives a short overview of the Skilled Labor Immigration Act which recently entered into force and expands the possibilities for qualified professionals to come to Germany for work.

The transposition in Poland is described by *Izabela Florczak*. She points out that over the last decades Poland used to be a country of emigration, but the changing attitude to internationalization of scientific research conducted in Poland the last years gives grounds for acknowledging that there will be a gradual increase in the share of highly qualified science representatives and students from third countries in Poland. She discusses the different types of visas and temporary residence permits executing the provisions of Directive 2016/801 as well as the rights to stay and continue residence conferred under the Directive.

The section on selected Member States is closed by *Sandra Mantu & Roxana Ruja* who discuss the implementation of Directive 2016/801 in a human capital exporting country Romania. They describe the transposition of the Directive in Romania in light of the Directive's stated objectives of simplification and streamlining while equally bearing in mind that although other categories are envisaged by the personal scope of the Directive, students and researchers enjoy the most developed legal status. While Romania continues to be a country of net emigration, the number of foreign students has increased steadily over the last decade. Until 2018, TCN students outnumbered TCN labour migrants. According to Mantu & Ruja the immigration authorities apply the law rigidly, there is little cooperation between universities and the immigration authorities, while jurisprudence in this area of law is far from unitary.

In practice, this means that TCN students and researchers may not always experience Romania as an attractive destination. If simplifying administrative procedures and streamlining the existing framework were the aims of Directive 2016/801, then Romania still has work to do to meet these goals.

The last chapter of the book contains some concluding remarks by *Tesseltje de Lange*. Building on the work in the other chapters she delineates five episodes in what she calls 'a legal jungle' in which third country nationals coming into the EU under this Directive may find themselves. These episodes are divided in two pre-admission episodes; one episode during their stay in one Member State, and one while mobile in the EU and finally, and after their studies or research, and an episode of looking for a future career, possibly also in the EU. She concludes with some suggestions for future research on the migration issues covered by this Directive, such as comparing legal jungles across the EU, drawing hierarchies between students (based on country of origin, type or location of educational institution, gender etcetera), comparing mobility regimes in other Directives and, finally, the study of stepwise migration and the extent to which the Directive facilitates a future career for TCN in the EU.

Students and Researchers Directive: Negotiations within the Council

*Matthieu Chavrier & Paulina Bury**

1. Introduction

The recasted *Students and Researchers Directive* was proposed by the European Commission[1] as a unique mix of two directives: 2004/114/EC[2] (admission of non-EU nationals for the purposes of study, training or voluntary service) and 2005/71/EC[3] (scientific research). It covered seven very varied categories of third-country nationals, namely researchers, students, exchange pupils, remunerated trainees, unremunerated trainees, volunteers and au pairs. Two of the categories of third-country nationals included in the proposal were introduced as a novelty, namely au pairs and remunerated trainees. Moreover, some categories were up till the moment optional. All in all, the categories of third-country nationals tackled by the new piece of proposed legislation were very diverse: between labour and non-labour, high- and low-skilled, or between those entitled to a short stay or arriving with a more long-term perspective. To complicate the issue further, the Council wished to modify the proposal so as to include both obligatory and non-obligatory elements (similarly to what was in force previously). Among all those difficulties, the most contentious issues that emerged during the discussions within the Council related to the scope, the intra-EU mobility and the rights given to different categories of third-country nationals (the rights debated included equal treatment, economic activities by students, stay for the purpose of job-searching or entrepreneurship for researchers and students, and the rights of family members).

After a presentation of the timeline of the discussions within the Council and the specificity of the legislative procedure in the present case, this chapter will discuss the Council's positions in relation to those three issues.

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1 COM (2013) 151: 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].

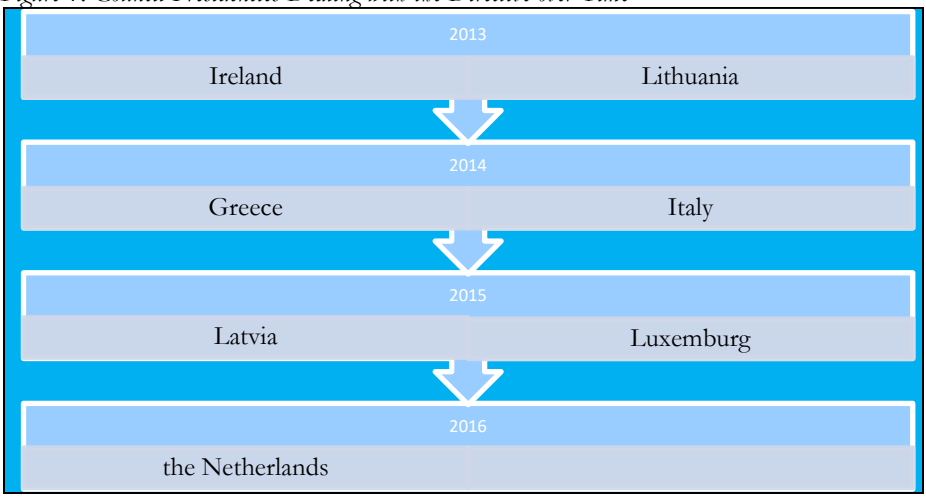
2 COUNCIL DIRECTIVE 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, at https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:375:0012:0018:EN:PDF.

3 COUNCIL DIRECTIVE 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, at https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:289:0015:0022:EN:PDF.

2. Timing and Context

The Commission submitted its proposal to the Council (under the Irish Presidency) and to the Parliament on 25 March 2013. It was first negotiated within the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE), under guidance of the rapporteur Cecilia Wikström. Altogether, it took seven Council Presidencies and over three years to reach an agreement on it. Six trilogues were conducted in 2015, under the Latvian and Luxembourgish Presidencies (that led three trilogues each). While that can seem to be a long process, it has not been outstanding in the field of labour migration. As a matter of comparison, it took five years to adopt the Single Permit Directive 2011/98[4], and around four years for both the Seasonal Workers Directive 2014/36 and the ICT Directive 2014/66. In addition, the final phase of negotiations in 2015 coincided with the so-called migration and refugee crisis.

Figure 1: Council Presidencies Dealing with the Directive over Time



Since the entry into force of the Treaty of Lisbon in 2009, the Union shall develop a common immigration policy (including labour migration) and shall adopt measures by Ordinary Legislative Procedure, in accordance with Article 79 TFEU. There are several reasons for which this policy field is so contentious. First of all, the economic perspective of the governments of the EU Member States is one of the most important elements determining their negotiation positions. In some Member States, the unemployment rates in the years 2010s reached 20 or even 30 per cent, and among youth up to 50 per cent. This was coupled with a drop of economic growth and a deepening economic crisis. The second factor that makes the negotiations of labour

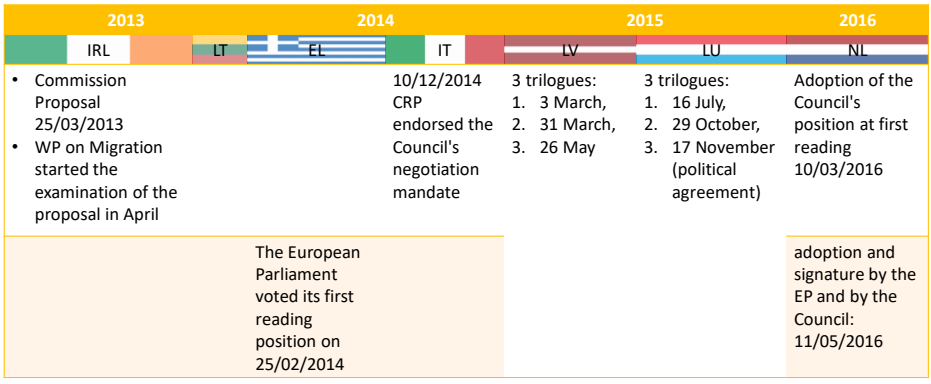
4 Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, OJ L 343, 23.12.2011, p. 1-9.

migration policies so complex is the fact that Member States have very divergent migration histories with important cultural and historical differences. Some of them have had experience with immigration for over a century, some other have been countries of emigration before becoming countries of immigration, and then some other Member States were not yet concerned by immigration. Finally, there are also structural differences, between for instance federal and centralised Member States. For instance, in Belgium or in Austria, the admission of third-country nationals is a competence of the federal state, but management of the labour market is done on the regional level, so it can make the national decision-making process more complicated concerning any labour migration directive.

2.1. An A-typical Procedure

In April 2013, the Working Party on Migration started to examine the proposal for the recasted Directive. The work continued in parallel in the European Parliament (EP). Almost a year later, in February 2014, the Parliament issued its opinion at first reading. Since it fell just a few months from the European Parliament elections that were scheduled for 22-24 May 2014, this first reading served as the a mandate for the negotiations with the Council. This was not everyday practice, as according to the Ordinary Legislative Procedure set out in Art. 294 TFEU, it is for the Council to first come up with the negotiation mandate. In case of the current directive proposal, it was only endorsed on 10 December 2014 by the Permanent Representatives Committee. In other words, the EP wanted to freeze its position before the elections and before the start of the trilogues. As a consequence, a first reading agreement between the co-legislators was not possible anymore.[5]

Figure 1: Timeline of the Negotiations



5 See Council of the EU, ST 14958/15 ADD1, which constitutes the Draft Statement of the Council's reasons regarding its position in the negotiations.

The usual practice is to start the inter-institutional informal discussions (that is to say, trilogues and technical meetings), before the EP adopts its first reading position (FRP), as per Article 294(3) TFEU. Then, once the two institutions have agreed in the framework, the Council sends to the EP a letter explaining that if the EP adopts a FRP corresponding to the text in annex, the Council will be in position to approve it in first reading as per Article 294(4) TFEU. In the case under consideration, the institutions had an interest to go for a so-called "early second reading", that is to launch discussions (trilogues and technical meetings) before reaching the stage described by Article 294(5) TFEU: the adoption by the Council of its FRP. This time, the positive outcome of discussions means that the EP sends to the Council a letter explaining that if the Council adopts a FRP corresponding to the text in annex, the EP will be in position to approve it in second reading, in accordance with Article 294(7)(a) TFEU. The major interest being to avoid to enter into the mandatory deadlines that apply once the co-legislator engage in second reading. After all the informal trilogues, the Committee of the Permanent Representatives of the Governments of the Member States (Coreper) endorsed the text negotiated with the European Parliament on 26 November 2015. A few days later, on 1 December the Chair of the LIBE Committee sent a letter stating that the compromise text was transmitted to the EP plenary with the recommendation to accept it in EP's second reading without amendment.[6] The Council adopted its political agreement on 4 December. Following that, the first reading position of the Council was adopted on 10 March 2016, under the Dutch Presidency. All delegations voted in favour, except the Austrians, who abstained from voting.

3. Scope

In its first reading position, the European Parliament supported the proposal of the Commission with all seven categories being obligatory. In the Council, however, half a year later, in October 2014, nine delegations argued that the scope of the new directive should be limited to researchers and students, and all other categories should be removed from the directive.[7] The question of the scope was raised from the outset by the delegations, some of them being very vocal against what they called a "catch-all directive". As concerns school pupils, Poland, Germany, Belgium, the Netherlands and Greece were against rendering this category obligatory and the situation was similar in case of unremunerated trainees (the Netherlands, Latvia, Greece, Austria and Germany did not want to include it as a mandatory category). But the situation was much more tense when it came up to remunerated trainees, with Germany, Romania, Portugal, Austria, Slovenia, Greece, the Czech Republic, Hungary, Poland and Cyprus being opposed to their inclusion, but Luxembourg and Italy being in favour thereof. Finally, when it came to the last two categories: volunteers and au-pairs, again only a few delegations were in favour of including them (Greece for volunteers and Luxembourg, Italy and France for au-pairs), and many (respectively Belgium, the

6 Council of the EU, ST 14958/15 ADD1.
7 Council of the EU, ST 5013/14.

Netherlands, Germany, Latvia, Finland, Austria, Spain and Cyprus for the former and Germany, Hungary, the Netherlands, Latvia, Finland, Slovenia, Portugal, Austria, Greece, Spain and the Czech Republic) introduced reservations against inclusion of the latter category. The rationale of the Council delegations was that some of those categories (in particular pupils, au pairs and non-EVS volunteers), were not necessarily highly-skilled, so not groups of third-country nationals that Member States would need to attract. Volunteers within the European Voluntary Service (EVS), as part of the Erasmus+ programme, were favoured: the necessity of harmonisation of rules within the EU was more pronounced than in the "other volunteers" category and this is why they were decoupled.[8] At the same time, some delegations (in particular the French) deplored the fact that teachers were not within the scope of the directive, because they could be included either as persons accompanying pupils taking part in international exchanges or themselves taking part in international exchanges.[9]

As can be seen, vast majority of delegations were wary of expanding the scope of the existing directives and only a few were mildly enthusiastic about the perspective of welcoming more third-country nationals through this legal framework. This being said, there was one category that was never foreseen to be included in the scope of the Students and Researchers Directive proposal: trainee employees, who are a special category (they are highly qualified and they are transferred so they already have a job). In theory they could fit perfectly into the definition in Article 3(f) for paid trainees. Nevertheless, they were never considered to be included in this proposal.

3.1. Subsidiarity Problem

By the end of 2014, the Italian Presidency decided to submit the legislative file to Coreper in order to seek the negotiating mandate. The issue of scope became ever more pressing. At the same time, Germany managed to create a coalition of Member States around this issue. As mentioned before, on 23 October nine delegations sent a letter to the Presidency, by means of which they sought to limit the scope to students and researchers. They argued that the directive, as designed by the Commission, breached the principle of subsidiarity, enshrined in Art. 5(3) TEU and ensured by Protocol 2, which put a certain number of obligations on the Commission and gives some reviewing rights to national parliaments.[10] Those Treaty provisions oblige the Commission to accompany draft legislative acts with a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality, give the right of opposition to national parliaments when they consider that a

8 Council of the EU, ST 14958/15 ADD1.

9 Council of the EU, ST 5013/14, p. 42.

10 Article 5(3) TEU provides that: "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.
The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol."

Commission legislative proposal does not respect the principle of subsidiarity. Under Articles 6 and 7 of Protocol 2 to the Treaty of Lisbon, draft legislative acts are sent to national parliaments which have eight weeks to issue a reasoned opinion setting out the reasons why they consider that the draft is not in accordance with the principle of subsidiarity. If the number of reasoned opinions reaches a certain threshold, the Commission is obliged to review, or in some cases even withdraw its proposal. While the latter is not a regular practice, it has already happened in 2012 that the Commission had to withdraw its proposal for a regulation on the exercise of the right to collective action (the right to strike). Moreover, it is not unusual to see such reasoned opinions issued by national parliaments or by chambers of these national parliaments. Even when the number of reasoned opinions is not sufficient to reach the threshold of yellow or orange cards, they will necessarily have a strong influence on the positions subsequently defended by a member state.

As a matter of fact, three of the categories proposed by the new directive have been regulated by the Community legislation for almost ten years: the conditions of entry and residence of the third-country nationals for the purposes of pupil exchange, unpaid training and voluntary service are regulated by Directive 2004/114. Already back in 2004, the Council was required to ensure compliance with the principle of subsidiarity (Article 1 of Protocol 30 annexed to the TEC). What is more, back in the time this policy area was governed by unanimity voting, so any of the (then) 25 Member States could have refused to include these categories if they felt that there was a problem of subsidiarity. On top of that, more than half of the Member States chose to apply the directive in those three categories (which were left to their discretionary power, unlike the category of students).

In case of this directive, there was only one reasoned opinion from the Greek Parliament[11] which pointed out the lack of reference to Article 79(5) TFEU and did not appreciate rendering all categories obligatory. Six parliaments (Polish supreme chamber, Italian, Romanian, Portuguese, Spanish an Czech) forwarded their contributions (or resolutions), out of which only the Czech one was negative. The Polish lower chamber of the parliament submitted a legal opinion which identified problems with the two new categories. Austria, the Czech Republic, Germany, Finland, Lithuania and Poland all wanted to limit the scope to students and researchers, since in their view, these categories were the only ones the EU should wish to attract, which as such constitutes a policy position but not a subsidiarity breach. In particular, Austrian and the Czech Republic were questioning why such different groups of third-country nationals had been put together in a single legislative act. Additionally, the Czechs were doubting whether a new directive was necessary to increase attractiveness of employment in fields that require higher education and research and expressed the opinion that the proposal should only deal with stays on the basis of residence permits, and not long-stay visas (which remain a national competence).

As a matter of compromise, the Italian Presidency proposed that students and researchers would be obligatory, school pupils, unremunerated trainees and volunteers would be optional, while remunerated trainees and au pairs would be removed. Ac-

11 See https://secure.ipex.eu/IPEXL-WEB/dossier/files/download/082dbcc53eea9b80013f423d7b8d3c21.do (last accessed on 22.06.2020).

cording to the nine Member States that wrote the letter, remunerated trainees "represent a considerable potential for non-managed access to the labour market by low-skilled persons". As it seems, the subsidiarity argument was a pretext for some Member States to make a strategic move against making the up till now optional categories obligatory.

4. Intra-EU Mobility

Mobility of the third-country nationals included in the scope of the proposed directive proved to be difficult to negotiate, as mobility needs of researchers and students were not quite compatible with the limits of the Schengen acquis. Even if they do not preclude it, the Schengen rules have not been designed to shape intra-EU mobility for the purpose of work, research or studies. Instead, they are intended to cover stays for tourism and other cases of short-term stays. As mentioned before, the Directive is based on Article 79 TFEU which relates to the Union common immigration policy and which enables the Union legislature to regulate "the conditions of entry and stay of third-country nationals" as well as "the definition of the rights of third-country nationals residing legally in a Member state, including the conditions governing freedom of movement and of residence in other Members Sates". As a result, it was possible to set up an autonomous mobility scheme in the framework of the Directive. Considering, on the contrary, that the mobility scheme of a migration directive should be dependent on the Schengen borders *acquis* (which is composed of secondary law instruments) would deprive Article 79 of some of its effectiveness.

The Austrian delegation had doubts whether Article 79 TFEU constituted a sufficient legal basis and suggested using article 153 TFEU (complementing Member States' social policies) instead. This was countered by the Council Legal Service, especially that this approach was also adopted in regards to the ICT and Seasonal Workers directives.[12] It was reiterated by Member States that they can decide on the volumes of admission of workers, as per Article 79(5) TFEU. It was then clarified 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, so 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.[13] Similar provisions were included in the ICT Directive and the Seasonal Workers' Directive.

The main problem with the alignment of the proposed directive and the Schengen *acquis* was that the geographical scope of the two was different. For immigration issues, Denmark, the UK, Ireland have an opt-out (with some possibilities of opting-in for the UK and Ireland), while Denmark applied the Schengen *acquis*, the UK and Ireland did not and four Member States (Cyprus, Bulgaria, Romania and Croatia) were not applying the Schengen *acquis* in full (in particular with regards to the absence of internal border controls and the issuance of Schengen visas). This would effec-

12 Council of the EU, ST 5013/14, p. 3.
13 Council of the EU, ST 14958/15 ADD1.

tively mean that a holder of an authorisation issued in Bulgaria, Romania, Cyprus or Croatia, in order to move to another Member State, would need to apply additionally for a Schengen visa. Apart from the procedural burden this would entail, such a situation would also create two sub-categories of third-country nationals, depending of their first member state of residence.

Another issue, apart from the geographical limitation of application of Schengen rules, was that Schengen has limitations of stay inherent to its rules: the maximum duration of stay of 90 days (in any 180-day period), under the Schengen rules, is calculated in relation to a stay within the territory of all the Member States of the Schengen area. Therefore, the calculation of stay according to the Schengen definition would considerably complicate mobility schemes of researchers or students when several subsequent stays in different Member States are foreseen. However, this problem has already been solved during the negotiations of the ICT Directive 2014/66/EU[14] which foresees the creation of a specific mobility scheme for ICT's. This Directive served as a model for the Students and Researchers Directive.

In order to avoid the constraints, differentiation and complexity deriving from the Schengen rules, Article 79(2) TFEU allows the Union to determine mobility schemes based on a principle of mutual recognition of an authorisation between all the Members States. Such an option does not create any differentiation between the Member States that will apply the Directive, and is more suitable to attract the researchers or the students by strengthening their mobility rights. Differentiation between Member States in this respect does also not appear justified given that EU mobility programmes for students and researchers (Erasmus Mundus, Marie Curie etc.) cover all Member States. At the same time, those mobility schemes should be framed (as it has been done for the ICT Directive) in order to foresee the same level of safeguards and guarantees for the Members States than those laid down in the Schengen acquis.

4.1. Rights

Delegations of Member States had to discuss the very complex relationship with the Single Permit Directive and decided to change the Commission's proposal in order to align it with the said directive. At some point, the Austrian delegation suggested that the overall consensus was that there should be no rights taken away and the status quo, as established by previous directives, should be maintained. However, there was no clear understanding of what the status quo actually meant. The Austrians proposed that there should be no reopening of the debate on the subject so as to avoid confusion. In the overall compromise proposed by the Presidency in order to reach a political agreement in October 2015 it was proposed that Article 12[15] of the Single Permit Directive 2011/98/EU would apply to trainees, volunteers and au pairs if they remained in an employment relationship, and to all students and researchers (with some restrictions, however, enumerated in Article 22(2) of the adopted directive. The

14 Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, OJ L 157, 27.5.2014, p. 1-22.

15 See Annex 1.

Presidency suggested that the restrictions should be clearly spelled out instead of simply referred to as exceptions to some 'branches of social security').

Similarly, for the reasons of consistency, in the Council position, intra-EU mobility of students and researchers scheme was aligned with the ICT Directive. As a result, the Council divided the mobility of researchers into short- and long-term mobility.

5. Economic Activity and Mobility of Students

There was a broad consensus about the fact that in order to allow students to cover part of the cost of their studies they shall be entitled, in accordance with Article 24, to have access to the labour market of the Member State where the studies are undertaken. However, the Council proposed to limit the number of hours of work per week to 15 (instead of 20 proposed by the Commission, but still more than the 10 hours allowed by Directive 2004/114/EC), considering that it would be "a balanced compromise taking into account the different national practices".[16] Moreover, the Council considered that access of students to the labour market should be the general rule and Member States should take the situation (in the form of labour market testing) in their labour markets into account only in exceptional circumstances.

Students turned out to be a very varied category, depending on the kind of programme they were inscribed to. The Council distinguished three types thereof: students covered by EU or multilateral programmes comprising mobility measures, students taking part in a programme being an agreement between two or more higher education institutions, and finally individual foreign students simply inscribed to a university. The first two categories of students were allowed to enter and stay in order to carry our part of their studies in a higher education institution in a second or several other Member States for a period of up to 360 days per Member State (subject to the conditions set out in Article 31 of the adopted Directive). In a sense, this type of students and the mobility rights attributed to them resemble short-term mobility of researchers, in which case it remains possible for the second Member States to require a notification. For individual students, it was decided that the procedure would be much heavier and they would need to submit an application for an authorisation to enter and stay in a second Member State for the purpose of studies (as they did to enter the first Member State).

5.1 Stay for the Purpose of Job-searching or Entrepreneurship for Researchers and Students

Apart from the right to an economic activity for students (who are one of the essentially non-economic categories of the Directive), researchers and students have been attributed the right to stay after their academic contract has ended. This was logical as one of the aims of the directive was to attract and maintain talent. This right was however not the right to labour market access, but merely the right to stay for job

16 Council of the EU, ST 14958/15 ADD 1 REV 1, p. 12.

seeking purposes.[17] This meant that Member States kept control over their labour market despite the fact that the third-country nationals were already present on their territories. Such argumentation was not convincing to the Cypriot delegation and Greece was of the opinion that Member States should have the liberty to decide whether they want to grant such a right. Hungary was at the same time wondering, how could one make sure that the third-country national was indeed doing the necessary to set up a business during the time that was granted to him or her.[18] A few Member States supported the argument that this should be a "may" rather than "shall" clause, but most importantly, the length of the permitted stay to be accepted varied between 3 and 18 months. The finally adopted provisions allows for at least 9 months of job searching period, with an additional optional requirement that after 3 months of stay, the student or researcher has to prove that he or she has a genuine chance of finding a job or setting up a business.

6. Conclusion

While the aim of the European Commission was to make the rules for admission of a wide array of third-country nationals more uniform than before, the negotiations in the Council showed that Member States were not yet ready for such harmonisation.

Strikingly, before exercising any competence in the field of labour migration, the Council had adopted 2 resolutions on 20 June and 30 November 1994 "on limitation on admission of TCN to the territory of the MS for employment" or "for pursuing activities as self-employed persons". Those titles were as explicit as was the content of the resolutions:

> "At present, however, no Member State is pursuing an active immigration policy. All States have, on the contrary, curtailed the possibility of permanent legal immigration for economic, social and thus political reasons. Admission for temporary employment may therefore be considered only in terms of what is purely exceptional. The Council recognizes that the present high levels of unemployment in the Member States increase the need to bring Community employment preference properly into practice."[19]

A few years later, the European Community started to have an appetite for more regulation in the area of migration and to start pursuing a policy actively attracting third-country nationals. It is interesting to note that from 1999 to 2009, there was a reversed proportion between the Primary Law and the political willingness. The Tampere programme was very ambitious regarding legal immigration with a narrow legal basis (in terms of decision-making process it was ruled by unanimity with mere consultation of the EP). Its successor, the Stockholm programme, which was adopted ten years later, was showing much less ambition with a much wider legal basis (common immigration policy under the ordinary legislative procedure). The negotiations

17 Cf. Council of the EU, 10717/14, p. 61.
18 Council of the EU, 10717/14, p. 117.
19 Council, 1994.

of the directive studied in this volume proved that despite the fact that there were already a number of migration policy directives adopted, EU Member States were still seeking to limit the scope of harmonization of this policy area and raised reservations that touched upon problems that seemed to be already long solved.

To conclude, it is important to mention that despite the difficulties and divergence of views, the directive was adopted and implemented by the 25 EU Member States that were bound by it. Additionally, with the negotiations on the reviewed EU Blue Card Directive proposal (COM(2016) 378 final) being currently stalled, the Students and Researchers Directive 2016/801 remains the last legal migration directive adopted up to date.

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Annex 1: Article 12 of the Single Permit Directive:

Article 12

Right to equal treatment

1. Third-country workers as referred to in points (b) and (c) of Article 3(1) shall enjoy equal treatment with nationals of the Member State where they reside with regard to:

(a) working conditions, including pay and dismissal as well as health and safety at the workplace;
(b) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;
(c) education and vocational training;
(d) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;
(e) branches of social security, as defined in Regulation (EC) No 883/2004;
(f) tax benefits, in so far as the worker is deemed to be resident for tax purposes in the Member State concerned;
(g) access to goods and services and the supply of goods and services made available to the public including procedures for obtaining housing as provided by national law, without prejudice to the freedom of contract in accordance with Union and national law;
(h) advice services afforded by employment offices.

2. Member States may restrict equal treatment:

(a) under point (c) of paragraph 1 by:
    (i) limiting its application to those third-country workers who are in employment or who have been employed and who are registered as unemployed;
    (ii) excluding those third-country workers who have been admitted to their territory in conformity with Directive 2004/114/EC;
    (iii) excluding study and maintenance grants and loans or other grants and loans;
    (iv) laying down specific prerequisites including language proficiency and the payment of tuition fees, in accordance with national law, with respect to access to university and post-secondary education and to vocational training which is not directly linked to the specific employment activity;
(b) by limiting the rights conferred on third-country workers under point (e) of paragraph 1, but shall not restrict such rights for third-country workers who are in employment or who have been employed for a minimum period of six months and who are registered as unemployed.
    In addition, Member States may decide that point (e) of paragraph 1 with regard to family benefits shall not apply to third-country nationals who have been authorised to work in the territory of a Member State for a period not exceeding six months, to third-country nationals who have been admitted for the purpose

of study, or to third-country nationals who are allowed to work on the basis of a visa.

(c) under point (f) of paragraph 1 with respect to tax benefits by limiting its application to cases where the registered or usual place of residence of the family members of the third-country worker for whom he/she claims benefits, lies in the territory of the Member State concerned.

(d) under point (g) of paragraph 1 by:
   (i) limiting its application to those third-country workers who are in employment;
   (ii) restricting access to housing;

3. The right to equal treatment laid down in paragraph 1 shall be without prejudice to the right of the Member State to withdraw or to refuse to renew the residence permit issued under this Directive, the residence permit issued for purposes other than work, or any other authorisation to work in a Member State.

4. Third-country workers moving to a third country, or their survivors who reside in a third country and who derive rights from those workers, shall receive, in relation to old age, invalidity and death, statutory pensions based on those workers' previous employment and acquired in accordance with the legislation referred to in Article 3 of Regulation (EC) No 883/2004, under the same conditions and at the same rates as the nationals of the Member States concerned when they move to a third country.

The Students and Researchers Directive: Analysis and Implementation Challenges

*Hélène Calers**

Introduction

Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service (hereafter the 'Students Directive')[1] was adopted in December 2004, following the proposal by the Commission for a Council Directive on the conditions of entry and residence of third country nationals for the purposes of studies, vocational training or voluntary service in October 2002.[2] The implementation report of this Directive was published in September 2011.[3]

Council Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research (hereafter the 'Researchers Directive')[4] was adopted in October 2005. In March 2004, the Commission proposed a draft Council Directive[5] and two Recommendations on the admission of third-country nationals to carry out scientific research in the European Community.[6] The implementation report was published in December 2011.[7]

The conclusions of those two implementation reports were that the level of harmonisation achieved by the Directives was low, because few of their provisions are legally binding and many provisions do not contain specific obligations for Member States.

They also pointed out that some amendments may be needed. With regards to the Researchers Directive, the implementation report underlined the need for clarifi-

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1 Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, OJ L 375, 23.12.2004, p. 12.

2 Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of studies, vocational training or voluntary service, COM(2002)548 final, 7.10.2002.

3 Report from the Commission to the European Parliament and the Council on the application of 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, COM(2011)587, 28.09.2011.

4 Council Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research, OJ L 289, 3.11.2005, p. 15.

5 Proposal for a Council Directive on a specific procedure for admitting third-country nationals for purposes of scientific research, COM(2004)0178, 16.03.2004.

6 Proposal for a Council Recommendation to facilitate the admission of third-country nationals to carry out scientific research in the European Community, COM(2004)0178, 16.03.2004.

7 Report from the Commission to the Council and the European Parliament on the application of Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research, COM(2011)901, 20.12.2011.

cations regarding hosting agreements, a more uniform way of updating and publishing the list of research organisations and the laying down of time limits for deciding on an application.

With regards to the Students Directive, the implementation report pointed out the need for a reinforcement of procedural guarantees (specific deadlines for handling applications, obligation on Member States to give reasons for refusals), the strengthening of mobility clauses, the increase of synergies with EU programmes that facilitate third-country nationals' mobility to the EU and the improvement of the level of harmonisation as regards volunteers, unremunerated trainees and school pupils. It also underlined that

> "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".

For both Directives, the need to take into account the increase in the internationalisation of studies/research and the EU programmes in the area (notably Erasmus and Marie Curie) was considered fundamental.

All of those factors were considered and resulted in the Commission proposing to recast the two Directives in March 2013.[8] The Commission proposal aimed to make the EU more attractive for talented/highly-skilled third-country nationals and foster people-to-people contacts and mobility. Those objectives were proposed to be achieved by

- widening the scope of the Directive: the Commission included two new categories in its proposal: au pairs and remunerated trainees. In addition, while the previous Directives only included compulsory provisions with regards to students and researchers, the new proposal made all categories compulsory for Member States to transpose.
- facilitating the admission of those categories of third-country nationals to the EU. The proposal achieved this by streamlining the conditions for admission and making the processing of the applications shorter (60 days, or 30 days if the third-country national participates in an EU programme). The conditions which are common for all categories are gathered in one Article (presenting a travel document, proof of sickness insurance and of sufficient resources), while the proposal also provides for specific conditions for each of the categories, linked to their specificities (researchers must provide a hosting agreement, students the proof of their acceptance in a higher education institution, trainees a training agreement, etc.).
- improving the rights during the stay. The Commission proposal provided for equal treatment with nationals in line with the Single Permit Directive. It also allowed students to work at least 20 hours per week with no limitation during the

8 Proposal for a Directive of the European Parliament and 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), COM(2013)151 final, 25.3.2013.

first year (under the 2004 Students Directive, students were allowed to work at least 10 hours per week, but Member States were allowed to restrict the access to economic activities for the first year of residence (Article 17(2) and (3)). The proposal provided for mobility for students, researchers and remunerated trainees to other EU Member States to carry out their studies, research or training. It also provided for an accelerated procedure for family reunification of researchers' family members, who, once in the EU would benefit from access to the labour market and mobility provisions.

- increasing retention rates. The Commission proposal provided for the right of students and researchers to stay on the territory of the EU after the completion of their studies or research for 12 months, in order to look for a job or set up a business, and therefore contribute to economic growth in the EU.

In the European Parliament, the Rapporteur of the Committee on Civil Liberties, Justice and Home Affairs was Cecilia Wikström (ALDE, SE). Her report was adopted by the Committee on 5 November 2013. As the Council was not progressing to reach its mandate to start negotiating and the European elections of May 2014 were approaching, rendering a conclusion of the negotiations before them impossible, the report was put on the plenary agenda and the Parliament adopted its first reading on 25 February 2014.[9]

In the Council, the proposal was discussed first in the Working Party on Integration, Migration and Expulsion until October 2014, then in JHA Counsellors meetings. The proposal was discussed in the Coreper on 12 November 2014 and on 10 December 2014, the Coreper adopted its common approach for inter-institutional negotiations with the European Parliament.[10]

Directive (EU) 2016/801 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) (hereafter the 'Students and Researchers Directive') was adopted on 11 May 2016 following a little more than eight months of negotiations between the Council and the Parliament (from the first trilogue on 3 March 2015 to the sixth and final one on 17 November 2015).

This Directive includes a number of improvements compared to the Students Directive and the Researchers Directive, and provides for more precise and detailed rules than the previous Directives, making it the longest (43 Articles) and most complex EU Directive on legal migration. A number of its provisions are inspired or aligned with other provisions of recently adopted Directives, notably the Seasonal Workers Directive[11] and the Intra-Corporate Transferee (ICT) Directive.[12]

9 European Parliament legislative resolution of 25 February 2014 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) (COM(2013)0151 – C7-0080/2013 – 2013/0081 (COD)), P7_TA(2014)0122.

10 https://data.consilium.europa.eu/doc/document/ST-16512-2014-INIT/en/pdf.

11 Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, OJ L 94, 28.3.2014, p. 375.

This contribution will present the main features of the Directive and the first identified implementation challenges, based notably on the discussions of the Contact Group on Legal Migration.[13] It will discuss the scope of the Directive (section I), the admission conditions (section II), followed by the grounds for rejection, withdrawal and non-renewal (section III) in which respect the Directive has some novelties. Section IV is on the procedures, including visa procedures, and finally the rights during residency are discussed in section V. Section VI is on a clear improvement brought by the Directive, intra-EU mobility and section VII addresses another novelty, the job-searching or entrepreneurship permit. The contribution ends with some conclusions (section VIII).

I. Scope

The scope of the Directive was one of the most disputed issues during the inter-institutional negotiations. While the Parliament and the Commission wanted all categories included in the proposal to be mandatory for Member States to transpose, the Council only wanted two categories to be compulsory: students and researchers, while other categories would remain optional for Member States to transpose, thereby not modifying the situation compared to the 2004 and 2005 Directives.

In the final compromise, provisions on students and researchers remain compulsory, as they were in the 2004 and 2005 Directives. Provisions on trainees (covering both remunerated and unremunerated trainees which were merged into a single category) have been made mandatory for Member States to transpose. The provisions on volunteers are mandatory to transpose as regards volunteers participating in the European Voluntary Service (EVS),[14] while Member States can choose to transpose the provisions with regards to other volunteers. Provisions on school pupils and au pairs (added to the scope compared to the 2004 Directive) are optional to transpose.

The information gathered by the Commission[15] by February 2020 show that 5 Member States have transposed the provisions on au pairs (EE, FR, LU, RO and SE), 10 Member States those on school pupils (CZ, EE, ES, HR, IT, CY, LV, LU, PT and RO) while 13 Member States have transposed or plan to transpose the provisions on volunteers not participating in the EVS (BG, CZ, EE, ES, HR, IT, CY, LV, LU, HU, PT, RO and SI).

12 Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, OJ L 157, 27.5.2014, p. 1.

13 Commission expert group composed of Member States experts to exchange views on the application of EU Directives on legal migration: https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2904.

14 The European Voluntary Service was partially replaced by the European Solidarity Corps. Article 7(2) of Regulation (EU) 2018/1475 of the European Parliament and of the Council ensures that both types of volunteering are covered by Directive (EU) 2016/801: "References to the European Voluntary Service in legal acts of the Union, in particular Directive (EU) 2016/801 of the European Parliament and of the Council, shall be read as including volunteering under both Regulation (EU) No 1288/2013 and this Regulation".

15 Document of the Contact Group on Legal Migration Mig-Dir 170, https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2904.

While the scope of the Directive is wide, some categories of third-country nationals are not covered by the Directive. The Directive does not cover students in post-secondary (but not tertiary) education, as the definition of students refers specifically to higher education (Article 3(3) and Recital 14). In addition, a third-country national who is a student in a Member State can carry out a traineeship in that Member State during his/her studies but not in other Member States: the definition of student covers compulsory training, but the mobility provisions do not cover mobility for training purposes. That third-country national will also fall outside the definition of a trainee (Article 3(5)) if the traineeship is to take place while pursuing studies, as the definition only covers third-country nationals pursuing a course of study in a third country (or who already graduated). Those are two of the identified gaps in the scope of the Directive.

The Directive applies to 25 Member States, i.e. all Member States except Denmark and Ireland. While Ireland had opted into the 2005 Researchers Directive, it did not opt into the recast Directive, and will therefore continue to apply Directive 2005/71/EC.

II. Admission Conditions

The Directive provides for some general admission conditions, applicable to all categories (Article 7) and some specific admission conditions applicable to one of the categories (Articles 8, 11, 12, 13, 14 and 16).

1. General Conditions

The general conditions are the 'usual' admission conditions found in legal migration Directives: the third-country national needs to present a valid travel document (Article 7(1)(a)), evidence of sickness insurance (Article 7(1)(c)) and evidence of having sufficient resources (Article 7(1)(e)) and he/she must not be considered to pose a threat to public policy, public security or public health (Article 7(6)). If the third-country national is a minor, a parental authorisation must also be presented (Article 7(1)(b)).

In addition, Member States may require evidence that the applicant paid the fee for the processing of the application (Article 7(1)(d)) and that the applicant provide an address on their territory (Article 7(2)).

2. Specific Conditions

Each category of applicants is also subject to specific admission conditions linked to their specific purpose of stay, some mandatory, some optional. In general, the mandatory conditions were already included in the Commission proposal, but a number of optional conditions were added during the negotiations, especially as regards trainees and au pairs. Those optional admission conditions reduce the harmonising effect of the Directive.

Each applicant must present a document from their host entity as evidence of their purpose of admission: a hosting agreement for researchers (Article 8(1)), evi-

dence of having been accepted by a higher education institution for students (Article 11(1)(a)) or by an education establishment for pupils (Article 12(1)(b)), training agreement for trainees (Article 13(1)(a)), agreement with the host entity for volunteers (Article 14(1)(a)) and with the host family for au pairs (Article 16(1)(a)).

For some categories, age requirements are set either by the Directive (au pairs, Article 16(1)(b)) or by the Member State (volunteers, Article 14(2)). The same applies with grade requirements: the Directive sets specific requirements for trainees (Article 13(1)(b)), requires Member States to set them for pupils (Article 12(1)(a)) or allows them to do so for au pairs (Article 16(2)(b)).

In addition to the general (compulsory) admission condition to provide evidence of having sufficient resources to cover subsistence costs and return travel costs (Article 7(1)(e)), Member States are allowed to check that the applicant also has sufficient resources for the specific purpose of the stay and that they will have adequate accommodation.

For students, Member States may require evidence that they can cover their study costs (Article 11(1)(d)) and that the university fees have been paid (Article 11(1)(b)).

For trainees, evidence may be required that they can cover their training costs (Article 13(1)(c)) and that the host entity accepts responsibility for the third-country national in particular as regards subsistence and accommodation costs (Article 13(1)(e)). In addition, Member States may require, if the third-country national is accommodated by the host entity, evidence that the accommodation meets the conditions set at national level (Article 13(1)(f)). The same evidence may be required in the case of volunteers (Article 14(1)(b)).

As regards school pupils, applicants have to provide evidence that the education establishment, or a third party accepts responsibility for the third-country nationals throughout the stay, notably as regards study costs (Article 12(1)(d)). In the same way, as regards au pairs, evidence must be provided that the host family or the organisation mediating au pairs accepts responsibility for the third-country national in particular with regards to living expenses and accommodation (Article 16(1)(c)). For volunteers, the information on the resources available to cover the third-country national's subsistence and accommodation costs, and pocket money must be included in the agreement with the host entity (Article 14(1)(a)(v)).

In addition, Member States may check that the applicant has sufficient knowledge to carry out their activities during their stay. Applicants to be admitted as students may be requested to prove that they have sufficient knowledge of the language of their course (Article 11(1)(c)), applicants to be admitted as trainees may be required to provide evidence that they have received or will receive language training so as to acquire the knowledge needed for the purpose of the traineeship (Article 13(1)(d)). As regards volunteers, Member States may require that the third-country national has received or will receive a basic introduction to the language, history, political and social structures of the Member State (Article 14(1)(d)). As regards au pairs, Member States may require evidence that they have basic knowledge of the language of the Member State concerned (Article 16(2)(a)) and/or that they have secondary education or professional qualifications or that they fulfil the conditions to exercise a regulated profession if required by national law (Article 16(2)(b)).

In addition to those admission conditions which concern several categories, some conditions applicable only to one category can be found in the Directive. One such

condition is provided for researchers: the possibility for Member States to require an undertaking of financial responsibility from the research organisation if the researcher remains on the territory illegally (Article 8(2)).

There are two such (optional) conditions for trainees: Member States may require that the traineeship be in the same field and at the same qualification level as the higher education degree or the course of study the third-country national is following (Article 13(2)). Member States may as well require the host entity to substantiate that the traineeship does not replace a job (Article 13(3)). Both conditions were quite controversial during negotiations, as the Parliament and the Commission wondered how such conditions would be checked in practice and what evidence would be required. For example, what does it mean for a traineeship to be in the same field as the course of study? Will it be strictly applied (only a traineeship in marketing would be allowed if the third-country national studied marketing?) or would they be allowed to have a traineeship in a sector linked to their field of study (in sales when they study marketing for example)? The concern was that it would give Member States' authorities a wide margin of discretion to admit or not a trainee.

Two specific conditions were also included as regards au pairs. Member States may require that the placement of au pairs can only be carried out by an organisation mediating au pairs under the conditions defined in national law (Article 16(3)). This was introduced to cater for the situation of a Member State which already had such a provision in its national legislation, and to allow a Member State to establish an equivalent system to that provided for in Article 9 and 15 for host entities.

In addition, Article 16(4) provides that Member States may require the third-country national not to have family links nor to be of the same nationality as the host family.

III. Grounds for Rejection/Withdrawal/Non-renewal (Articles 20 and 21)

In addition to fulfilling the conditions for admission, the third-country national applying to be admitted under the Directive must also not meet any of the grounds for rejection of Article 20, or in case he/she was already admitted to a Member State under the Directive, any of the grounds for withdrawal or non-renewal of Article 21. There are relatively few compulsory grounds for rejection/withdrawal/non-renewal ('shall clauses'), but a longer list of optional grounds ('may clauses'), once again endangering the harmonisation effect of the Directive.

The mandatory grounds can be found in most or all legal migration Directives, notably the need to fulfil the admission conditions (Articles 20(1)(a) and 21(1)(a)) and the requirement not to have falsified, fraudulently acquired or tampered with the documents presented for the application or the authorisation once issued (Articles 20(1)(b) and 21(1)(b)), and for those already residing, the interdiction to reside for other purposes than those authorised (Article 21(1)(d)).

One specific ground was introduced in this Directive, linked to the possibility for Member States to make it compulsory for applicants to be hosted by an approved host entity, in line with Articles 9 and 15. Member States which have introduced such a compulsory approval system must reject applications or refuse to renew the au-

thorisations of third-country nationals who will not be hosted by approved host entities (Articles 20(1)(c) and 21(1)(c)).

Most of the optional grounds for rejection/withdrawal/non-renewal have been inserted in the Directive to align it with the other recently adopted legal migration Directives, notably the Seasonal Workers Directive and the ICT Directive.

Articles 20(2)(a) and 21(2)(a) on the requirement to meet legal obligations regarding social security, taxation, labour rights or working conditions are the equivalent of Articles 7(3)(b) and 8(5)(b) of the ICT Directive and Articles 8(4)(a) and 9(3)(b) of the Seasonal Workers Directive.

Articles 20(2)(b) and 21(2)(b), which refer to the obligation to meet the terms of employment, relate to a part of the same Articles of the Seasonal Workers Directive. This ground was however separated from the previous ground on legal obligations so as to make it possible to indicate that it can only be applied 'where applicable', which means in cases where the third-country national is actually employed by the host entity and the terms of employment are not met towards him/her. On the contrary, the previous ground relating to the fulfilment of legal obligations is of general application: the authorisation may be rejected, withdrawn or not renewed if the host entity does not meet its legal obligations regarding social security, taxation, labour rights or working conditions in general, ie either towards the third-country national admitted under this Directive or any other person working for the host entity.

Articles 20(2)(c) and 21(2)(c) on undeclared work or illegal employment are aligned with Articles 7(2) and 8(2) of the ICT Directive and Articles 8(2)(a) and 9(2)(a) of the Seasonal Workers Directive.

Articles 20(2)(d) and 21(2)(d) on host entities established or operating for the main purpose of facilitating the entry of third-country nationals are the equivalent of Articles 7(1)(c) and 8(1)(c) of the ICT Directive.

Articles 20(2)(e) and 21(2)(e) on wound up businesses or situations where no economic activity is taking place are equivalent to Articles 7(3)(b) and 8(5)(c) of the ICT Directive and Articles 8(2)(b) and 9(2)(b) of the Seasonal Workers Directive.

Articles 20(3) and 21(5) allow Member States to reject an application or refuse to renew an authorisation on the basis of a labour market test. However, such a test cannot be applied to students, as they do not apply to be admitted to enter into an employment relationship, nor can it be applied to a category which is not considered to be in employment at national level. At the stage of renewal, the Directive excludes the application of a labour market test to researchers who continues their employment relationship with the same host entity. Rejection or non-renewal on the basis of a labour market test is a common ground found in a number of Directives, such as in Articles 8(3) and 15(6) of the Seasonal Workers Directive.

Also in line with the Seasonal Workers Directive (Article 7) and the ICT Directive (Article 6), this Directive includes an Article on volumes of admission (Article 6), which refers to Article 79(5) of the TFEU. This Article recalls the right for Member States to determine volumes of admission of third-country nationals, under the conditions set in the TFEU. Indeed, Article 79(5) provides for

> "the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed".

This excludes the application of volumes of admission for third-country nationals already residing in a Member State, for third-country nationals not coming for the purpose of work (ie students, who come for the purpose of study, but are allowed to work while on the territory, or school pupils) and third-country nationals who are not considered to be in an employment relationship. The Directive does not define which categories are considered employees or not, it is left for Member States to define it in their national law, but if trainees for example are not considered in employment at national level, volumes of admission cannot be applied to their admission.

In addition to the grounds for rejection/withdrawal/non-renewal which can be found in other Directives, this Directive includes some specific grounds.

As regards grounds for rejection, the only ground not usually found in other Directives is also the ground which was the most controversial during negotiations. Article 20(2)(f) allows Member States to reject an application where the Member State has evidence or serious and objective grounds to establish that the TCN would reside for purposes other than those for which he/she applies to be admitted. Such a ground for rejection is usually only found in legal migration Directives once the third-country national is already admitted to the territory and is found to be residing for another purpose than the one he/she was admitted for. This ground for withdrawal/non-renewal can be found in Article 21(1)(d) of this Directive. But this is the first time such an assessment is allowed to be carried out by the Member State *before* the third-country national is admitted under the Directive. Both the Commission and the European Parliament were very reluctant for such a ground to be included in the Directive, fearing it would allow Member States to reject applications on unfounded grounds or on suspicions. In the Council mandate for negotiations, this ground was formulate more loosely, allow Member States to reject an application

> "where there are reasonable grounds to believe that the third-country national intends to reside or carry out an activity for purposes other than those for which he/she applies to be admitted".

During the inter-institutional negotiations, the wording was reinforced, requiring 'serious and objective grounds' instead of reasonable ones.

The Parliament and the Commission issued a joint statement on this point, first annexed to the adoption by the Council of its position in first reading,[16] then set out in the Commission Communication to the Parliament on the Council position in first reading[17] and included as an Annex to the legislative resolution at the time of the adoption of the Directive in Parliament:[18]

16 Joint statement by the Commission and European Parliament, document 6414/16 ADD 1 https://data.consilium.europa.eu/doc/document/ST-6414-2016-ADD-1/en/pdf, 29.02.2016.

17 Communication from the Commission to the European Parliament pursuant to Article 294(6) of the Treaty on the Functioning of the European Union concerning the Position of the Council on 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, COM(2016)184, 5.4.2016.

18 Joint statement by the European Parliament and the Commission on the ground for rejection specified in point (f) of Article 20(2), https://www.europarl.europa.eu/doceo/document/TA-8-2016-0216_EN.html.

> 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. The Commission will ensure that Member States implement this provision in line with this interpretation when transposing the Directive, and will inform the Parliament and the Council thereof, in the framework of its obligations under Article 39. The European Parliament and the Commission consider that the inclusion of this provision in this Directive should not constitute a precedent for future legal migration instruments.

In the Statement of the Council's reasons on its position at first reading,[19] the Council stated that "the objective of this ground is to enable Member States to fight against abuse and misuse of the procedures set out in this Directive".

During negotiations, it was clear that (at least some) Member States feared that third-country nationals could use the provisions of this Directive to enter the Member States via an 'easier' route, but then carry out another activity while on the territory (work, move to other Member States, etc). But one of the main reasons for the addition of such a ground for rejection was the *Ben Alaya* judgment by the European Court of Justice.[20] In that judgment, the Court considered that the legal migration Directives (in this specific case the 2004 Students Directive) exhaustively list the conditions for admission and the grounds for refusal of an application which can be applied by the Member States, and that Member States cannot add any other criteria not included in the Directive.

Yet, a number of Member States included in their legislation a wide margin of appreciation of the applications of third-country nationals for their national authorities in charge of their processing. This judgment clarified that such a margin was limited to the assessment of the fulfilment or not of the conditions listed in the Directive. However, some Member States considered that this was too restrictive and wanted to keep a wider margin of manoeuvre to reject an application in cases when they wouldn't be convinced that the third-country national was coming for the purpose stated in their application.

However, the rewording of that provision, at the insistence of the Parliament and Commission, limits very much such a margin of discretion. During the negotiations of the Directive or during discussions in the framework of the Contact Group on Legal Migration on that Directive, a number of examples were provided of situations where such a ground could not be used in the opinion of the Commission. These include the general rejection of applications from a specific third country because of previous fraud by nationals of that country, the rejection of an application for the purpose of studies because the applicant had previously unsuccessfully applied for admission under other grounds, the rejection of an application solely based on the age of the applicant or their level of language competency (unless this is a condition of admission of the category applied for). It would also not be possible to reject the

19 https://data.consilium.europa.eu/doc/document/ST-14958-2015-REV-2-ADD-1/en/pdf.
20 C-491/13, ECLI:EU:C:2014:2187.

application of a prospective student because they intend to work in parallel of their studies, as long as they abide by the provisions of the Directive on this issue.

One example of when this provision could be used is when the Member State has evidence that the third-country national who applies to be admitted for example as a trainee or a volunteer will in fact take up a position in another company (if for example a contract was already signed with that company, if the company required a work permit for that third-country national, etc).

As regards grounds for withdrawal or non-renewal, the Directive also includes two specific optional grounds, only applicable to students. Article 21(2)(f) provides that an authorisation may be withdrawn or not renewed if the student does not respect the maximum authorised working time set by the Member State in line with Article 24(1), or if the student does not make sufficient progress in their studies. Sufficient progress must be assessed in accordance with criteria set in national law or administrative practice.

IV. Procedures

With regards to the applicable procedures, some improvements were introduced when the two Directives were recast.

1. Deadline for the Processing of Applications

While the 2004 and 2005 Directives provided that the competent authorities of the Member States shall adopt a decision on the complete application as soon as possible (Article 15(1) of the Researchers Directive) or 'within a period that does not hamper the pursuit of the relevant studies' (Article 18(1) of the Students Directive) but without setting a deadline, the Students and Researchers Directive corrects this insufficiency, which was highlighted in the implementation reports. Article 34(1) provides that the competent authorities must adopt the decision and notify it to the applicant in writing as soon as possible but not later than 90 days from the date on which the complete application was submitted. This new wording, broadly aligned to the other recently adopted legal migration Directives aim to provide applicants with legal certainty as to when they can expect a decision on their application.

2. Approval procedure for Host Entities (Articles 9 and 15)

In the 2005 Researchers Directive, the approval of research organisations was required for them to host third-country national researchers, via a procedure set up at national level. The new Students and Researchers Directive makes this procedure optional (Article 9(1)): Member States now have a choice between three options:

- either they do not establish an approval procedure. This means any research organisation can host third-country national researchers, without any procedure, apart from the application procedure of the individual researcher
- either they establish a compulsory approval procedure, which is the same system as under the 2005 Directive: all research organisations must be approved in order to host third-country national researchers.

- either they establish an optional approval procedure. This means that research organisations that want to benefit from facilitated admission procedures for their third-country researchers can seek approval, but a research organisation which is not approved can still host third-country researchers.

Member States may also decide to provide for a different procedure for public and private research organisations. They could for example decide not to have an approval procedure for public research organisations, but to have a compulsory approval procedure for private research organisations.

The approval procedure is to be decided by Member States. The Directive only provides general rules on how it should be organised, which were hardly modified compared to the 2005 Directive. The only obligation is to provide for the approval to be granted for 5 years, as it was already under the 2005 Directive, so that the procedure is not too burdensome on research organisations.

The possibility to establish an approval procedure was extended to all types of host entities. Article 15 allows Member States to establish such a procedure for higher education institutions, education establishments, organisations responsible for a voluntary service scheme and entities hosting trainees. They could decide to set up such procedures for all those host entities or only one or some of them, and make it compulsory or optional, as for research organisations.

One innovation under the new Students and Researchers Directive is that, if an approval procedure is established, it must result in a facilitated procedure for the applicant.

In accordance with Article 34(2) and in derogation from the general deadline set at 90 days for all applications, if the admission procedure is related to an approved host entity, the maximum duration for the processing of the application is 60 days.

In addition, if it concerns a student or a researcher, the applicant must be exempted from presenting at least one document or information required for the application. In accordance with Articles 8(3) and 11(3), the applicant in such a case must be exempted from presenting one or more of the documents or information they are required to provide. Researchers must be exempted from presenting one of the following documents or information: evidence of sickness insurance (Article 7(1)(c)), evidence that the fee for handling the application was paid (Article 7(1)(d)), evidence of sufficient resources (Article 7(1)(e)), their address in the Member State (Article 7(2)) or the undertaking of financial responsibility (Article 8(2)). Students must be exempted from presenting one of the following: evidence that the fee charged by the higher education institution was paid (Article (11)(1)(b)), evidence of sufficient knowledge of the language of the course (Article 11(1)(c)), evidence of sufficient resources for the study costs (Article 11(1)(d)), evidence that the fee for handling the application was paid (Article 7(1)(d)) or their address in the Member State (Article 7(2)).

In accordance with the 2005 Directive, Member States had to accept applications for the purpose of research made from abroad (Article 14(2)), but could also accept applications from their territory if the third-country national was already present (Article 14(3)).

With the Students and Researchers Directive, this provision is extended to all the categories covered by the Directive (Article 7(4)) and made more favourable for the

third-country nationals: Member States must now in all cases accept an application from their territory if the third-country national holds a long-stay visa or a residence permit. They may also accept applications if the third-country national is on their territory under a short-stay visa or for a visa-free short stay.

3. Authorisations (Articles 17 and 18)

Contrary to most of the EU legal migration Directives, the Students and Researchers Directive regulates not only the issuance of residence permits, but also of long-stay visas. Visa matters are usually not covered by legal migration Directives, with the notable exception of the Seasonal Workers Directive. But the implementation report on the Students Directive had highlighted this issue in the application of the Directive, as a high number of Member States tend to issue long-stay visas to students and other categories not considered as workers at least for their first months of stay in the EU, or the full first year. Not regulating these matters in the Directive would therefore risk excluding only on the basis of procedural matters a high percentage of the categories concerned.

The Directive therefore covers all the authorisations issued by the Member States to the categories covered by the Directive, either in the form of a long-stay visa or of a residence permit (Article 3(21)). This means that the admission conditions, the procedural safeguards and the rights provided for in the Directive apply to all third-country nationals covered by the Directive, with no distinction on the basis of the document they receive. This means for example that the 90 day deadline (or 60 day deadline for those hosted by an approved host entity) for the processing of the application apply to the decision-making procedure of the long-stay visas and the residence permits, even in cases when the Member State requires the third-country national to apply for both.

The Students and Researchers Directive keeps the general rule that authorisations issued to the categories covered by the Directive must be valid for at least a year, unless the stay is planned to be shorter, as it was the case under the 2004 and 2005 Directives. However, there are two exceptions.

For trainees, the maximum duration of the authorisations is 6 months, this was one of the compromises to be made to ensure that both unremunerated and remunerated trainees would be covered by the Directive and compulsory for Member States to transpose. The Directive however allows Member States to adopt more favourable provisions, in line with Article 4(2), which lists Article 18 as one of the Articles on which such provisions can be adopted or maintained.

On the other hand, the duration of authorisations for researchers and students who are covered by Union or multilateral programmes that comprise mobility measures or students who are covered by an agreement between two or more higher education institutions must be of at least two years, to prevent those students and researchers to face the administrative burden to have to apply to renew their authorisation every year, especially as they may be exercising mobility and therefore be staying in another Member State.

The renewal of the authorisation is an obligation for students and researchers who still fulfil the admission conditions and do not meet any of the non-renewal grounds. As regards the other categories, Member States may allow the renewal once

for school pupils, au pairs and trainees but the Directive does not provide for the renewal of the authorisation of volunteers. However, once again, this would be possible for Member States to provide for such a possibility in their national law on the basis of Article 4(2).

While the Students and Researchers Directive does improve the procedures third-country nationals have to go through to be granted an authorisation, the main issue probably remains that of the practical implementation.

A number of third-country nationals are still faced with difficulties to apply for admission to a Member State for a number of practical reasons: the absence of a consulate of the Member State of destination in their country of origin or the long distance to reach it (in the same country or a neighbouring one) or the absence of agreements for consular representation between Member States as regards long stays (while this is provided for as regards short stays under the Visa Code).

In addition, the rules for admission are quite complex and sometimes difficult to grasp. For example, the fact that nationals of visa-free countries are not allowed to enter the Member States without a visa if their stay will be of more than 90 days is not widely known. Nor is the fact that a short-stay visa is not adequate in such a case. Each year, students coming from visa-free countries or with short-stay visas arrive in the EU, thinking they can enter and stay for up to 90 days while applying for a residence permit or long-stay visa for their stay, and are refused entry at the border. While this may be the case if Member States transposed the second sub-paragraph of Article 7(4), this is not the case of all Member States and should be checked before travelling.

The Commission is trying to disseminate information on the correct procedures to third-country nationals willing to be admitted through the EU delegations in third countries, the higher education institutions notably via the Erasmus correspondents, and other networks.

V. Rights during the Stay

The new Students and Researchers Directive also clarified the rights of the third-country nationals covered by the Directive during their stay in the EU.

1. Equal Treatment with Nationals in Line with the Single Permit (Article 22)

While the Researchers Directive included an article on the equal treatment of researchers with EU nationals (Article 12), this was not the case of the Students Directive. The rights of some of the categories covered by the Students Directive were however regulated by the Single Permit Directive,[21] but the Recital explaining this situation and the interaction with the Researchers Directive (Recital 20 of the Single

21 Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, OJ L. 343, 23.12.2011, p. 1

Permit Directive) is quite unclear. The reference in the Recital to the Researchers Directive prompted some to question whether the Single Permit Directive actually applied to researchers, and not the specific provisions of the Researchers Directive.

One of the objectives of the recast was to clarify the situation and the rights granted to the third-country nationals covered by the Directive.

As regards researchers, the Directive specifies that the right to equal treatment granted under the Single Permit Directive applies to researchers as well (Article 12(1) of the Single Permit Directive), but only a few of the exceptions provided for in the Single Permit can be applied (Article 12(2)).

In addition to the areas in which researchers enjoyed equal treatment on the basis of the Researchers Directive, Article 22(1) of the Students and Researchers Directive provides that they should have equal treatment as regards freedom of association (Article 12(1)(b) of the SPD), education and vocational training (Article 12(1)(c) of the SPD) and advice services afforded by employment offices (Article 12(1)(h) of the SPD).

Article 22(2) however allows Member States to restrict the equal treatment rights of researchers in four cases:

- in the field of education and vocational training, Member States may decide not to grant equal treatments to researchers as regards study and maintenance grants and loans or other grants and loans (Article 22(2)(a));
- in the field of social security benefits, Member States may decide not to grant family benefits to researchers who are authorised to reside in the territory of the Member State concerned for a period not exceeding six months (Article 22(2)(b));
- in the field of tax benefits, Member States may decide to apply equal treatment only in case where the registered or usual place of residence of the family members of the researcher for whom that researcher claims benefits lies in the territory of the Member State concerned (Article 22(2)(c));
- in the field of access to goods and services, Member States may decide not to grant equal treatment in terms of access to housing (Article 22(2)(d)).

This means that all the other restrictions to equal treatment provided for in Article 12(2) of the Single Permit Directive do not apply to third-country researchers. So if the national legislation transposing the Single Permit provides for one or more of those restrictions, it must be clear that researchers are excluded from the application of such restrictions. One example is the second sub-paragraph of Article 12(2)(b) of the Single Permit Directive which notably provides that Member States may decide not to grant equal treatment with regards to family benefits to third-country nationals allowed to work on the basis of a visa. In accordance with the Students and Researchers Directive, this restriction to equal treatment cannot be applied to researchers, even though they may be issued a long-stay visa and reside in the Member State on that basis.

For the other categories covered by the Students and Researchers Directive, Article 22(3) clarifies that the equal treatment rights provided for under the Single Permit Directive apply, if they are considered to be in an employment relationship. In such a case, the whole Article 12 of the SPD is applicable to those third-country nationals.

It should be highlighted that Article 22(3) provides that Article 12 of the Single Permit Directive always applies to students, whether or not they are in an employment relationship, as they fall under the definition of 'third-country workers' as defined in Article 2(b) of the Single Permit Directive: they are third-country nationals who are admitted to the territory of a Member State and who are legally residing and who are *allowed* to work in the context of a paid relationship in that Member State in accordance with national law or practice.

It should be noted that Article 22(3) provides that Article 12 of the Single Permit Directive applies to au pairs, if they are considered in an employment relationship, while they are excluded from the scope of the Single Permit Directive (Article 3(2)(e)). This Directive therefore extends the provisions of Article 12 of the Single Permit Directive to that category, if they are considered in an employment relationship at national level.

Article 22(4) regulates the situation of trainees, volunteers and/or au pairs, when they are not considered to be in an employment relationship under national law, and school pupils, who by definition cannot be considered as such. This paragraph grants a basic right to equal treatment in such a case, in fields which are not related to employment: access to goods and services, and recognition of diplomas. In such a case, the restrictions to equal treatment provided for in the Single Permit Directive related to those fields may also be applied by Member States.

2. Economic Activities by Students (Article 24)

The 2016 Directive grants more rights to students in terms of their access to the labour market.

As under the 2004 Directive, they are entitled to be employed, and Member States may allow them to be self-employed.

But contrary to the 2004 Directive, Member States are prohibited from restricting their access to economic activities for the first year (Article 17(3) of the Students Directive).

Member States remain allowed to carry out a labour market test, with the exact same wording as under the 2004 Directive. During negotiations, the Council wanted to make it easier to carry out a labour market test but the Parliament and the Commission opposed any change of the wording of the Article and the relevant Recital (Recital 18 of the Students Directive, and Recital 52 of the recast Directive), and insisted to keep the 2004 wording, to ensure that the interpretation given by the ECJ in its *Sommer* judgment would remain valid.[22]

In this case the Court determined that it

> "follows from the general scheme of Directive 2004/114, in particular Article 17, and from the purposes thereof that the host Member State (…) may invoke the second sentence of the first subparagraph of Article 17(1) of that directive in order to take into account the situation of the labour market only after having exhausted the possibilities resulting from Article 17(2) to determine the maximum number of hours worked outside of study time, and that that taking

22 C-15/11, ECLI:EU:C:2012:371.

> into account of the situation of the labour market can only take place in exceptional circumstances and provided that any planned measures to that effect are justified and proportionate with regard to the aim being pursued". (point 42)

This interpretation remains applicable as the wording of that provision remains unchanged. Member States can therefore only carry out a labour market test in exceptional circumstances, when it is justified and proportionate, and as provided for in Recital 52, 'the principle of access for students to the labour market should be the general rule'.

In addition, the 2016 Directive increased the minimum number of hours students must be allowed to work during their studies. While the minimum was set at 10 hours a week under the 2004 Directive, it was increased to 15 hours a week under the 2016 Directive (Article 24(3)), to make it easier for students to cover part of the cost of their stay, but also gain practical experience.

3. Family Members of Researchers

As it was the case in the Researchers Directive, family members of researchers may accompany them when they are admitted to a Member State. However, the new Students and Researchers Directive includes more precise provisions than in the 2005 Directive.

While the 2005 Directive was almost silent as regards the procedure for the granting of a residence permit to the family members of researchers in terms of deadlines, procedural safeguards and other procedural issues, the 2016 Directive provides very precise rules. It firstly clarifies that the Family Reunification applies to those family members, but with a number of derogations provided for in the Students and Researchers Directive. Article 26(4) clearly sets out that, if the conditions for family reunification are fulfilled, a residence permit must be issued to the family members of the researcher. This Article also sets out the principle, already included in the ICT Directive, of the parallel processing of the application of the researcher and his/her family members: this means that, if the applications of the family members are submitted at the same time as that of the researcher, they must all be informed at the same time of the decision, ie within 90 days at a maximum, or within 60 days if the researcher is to be hosted by an approved research organisation (Article 34(2)).

The Students and Researchers Directive also clarifies the modalities of access to the labour market for those family members. Article 26(6) bans Member States from imposing a labour market test to those third-country nationals, unless there are exceptional circumstances such as particularly high levels of unemployment. In such a case, Article 14(2) of the Family Reunification Directive would apply and such a measure could not be imposed for more than 12 months. The reference to 'exceptional circumstances' is taken over from the provisions on students, to ensure that the rule is for family members to have access to the labour market, while the labour market test is only carried out in rare cases.

In addition, family members of researchers benefit from a completely parallel procedure for intra-EU mobility (to be discussed further in section VI): family members can always accompany the researcher, whatever the duration of the mobility (while in the ICT Directive, intra-EU mobility is provided for family members only

for long-term mobility) and the procedure applying to the researcher also applies to the family members, with equivalent documents to provide, if applicable. This aims to ensure that the mobility of family members is as easy as possible, and there is no risk of the family members having to remain in the first Member State, even for a period of time while the researcher is mobile to a second Member State (unless of course, they decide to do so).

VI. Intra-EU Mobility

Another improvement brought by the Students and Researchers Directive relates to intra-EU mobility. While the 2004 and 2005 Directives already included mobility provisions for students and researchers (Article 8 of Directive 2004/114/EC and Article 13 of Directive 2005/71/EC), the applicable procedures were unclear and the Directives remained vague as regards the rights and obligations of the third-country nationals.

The Students and Researchers Directive aims to clarify the procedure and facilitate it by, in some cases, allowing mobility to other Member States on the basis of the authorisation issued in the first Member State.

It should be noted that the mobility provisions cover the situation in which the researcher, his/her family members or the student moves to a second Member State to carry out part of the research or the studies. If the third-country national goes to another Member State than the Member State of residence for another purpose (tourism, visiting relatives, etc), the Schengen *acquis* applies and not the mobility provisions included in the Directive. It should also be highlighted that the mobility provisions under the Directive apply to all Member States bound by the Directive (all EU Member States except Ireland and Denmark). This means that these mobility provisions also allow mobility between a non-Schengen and a Schengen Member State, based on the authorisation issued by the non-Schengen Member State and without the third-country national requiring a visa to enter the Schengen area.

Students and researchers in mobility benefit from the same rights in the second Member State as in the first one: students are allowed to work in parallel of their studies, researchers are allowed to teach and they benefit from the same equal treatment rights (but the legislation on the coordination of social security schemes in case of mobility between Member States also applies[23]).

1. Researchers (and Their Family Members)

The mobility provisions for researchers are very much modelled on the mobility provisions for intra-corporate transferees, the main difference being the threshold between short-term and long-term mobility: for ICTs, the threshold is set at 90 days in any 180 day period, for researchers at 180 days in any 360 day period.

23 Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality, OJ L 344, 29.12.2010, p. 1.

For each type of intra-EU mobility, Member States can choose which procedure to apply to researchers.

In case of short-term mobility (Article 28), ie if the stay in the second Member State lasts up to 180 days in any 360 day period, the Member State can choose to allow mobility without any procedure, or to apply the notification procedure.

The notification procedure is a simpler and faster procedure than a normal application: the researcher must send some documents and information to the second Member State and can be mobile immediately after the notification without waiting for the approval of the second Member State. Contrary to the regular admission procedure, the notification procedure only requires a decision to be issued by the Member State if the third-country national is not allowed mobility.

If it opts for the notification procedure, the Member State must require the notification to include at least the travel document and the authorisation issued by the first Member State. In addition, the Member State can require most of the documents and information to be provided for an application: evidence of sickness insurance, evidence of sufficient resources and the hosting agreement. The second Member State may require that the hosting agreement be concluded with a research organisation in that Member State. The Member State has 30 days to object to the mobility, on the grounds that one of the conditions for the mobility is not fulfilled, or one of the grounds for rejection of Article 20 is met. It should be noted that only the grounds of paragraphs 1 and 2 of Article 20 apply, which means that a Member State cannot carry out a labour market test (provided for in Article 20(3)) in the case of short-term intra-EU mobility of researchers.

In case of long-term mobility ie if the stay in the second Member State lasts more than 180 days in any 360 day period (Article 29), the second Member State may choose between three options:

- either to allow mobility without any procedure;
- either to allow mobility on the basis of a notification, as described for the short-term mobility;
- either to require researchers to submit an application.

If the Member State opts to require an application, the procedure is quite similar to the admission procedure regulated in Chapter II of the Directive, with only a few differences:

- the second Member State may choose which documents to require or even not require any;
- second Member States are not allowed to require the undertaking of financial responsibility provided for in Article 8(2) for mobility, nor the evidence that the fee for handling the application was paid (Article 7(1)(e));
- the researcher is allowed to move to the second Member State and start his/her research while waiting for the application to be processed (Article 29(2)(d)) under the short-term mobility procedure.

Mutatis mutandis, the same grounds for rejection and the same procedural safeguards apply as for the admission.

So while the short-term mobility of researchers is to a large extent facilitated under the 2016 Directive, depending on the choice the Member States make with re-

gards to the applicable procedure, the long-term mobility procedure can be much more burdensome.

2. Students (Article 31)

For students, there is no distinction on the basis of the duration of stay: mobility is allowed for up to 360 days per Member State, but only students who are covered by a Union or multilateral programme that comprises mobility measures or by an agreement between two or more higher education institutions can benefit from the mobility provisions included in the Directive.

Other students have to submit a new application in the Member State where they wish to carry out part of their studies. In that case, the regular admission procedure applies.

As regards students covered by the mobility provisions of the Directive, Member States must choose to either allow mobility to their territory without any procedure, or to apply a notification procedure, in the same way as for researchers.

If the notification procedure is chosen, the Member State requires at least the transmission of the travel document and the authorisation issued by the first Member State. It may also require some of the documents or information required for the admission procedure: evidence that the student is accepted by the higher education institution in the second Member State, evidence of sufficient resources, evidence of sickness insurance and evidence that the higher education fees were paid. It may also require for evidence that the student is indeed covered by the mobility provisions of the Directive and participates in a Union or multilateral programme or an agreement between higher education institutions. This means that, contrary to the admission procedure, the second Member State may not require evidence of the payment of processing fees, nor evidence of sufficient knowledge of the language of the course to be followed.

Contrary to the situation for researchers, students are not allowed to move to the second Member State immediately, they must wait for the 30 day period during which the second Member State may object to the mobility before being allowed to carry out part of their studies in the second Member State. They may however go to that Member State if the Schengen *acquis* allows them to.

3. Implementation of the Mobility Provisions

The mobility provisions included in this Directive, as the mobility provisions included in the ICT Directive, are very innovative. Compared to the ICT Directive, the Students and Researchers Directive will most likely apply to a higher number of third-country nationals. While for now, little information is available on the number of ICTs actually making use of those provisions, it can be expected that they will be higher for this Directive, and it is therefore of utmost importance to ensure that all stakeholders are informed so that they operate smoothly.

Figure 1 – Intra-EU mobility procedures under the Students and Researchers Directive – information on procedures chosen/foreseen for short-term and long-term mobility as provided by Member States in the framework of the Contact Group on Legal Migration as of 18.02.2020[24]

	Researchers' short-term mobility	Researchers' long-term mobility	Students' mobility
BE	no procedure	application	notification
BG	notification	application	notification
CZ	no procedure	no procedure	no procedure
DE	notification	application	notification
EE	notification	notification	no procedure
EL	notification	application	notification
ES	notification	notification	notification
FR	notification	notification	notification
HR	no procedure	application	no procedure
IT	notification	application	notification
CY	notification	application	notification
LV	no procedure	application	no procedure
LT	no procedure	application	no procedure
LU	notification	application	notification
HU	notification	application	notification
MT	notification	application	notification
NL	notification	application	notification
AT	no procedure	application	no procedure
PL	notification	application	notification
PT	no procedure	application	notification
RO	notification	application	notification
SI	notification	application	notification
SK	notification	notification	notification
FI	notification	notification	notification
SE	no procedure	application	notification

One issue that could prevent a smooth implementation of those provisions is the great variety of application between the Member States. Each Member State may choose up to three systems of mobility, may use or not a wide range of optional provisions (from the documents to be provided by the third-country national to the grounds applicable for rejection). This hampers harmonisation but also makes it more difficult for third-country nationals to know which rule is applicable to their mobility. This also means that third-country exercising mobility in different Member States may have to provide different documents under different procedures for each of their mobility.

24 Document of the Contact Group on Legal Migration Mig-Dir 170, https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2904.

This is why the Commission is trying to ensure as wide an access as possible to the information on the procedures in each of the Member States for each of the categories, firstly by updating the Immigration Portal with information on the mobility procedures,[25] but also by informing as much as possible the different networks already existing for researchers and students (such as the EURAXESS network, or the network of ERASMUS correspondents).

VII. Job-searching or Entrepreneurship (Article 25)

One of the innovations of the Students and Researchers Directive is to provide students and researchers (and their family members) with a possibility to stay in the EU after the finalisation of their studies or research. The objective of this addition is to allow for those highly skilled third-country nationals to look for a job or set up a business in the EU.

In accordance with Article 25 of the Directive, students and researchers shall be allowed to stay in the Member State where they studied or carried out research for at least 9 months after the completion of their research or studies. Member States where the student or the researcher exercised mobility may also allow them to stay on their territory (Article 25(9)).

The 9-month period is a compromise between the Commission proposal of 12 months, the European Parliament increasing the duration to 18 months and the Council position of 6 months.

The conditions to fulfil to be granted an authorisation for that purpose are quite limited: third-country nationals must submit an application together with their travel document and their authorisation, evidence that they have sickness insurance and sufficient resources and, if required by the Member State, evidence that they paid the handling fee for the processing of their application and they must prove that they have indeed finished their studies or research (Article 25(3)).

As regards students, Member States may choose to set a minimum level of degree to be obtained in order to have the right to stay on their territory, this level may not be higher than a Masters degree (Article 25(2)).

Member States may only reject the application if one of those conditions is not met or if any of the documents presented has been fraudulently acquired or falsified or tampered with (Article 25(4)). Member States must facilitate this application procedure as much as possible, notably by allowing third-country nationals to stay on their territory if they are not yet in possession of their qualification or the confirmation that their research was completed by the time their authorisation expires (Article 25(6)).

For the duration of the residence permit, Member States may carry out some checks. After at least three months, they are allowed to require their holders to prove that they have a genuine chance of being engaged or of launching a business, most likely by proving that they are actively trying to find a job or are in the process of launching a business. Member States may also require them to look for a job or set

25 www.ec.europa.eu/immigration.

up a business corresponding to the level of their research or studies (Article 25(7)). If this is not the case, their residence permit may be withdrawn.

The residence permit granted allows them to stay on the territory of the Member State concerned and look for a job or set up a business. Member States are not obliged to provide that those residence permits also allow them to work. If they find a job, they would need to apply for another residence and work permit, either under national law or Union law (the Blue Card Directive notably).

Conclusion: State of Transposition

In accordance with Article 40 of the Directive, the deadline for transposition of the Directive into national law was 23 May 2018.

On 19 July 2018, letters of formal notice were addressed by the Commission to 17 Member States which had not yet transposed the Directive (all Member States bound by the Directive except BG, DE, EE, IT, MT, NL and SK).

Between January and July 2019, reasoned opinions were sent to 7 Member States (CY, EL, PL, BE, FR, SI, SE) which had still not notified full transposition of the Directive to the Commission.

Since then, some Member States have notified full transposition of the Directive and the Commission is assessing it. The infringement procedures against Cyprus and Spain (October 2019), Poland (November 2019) and Sweden (July 2020) were closed. As of the meeting of the Contact Group on Legal Migration of 18 February 2020, two Member States (Belgium and Slovenia) indicated that they had not yet fully transposed the Directive.[26]

Statistics on the number of authorisations issued under the Directive are not yet available. In accordance with Article 38 of the Directive, the first reference year is 2019 and Member States must transmit those statistics to the Commission (Eurostat) by 30 June 2020.

The complexity and length of the Directive, the delays in transposition by Member States and the lack of statistics do not yet allow to draw general conclusions on the transposition of the Directive and its application.

26 Document of the Contact Group on Legal Migration Mig-Dir 170, https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2904.

Attracting and Retaining Foreign Talent Across the EU: A Comparative Overview of Member States' Policies

*Ana Correia Horta & Jo Antoons**

1. Introduction

1. The combination of shortages in specific skills within the EU, the aging of the EU population and the competition from other attractive destinations for the talented and the highly skilled, created a need to increase the attractiveness of the EU as a destination for talented foreign nationals. As the EU legislation in place (Directives 2004/114[1] and 2005/71[2] regulating the admission of students and researchers) had been evaluated as insufficient to fully tackle this challenge, Directive 2016/801 of 11 May 2016 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[3] was adopted.

The EU Students and Researchers Directive aims to attract and retain foreign talent by simplifying and harmonising the conditions for entry and stay of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchanges and au pairing, enhancing labour market access and improving mobility within the EU once a permit is obtained.

2. This chapter will outline the practical impact Directive 2016/801 had on foreign students, researchers and trainees in the EU by focusing on the admissibility criteria and benefits foreseen for each of these categories. Throughout the sub-sections, practical examples on the implementation of specific legal provisions have been included, as well as comparative overviews on Member States' policies. The information with regard to the implementation of the Directive has been limited to the following Member States: Austria, Czech Republic, France, Germany, Italy, Luxembourg, Netherlands, Poland, Spain, Malta and Portugal.

Based on the information gathered on the implementation of Directive 2016/801 in certain Member States, we can conclude that although the Directive brings several new benefits to foreign researchers, students and trainees in the EU, an overall con-

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1 Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service.

2 Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research.

3 Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 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.

servative approach towards the implementation of the Directive has unfortunately been adopted by the Member States.

2. Directive 2016/801: Background

3. In May 2015, the European Commission presented the European Agenda on Migration,[4] which was intended to equip the EU with tools to better manage migration in the medium- and long-term in the areas of irregular migration, borders, asylum and legal migration. In this document, the European Commission stressed that labour migration will increasingly be playing an important role in addressing long-term economic and demographic challenges.[5] For this reason, the EU's legal migration framework aimed at making the EU an attractive destination for third-country nationals.[6] Against this background, the EU has seen a significant raise in numbers of international students within the past years, but was struggling to retain them after graduation.[7]

Directive 2016/801 of 11 May 2016 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 [8] was adopted with a view to retain a higher number of foreign talent in the EU. This Directive replaced Directives 2004/114[9] and 2005/71[10] regulating the admission of students and researchers.

European Commission reports (2011) dealing with the application of these two Directives indicated that improvement was required. More specifically, the report on the Students Directive[11] pointed out that this Directive lacked procedural guarantees, strong mobility clauses and provisions on access to work at the end of the studies,

4 European Commission (2015), *European Agenda on migration*, Brussels: European Commission, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf.

5 European Commission (2015), *European Agenda on migration*, p. 14, Brussels: European Commission, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf.

6 EMN Inform (2017), *Retaining third-country nationals in the European Union*, p. 1, Brussels: European Commission, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_inform_student_retention_final_en.pdf.

7 OECD (2016), How attractive is the European Union to skilled migrants?, in: *Recruiting Immigration Workers: Europe 2016*, Paris: OECD publishing, p. 98.

8 Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 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.

9 See footnote 1.

10 See footnote 2.

11 Report from the Commission to the European Parliament and the Council on the application of 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, https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0587:FIN:EN:PDF.

while the report on the Researchers Directive[12] suggested that this Directive could be improved through better guidance and information provisions as well as through amendments related to defining the researchers' rights more clearly.

In 2013, the European Commission consequently submitted a proposal to overhaul the existing two Directives into one single text, which was adopted in 2016. The Member States had until May 2018 to transpose the Directive into their national legislation.

3. Scope and Benefits of Directive 2016/801

3.1. Scope

4. The 2016 recast Directive stipulates the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchanges and au pairing. While the provisions with regards to students, researchers, trainees and volunteers under the European Voluntary Scheme are mandatory, the rules foreseen for the other volunteers, school pupils and au pairs remain optional. As briefly mentioned in the introduction (*supra* nr. 2), this chapter will be focusing on the following three categories: Students, Researchers and Trainees.

Directive 2016/801 applies to all EU countries, with the exception of Ireland and Denmark, which have not taken part in the adoption of this Directive. The other Member States had until the 23th of May 2018 to transpose the Directive into their national legislation. At this point in time, all Member States have done so, save for Belgium[13] and Slovenia[14].

Article 3 of the Directive foresees in broad definitions to define the 3 main categories regulated under the Directive:

Researchers are defined as

> 'third-country nationals who hold a doctoral degree or an appropriate higher education qualification which gives access to doctoral programmes, selected by a research organization for carrying out a research activity for which such a qualification is required'.[15]

On the other hand, the Directive defines *students* as

12 Report from the Commission to the European Parliament and the Council on the application of Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0901&from=EN.

13 Directive 2016/81 has not yet been fully transposed in Belgium. While the Regions have already transposed the work-related rules of Directive 2016/801 (and the Federal State and the Regions have concluded an executing cooperation agreement with respect to the implementation on December 6th 2018), the transposition of the provisions related to residence rights are currently pending at federal level.

14 Directive 2016/801 has not yet been transposed in Slovenia. The new government recently managed to push through the pending reform of the Foreigners Act, which includes implementation of the Directive. The Act is in the last stage of governmental consultation before being submitted to the parliamentary adoption procedure.

15 Art. 3 (2) of Directive 2016/801.

> 'third-country nationals who have been accepted by a higher education institution and are admitted to the territory of a Member State to pursue as a main activity a full-time course of study leading to a higher education qualification recognised by that Member State, including diplomas, certificates or doctoral degrees in a higher education institution, which may cover a preparatory course prior to such education, in accordance with national law, or compulsory training'.[16]

Finally, Article 3(5) defines the *trainee*-category as

> 'Third-country nationals who hold a degree of higher education or are pursuing a course of study in a third country that leads to a higher education degree and who are admitted to the territory of a Member State for a training programme for the purpose of gaining knowledge, practice and experience in a professional environment'.[17]

3.2. Practical Impact of Directive 2016/801 on Students, Researchers and Trainees

5. In what follows, a detailed overview will be provided with respect to the impact of Directive 2016/801 for students, researchers and trainees. The below sections will be focusing on the admissibility criteria and the improved rights for each of these categories. In addition, a comparative overview of Member States' policies, as well as practical examples concerning the implementation of certain provisions foreseen by the Directive will be outlined. The information concerning the implementation of Directive 2016/801 has been restricted to the Member States indicated below:

1. Austria
2. Czech Republic
3. France
4. Germany
5. Italy
6. Luxembourg
7. The Netherlands
8. Poland
9. Spain
10. Malta
11. Portugal

3.2.1. Students

6. Directive 2016/801 generally unifies the eligibility criteria for students, making the student permit approval process more predictable and straightforward. In addition, the Directive lists new benefits which must be introduced by the Member States if not yet available, such as a work option for at least 15 hours per week, the right to move within the EU and the possibility to search for a job or set up a business after completion of the studies.

16 Art. 3 (3) of Directive 2016/801.
17 Art. 3 (5) of Directive 2016/801.

3.2.1.1. Admissibility criteria

7. To ensure a more predictable and straightforward student permit approval process in the EU, article 7 of the Directive lays down a list of 'standard' admission conditions, including the requirement of being able to present a valid travel document, a sickness insurance, proof of payment of application fees, proof of sufficient resources to cover subsistence costs etc.[18]

Box 1 - Member States' implementation of Art. 11.1 of Directive 2016/801

Art. 11.1 of Directive 2016/801 - Implementation of the additional admissibility criteria for students in the Member States

In practice, most of the Member States included in the scope of this chapter (supra nr. 5) are imposing additional admissibility criteria to student permit applicants, therefore foreseeing in a conservative approach towards the transposition of the Directive. *Germany* and *Malta* are examples of Member States requiring proof of sufficient language knowledge when applying for a student permit. Third-country nationals applying for a student permit in Member States such as *Poland* and *Malta* need to submit additional evidence that the fees charged by the higher education institution have been paid. All Member States included in the scope of this chapter, with the exception of *Spain*, *Luxembourg* and *the Netherlands* have implemented the additional admission condition foreseen by article 11.1 d) of the Directive and therefore require applicants to provide proof of sufficient resources to cover the study costs.

In addition, third-country national applicants are required to provide evidence of acceptation by a higher education institution to follow a certain course.[19] Finally, the Directive foresees in the possibility for Member States to impose additional admissibility criteria, such as proof of sufficient language knowledge, proof of sufficient resources to cover the study costs and the proof that the fees charged by the higher education institution have been paid.[20]

8. One of the main changes established by Directive 2016/801 was the introduction of an optional approval procedure for higher education institutions.[21]

Where Member States decided to establish such approval procedure, they could choose to restrict the admission to approved higher education institutions or to allow admission to both approved and non-approved education institutions. Applicants who are to be hosted by approved higher education institutions enjoy certain process facilitations, such as less document requirements and shorter processing times (maximum of 60 days instead of a maximum 90 days).[22]

18 Art. 7 of Directive 2016/801.
19 Art. 11.1 a) of Directive 2016/801.
20 Art. 11.1 of Directive 2016/801.
21 Art. 15 of Directive 2016/801.
22 Art. 11.3 of Directive 2016/801.

Box 2 - Member States' implementation of Art. 15 of Directive 2016/801

Art. 15 of Directive 2016/801 - Implementation of the optional approval procedure for higher education institutions in the Member States

It is interesting to note that the vast majority of Member States included in the scope of this chapter (*supra* nr. 5) opted for introducing an approval procedure for higher education institutions, *France* and *Germany* being the sole two Member States to not foresee in such an approval procedure. The approach of both France as Germany may be considered as conservative, as the Directive foresees in certain process facilitations for applicants who are to be hosted by approved higher education institutions.

3.2.1.2. Improved rights for students

9. Following Directive 2016/801, Member States are required to offer certain benefits to third-country national students, such as granting access to the labour market for at least 15 hours per week or the equivalent in days or months per year. Member states have the discretion to restrict this right in exceptional circumstances such as high unemployment rates.[23] In addition, Member States may decide to grant students the right to exercise self-employed economic activities, subject to the time limitations as indicated in article 24.3 of the Directive.[24] For this, and where necessary, Member States need to grant students a prior authorization in accordance with national legislation.[25] The right to work is also provided to students who are making use of their mobility rights.[26]

In practice we see an overall conservative approach, as most Member States have limited the number of hours per week (or the equivalent in days or months per year) during which a foreign student is allowed to work. Other Member States, such as *Austria, Czech Republic, Poland* and *Portugal* have upheld a less restrictive implementation of the Directive by not imposing any limit to foreign students' working time (*infra* box 3).

To grant foreign students access to the labour market during their studies, the overall majority of Member States require a separate work authorization application or a similar procedure such as a notification or declaration to the competent national Authorities. While article 24.2 of the Directive indicates that Member States need to grant the necessary prior authorisations in accordance to national law as to enable foreign students to access the labour market, the question remains whether Member States imposing a separate work authorization or a similar procedure to allow foreign students to be employed on their territory is to be considered as infringing Article 24.1 of Directive 2016//801. *Germany, Italy* and *Poland* are examples of Member States that do not require any separate authorization to work. Holders of a student permit in these three Member States are consequently allowed to work on the sole basis of their student permit.

23 Art. 24.1 and 24.3 of Directive 2016/801.
24 Art. 24.1 of Directive 2016/801.
25 Art. 24 of Directive 2016/801.
26 Art. 27.2 of Directive 2016/801.

The Directive also provides for the possibility for Member States to grant students the right to exercise self-employed activities.[27] In practice, we see a conservative approach by the Member States with regard to the implementation of this provision, as *The Netherlands* and *Malta* are examples of the few Member States that have decided to grant students the right to exercise self-employed economic activities without the need to file a separate permit application(*infra* box 4).

Box 3 - To what extent can students work during their studies? An overview of Member States' implementation of Art. 24.3 of Directive 2016/801

Examples of Member States where there is no limit on the number of hours a student can work:	**Austria** **Czech Republic** **Poland** **Portugal**
Examples of Member States where there is a limit to how many hours a student can work:	**France** - Up to 964 hours per year, and full-time work must be limited to not more than 6 months (part-time work allowable for the full year). **Germany** – 120 full-time days or 240 half-days per year. **Italy** – Max. 20 hours per week and no more than 1040 hours per year. **Luxembourg** – Max. 15 hours per week, possibility to work full-time during the holiday seasons. **Netherlands** – Max. 16 hours per week or full-time in June, July and August. **Spain** – Max. 20 hours per week and full-time during the holiday seasons.

Box 4 - Do students need to file a separate application to be entitled to work? An overview of Member States' implementation of Art. 24.2 of Directive 2016/801

Examples of Member States where no work authorization application is required:	• **Germany** • **Italy** • **Poland**
Examples of Member States where applications or similar procedure are required:	• **Austria –** Work permit application required; no labour market test required if working less than 20 hours per week. • **Czech Republic -** Labour office registration is required. • **France -** A declaration of the activities must be submitted to the labour office. • **Luxembourg -** Work permit application required. • **Netherlands -** Work permit application required (note: no work permit application is required to exercise self-employed economic activities.) • **Portugal -** Notification to the immigration services is required. • **Spain -** Part-time work permit application required.

27 Art. 24.1 of Directive 2016/801.

10. The Directive also provides for the possibility for students to stay on the territory of the Member State after having finalised their studies, and this for a period of at least nine months, to seek employment or to set-up a business.[28] This right should incentivize recent graduates to remain in the host Member State and consequently allow the EU to benefit from their skills upon finalisation of their studies. Certain Member States, such as *Austria, France, Germany, Czech Republic, the Netherlands* and *Spain* have gone further by foreseeing certain immigration facilitations for recent graduates once a job has been found (*infra* box 5).

Box 5 - Students' stay for the purpose of job-searching or entrepeneurship? An overview of Member States' implementation of Art. 25 of Directive 2016/801

Examples of Member States that allow a duration of more than 9 months for job-search permits	• **Portugal** (12 months) • **Spain** (12 months) • **Italy** (12 months) • **France** (12 months) • **Austria** (12 months) • **Netherlands** (12 months) • **Germany** (18 months) • **Poland** (12 months)
Examples of Member States that accept job-search permit applications from holders of a student permit in another Member State	• **Czech Republic -** The student permit of the other EU Member State must still be valid at the time of applying. • **Germany** - A TCN who holds a foreign university degree comparable to a German university degree can apply for a residence permit for up to six months to search for a job appropriate to the qualification. • **Netherlands -** The TCN must hold a master or Phd from a top 200 university and must be able to proof English or Dutch language skills. • **Portugal**
Examples of Member States that foresee in immigration facilitations for recent graduates once a job has been found	• **Austria -** Graduate students applying for the Red-White-Red Card are subject to lower minimum salary requirements and standard labour market test requirements are waived. • **Czech Republic -** Labour market test requirements are waived for graduates from Czech schools. • **France -** Labour market test requirements are waived for (1) holders of job-search permits, (2) who obtain a job related to their studies, and (3) are paid at least EUR 2281.82 gross per month. • **Germany -** Labour market test requirements are waived • **Netherlands -**The highly skilled migrant permit has a significantly reduced salary threshold (with an employer holding a trusted sponsor-status) for anyone who held a job-seeker permit or would qualify for such permit. The TCN can work during the application process. • **Spain -** Labour market test requirements are waived.

28 Art. 25 of Directive 2016/801.

In practice, the majority of the Member States have extended the job-search duration above the minimum duration indicated in Article 25.1 of the Directive. While most Member States require the job-search permit application to be submitted within the validity of the student permit, it is interesting to note that *France* and *the Netherlands* allow students to do so within respective 4 and 3 years of their graduation. *Germany, Portugal, Czech Republic* and *the Netherlands* are examples of Member States accepting job-search permit applications from student permit holders of another Member State (*infra* box 5).

11. The Directive equally expands opportunities for students by affording greater mobility within the EU. Students who hold a valid student permit issued by the first Member State and who are covered by an Union or multilateral programme that comprises mobility measures or by an agreement between two or more higher education institutions, can carry out part of their studies in another Member State for up to 360 days without the need to apply for a new authorization to enter and stay in the second Member State.[29] However, many Member States require a notification to be submitted to the competent authorities of the first and second Member State in such case, according to the possibility foreseen by Article 31.2 of the Directive.[30] In addition, the Directive provides for the possibility for the second Member State to allow students to work besides the studies.[31]

Box 6 - Member States' implementation of Art. 31 and 27.2 of Directive 2016/801

Art. 31 of Directive 2016/801 - Implementation of the mobility rights of students in the Member States

Most of the Member States included in the scope of this chapter (supra nr. 5), such as *France, Germany, the Netherlands, Luxembourg* and *Poland*, decided to impose a notification requirement in case the foreign student makes use of his/her intra-EU mobility rights.
Following Article 27.2 of Directive 2016/801, Member States such as *France, Germany, Italy* and *Luxembourg* provide for the possibility for students, who are making use of their intra-EU mobility rights, to work besides their studies.

3.2.2. Researchers

12. As with regards to researchers, Directive 2016/801 harmonizes the eligibility criteria and introduces new benefits, such as the right to sponsor eligible dependents, to move within the European Union, to teach and the right to search for a job or to set up a business after completing their research activity.

29 Art. 31.1 of Directive 2016/801.
30 Art. 31.2 of Directive 2016/801.
31 Art. 27.2 of Directive 2016/801.

3.2.2.1. Admissibility criteria

Box 7 - Member States' implementation of Art. 8.2 of Directive 2016/801

Art. 8.2 of Directive 2016/801 - Implementation of the additional admissibility criterium for researchers in the Member States

In practice, most of the Member States included in the scope of this chapter (*supra* nr. 5) have refrained from imposing the additional requirement to provide the competent Authorities with a written statement concerning the financial responsibility of the research organization in case the researcher remains illegally in the Member State. *Germany* and *Poland* are examples of the few Member States requiring proof of such financial responsibility for a research permit application, resulting in a stricter approach with regard to the transposition of the Directive.

13. Following article 7 of the Directive, foreign researchers benefit from a harmonisation of the eligibility criteria when applying for a researcher permit.[32] In addition to the general conditions laid down in Article 7, applicants are required to present a hosting agreement or a contract, which needs to comply with the elements set-out in Article 10 of the Directive. [33] Furthermore, Member States may require a written undertaking from the research organisation, mentioning that the organisation will be financially responsible in the event that the researcher remains illegally in the territory of the Member State concerned.[34]

Box 8 - Member States' implementation of Art. 9 of Directive 2016/801

Art. 9 of Directive 2016/801 - Implementation of the optional approval procedure for research organizations in the Member States

The vast majority of Member States included in the scope of this chapter (*supra* nr. 5), such as *Austria, Italy, Spain, Germany* and *the Netherlands* decided to allow private companies to be recognized as a research organization. This is of relevance for the business community as Research & Development departments of pharmaceutical companies for instance would be able to make use of this route to hire foreign researchers. While most Member States only allow admission through approved entities, *Czech Republic* and *Spain* opted to allow admission through both approved and non-approved research organizations.

14. Directive 2016/801 provides for more flexibility by allowing Member States to issue a researchers permit even in case of non-recognised public or private research organisations. Member states that decide to have an approval procedure, can opt to allow admission only through approved entities or through both approved and non-approved research organisations.[35] Certain process facilitations are foreseen for applicants who are to be hosted by approved research organisations. These facilitations

32 Art. 7 of Directive 2016/801.
33 Art. 8.1 of Directive 2016/801.
34 Art. 8.2 of Directive 2016/801.
35 Art. 9 of Directive 2016/801.

include a restricted amount of documents for the application and shorter processing times (maximum of 60 days instead of maximum of 90 days).[36]

3.2.2.2. Improved rights for researchers

15. With the adoption of Directive 2016/801 certain benefits were introduced for foreign researchers, such as having the right to teach in addition to carrying out research activities. Member states remain free in deciding to introduce a maximum number of hours or days for such teaching activities.[37] Teaching is equally allowed for researchers making use of their intra-mobility rights.[38]

Box 9 - Member States' implementation of Art. 23 of Directive 2016/801

Art. 23 of Directive 2016/801 - Implementation of the maximum number of hours for the activity of teaching

Most of the Member States included in the scope of this chapter (*supra* nr.5), including *Austria, Germany, Italy* and *the Netherlands* decided to not introduce any time limit to teaching activities for research permit holders.

16. In line with the student-category (*supra* nr. 10), the Directive foresees in the possibility for researchers to stay on the territory of the Member State after the completion of the research activity, for a period of at least nine months, to seek employment or to set-up a business.[39] This right should incentivize researchers to remain, after completion of the research, in the host Member State for work purposes.

Member States, such as *France, Germany, the Netherlands* and *Spain***,** have even foreseen in immigration facilitations for researchers once a job has been found (see box nr. 10).

In practice, most Member States allow for a longer job-search duration than the minimum duration indicated in Article 25.1 of the Directive (9 months). Following Article 25.7, Member States may require, after a minimum of three months from the issuance of the job-search permit, proof that the foreign researcher has a genuine chance of being engaged or of launching a business. It is interesting to note that *Malta* is the only Member State that has decided to implement this requirement. With regard to the transposition of this optional additional condition, a certain lenience of the other Member States included in the scope of this chapter can therefore be noticed.

36 Art. 8.3 of Directive 2016/801.
37 Art. 23 of Directive 2016/801.
38 Art. 27.2 of Directive 2016/801.
39 Art. 25 of Directive 2016/801.

Box 10 - Researchers' stay for the purpose of job-searching or entrepeneurship? An overview of Member States' implementation of Art. 25 of Directive 2016/801

Examples of Member States that limit the duration of job-search permits to 9 months	• **Czech Republic** • **Germany** • **Luxembourg** • **Poland** • **Malta**
Examples of Member States that allow a duration of more than 9 months for job-search permits	• **Portugal** (12 months) • **Spain** (12 months) • **Italy** (12 months) • **France** (12 months) • **Austria** (12 months) • **Netherlands** (12 months)
Examples of Member States that require applicants to provide proof that they have a genuine chance of being hired	• **Malta -** After three months in Malta, the applicant must prove that he or she has a genuine chance of being hired or launching a business.
Examples of Member States that foresee in immigration facilitations for researchers once a job has been found	• **France -** Labour market tests are waived. • **Germany -** Labour market tests are waived. • **Netherlands -**The highly skilled migrant permit has a significantly reduced salary threshold for anyone who held a job-seeker permit or would qualify for such permit. The TCN can work during the application process. • **Spain** – Labour market tests are waived and shorter processing times apply.

17. Additionally, the Directive introduces mandatory family reunification provisions [40] for researchers, which are more favourable than the general rights set out by the family reunification directive.[41] Under Directive 2016/801, the granting of a residence permit to family members cannot be made dependent on a minimum period of residence or on the requirement of the researcher having reasonable prospects of obtaining the right of permanent residence.[42] Processing times for issuing such family member permits are set at a maximum of 90 days from the date on which the complete application is submitted.[43] Family members are allowed to work, and labour market tests are only allowed in exceptional circumstances.[44] Moreover, family members have the possibility to accompany the researcher during the time the research stays in the Member State for job-searching purposes or for purposes to set-up a business,[45] and are equally authorised to join the researcher in the framework of the researcher's mobility.[46]

40 Art. 26.1 of Directive 2016/801.
41 Directive 2003/86/EC of 22 September 2003 on the right to family reunification.
42 Art. 26.2 of Directive 2016/801.
43 Art. 26.4 of Directive 2016/801.
44 Art. 26.6 of Directive 2016/801.
45 Art. 25.5 of Directive 2016/801.
46 Art. 27.3 of Directive 2016/801.

18. Finally, researchers can benefit from enhanced mobility rights to conduct their research across the EU.[47] Third-country national researchers and their family members are guaranteed with the following two types of intra-EU mobility:

1. Short-term mobility:[48] Member states may require a notification to take place for researchers who are holding a valid authorization issued by the first Member State and who intend to carry out part of their research in a research organization in one or several second Member States for a period of up to 180 days in any 360 day-period per Member State.

2. Long-term mobility:[49] Member states may require a notification or a long-term mobility application for researchers who hold a valid researcher permit issued by the first Member State and who intend to stay in order to carry out part of their research in any research organization in one or several second Member States for more than 180 days per Member State.

3.2.3. Trainees

19. Directive 2016/801 requires EU Member States to offer a trainee category in addition to the existing EU ICT Permit trainee option, whereas prior EU rules allowed this category to remain optional. The Directive leaves considerable freedom to Member States in setting the eligibility criteria and process for trainees, and does not require Member States to allow accompanying dependents, facilitated intra-EU mobility or job search.

Box 11 - Member States' implementation of Art. 28 and 29 of Directive 2016/801

Art. 28 and 29 of Directive 2016/801 - Implementation of the short-term and long-term mobility rights of researchers in the Member States

Most Member States such as, *France, Germany, Italy, the Netherlands* and *Spain* decided to impose a notification requirement for short-term mobility purposes.

As with regards to the long-term mobility right of researchers, a majority of the Member States such as *Austria, Germany, Italy* and *Poland*, decided to implement Article 29 of the Directive strictly by requiring a long-term mobility application for researchers holding a valid research permit issued by the first Member State.

3.2.3.1. Admissibility criteria

20. Just as for the students and researchers, the Directive harmonizes eligibility criteria for trainees. The "standard" admission conditions as foreseen by article 7 of the Directive, are consequently applicable to trainees.[50] In addition to the general conditions laid down in Article 7, applicants will need to present a training agreement, which needs to comply with the elements set-out in Article 13.1 a) of the Directive, and provide evidence of having obtained a higher education degree within the two

47 Art. 27-29 of Directive 2016/801.
48 Art. 28 of Directive 2016/801.
49 Art. 29 of Directive 2016/801.
50 Art. 7 of Directive 2016/801..

years preceding the application or of pursuing studies that lead to a higher education degree. [51]

The Directive also leaves considerable freedom to Member States in setting additional eligibility criteria as Member States may require applicants to provide proof of sufficient resources to cover the training costs, evidence that the applicant has received or will receive language training, proof that the host entity accepts responsibility for the applicant throughout the stay as regards to subsistence and accommodation costs and evidence that the applicant is accommodated throughout the stay by the host entity.[52] Furthermore, EU countries may require (1) the traineeship to be in the same field and at the same qualification level as the higher education degree that has been or is to be obtained, (2) evidence from the host entity that the traineeship does not replace a job, (3) as well as a written undertaking from the host entity mentioning that the entity will be financially responsible in the event that a trainee remains illegally in the territory of the Member State concerned.[53]

Box 12 - Trainee category: an overview of Member States' implementation

Examples of Member States with a minimum salary requirement for this category:	• **Austria** • **France** • **Germany** • **Luxembourg** • **Spain -** for labor training contracts
Examples of Member States that do *not* require traineeship to be in the same field and at same qualification level as the education degree or the current studies:	• **Czech Republic** • **France**
Examples of Member States that do *not* allow voluntary (non-compulsory traineeships in the framework of the studies) traineeships to qualify for the trainee permit:	• **France** • **Portugal**
Member States in which the application process is easier than the permit options which were already in place for trainees:	• **Spain -** Statutory processing times of 30 days and silent consent applies (new category in Spain). • **Austria** - Main benefit is that the trainee can be anyone currently enrolled in a university and not yet a university graduate, which is much less restrictive than previous framework. • **Italy -** New possibility to enter for "curricular" internships, which are not subject to numerical limits imposed by the Ministry of Labour to non-curricular internships.

51 Art. 13.1 a) and b) of Directive 2016/801.
52 Art. 13.1 c) – f) of Directive 2016/801.
53 Art. 13.2 – 13.4 of Directive 2016/801.

Many Member States have made use of this freedom and do require certain criteria to be fulfilled in addition to the standard admission conditions as foreseen in article 7 of the Directive, therefore resulting in a conservative implementation of the Directive. The majority of the Member States that have been included in the scope of this contribution (*supra* nr. 5) require the traineeship to be in the same field and at the same qualification level as the education degree or the current studies. It is however worth noting that voluntary traineeships (non-compulsory traineeships in the framework of the studies) can qualify for the trainee permit applications in most of the Member States. While the Directive does not require Member States to foresee in a certain minimum salary threshold, and allows unpaid trainees to fall under the scope of the trainee-category, Member States such as *Austria, Germany, France, Luxembourg* and *Spain* decided nevertheless to foresee in a minimum salary requirement for this category. Nonetheless, the current trainee application processes in Member States such as *Austria* and *Italy* are considered to be easier than the processes of the permit options which these countries already had in place for trainees (see box nr. 12).

3.2.3.2. Improved rights for trainees

21. With regard to trainees, Directive 2016/801 does not require Member States to introduce facilitated intra-EU mobility rights, to allow accompanying dependents or foresee in the right to search for a job or set up a business after completion of the traineeship.

As the Directive does not foresee in the possibility for trainees to remain in the Member State for job-search purposes or to set up a business after the completion of the traineeship, trainees are restricted to the possibility to remain in-country for employment purposes by complying with the national immigration provisions. As a result, Member States have retained a restrictive approach for this category.

4. Conclusion

22. Directive 2016/801 was adopted with the main aim of making the European Union a more attractive destination for studying purposes as well as for research and innovation, leading as such to an increase in competitiveness, growth and employment. The possibility for students and researchers to apply for job-search permits after finalizing their studies or research and the intra-mobility measures foreseen for these two categories should help retain the foreign talent in the EU.

23. While Directive 2016/801 brings several new benefits to foreign researchers, students and trainees in the EU, a rather conservative approach towards the implementation of the Directive has unfortunately been adopted by the Member States.

Generally speaking, Member States have made the administrative process of immigration and access to the labour market for foreign students and researchers easier and less restrictive following the transposition of the Directive into their national legislation. It should however be noted that certain Member States have made the administrative immigration process less straightforward by requiring certain criteria to be fulfilled in addition to the standard admission conditions as foreseen by the Directive (*supra* nr. 7, 13 and 20). Moreover, Member States not foreseeing in the introduc-

tion of the optional approval procedure for higher education institutions are as a consequence dismissing the opportunity for applicants to enjoy certain process facilitations (*supra* nr. 8).

In addition, it may be observed that Member States have stayed rather protective of their national labour market when implementing Directive 2016/801. Member states have done so by restricting the number of hours per week (or the equivalent in days or months per year) that foreign students are allowed to work (*supra* nr. 9) as well as by requiring a separate work authorization application or a similar procedure such as a notification or declaration to the competent national Authorities in order to grant foreign students the access to their labour market (*supra* nr. 9). Member states that have introduced further integration measures for foreign students and researchers once a job has been found, such as reduced salary thresholds, are also rather limited (*supra* nr. 10 and 16).

Finally, it is noteworthy that certain Member States are also requiring a long-term mobility application for researchers holding a valid research permit in the first Member State, which may be considered as being distrustful of other Member States. On the other hand, Member States that have decided to impose language requirements to student permit applicants may be regarded as being distrustful of the selection made by the higher education institutions.

Mobility of TCN Researchers in the European Research Area: Findings from Cyprus

*Louisa Borg Haviaras**

1. Introduction

Scientific migration/mobility represents one of the most important,[1] unconventional[2] types of migration and a phenomenon of growing interest not only for scholars[3] but also for the EU and countries worldwide. It also implies 'free movement' as well as immigration of non EU scientists, researchers and their family members. In the European context an increase in the geographical mobility of scientists has been promoted as a strong instrument to foster faster economic adjustment, growth and competitiveness.[4] In terms of numbers, Europe taken as a block and compared to the United States represents the greatest scientific entity in the world. The argument of promoting scientific mobility is at the core of the European Research Area (ERA), a concept initially conceived back in 1973[5], and becoming an integral part of the so called Lisbon Agenda formulated in 2000, a new strategy adopted for the establishment of the ERA.[6] Underlying this argument and the main Lisbon Agenda objectives is the idea that Member States' (MSs) national research systems should not be isolated but that they should become more interoperable creating and establishing a common scientific area with an integrated European system for research irrespective of national borders.[7] Thus, growth and competitiveness can be boosted for the benefit of the whole block through intra-Union scientific mobility and attraction of non-EU researchers in order for the EU to become the premier knowledge economy world-

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1 M'hamed Aisati et al. (2012). International Scientific Migration Balances, in: Eric Archambault, Yves Gingras & Vincent Larivi0re, *Proceedings of 17th International Conference on Science and Technology Indicators*, Montréal: Science-Metrix and OST, pp. 33-45, at p. 33.

2 Adrian Favell (2015). Migration Theory Rebooted? Asymmetric Challenges in a Global Agenda, in: Caroline B. Brettell & James F Hollifield (eds), *Migration Theory Talking Across Disciplines* (3rd ed.), Abingdon: Routledge, p. 325.

3 Stefano H. Baruffaldi & Paolo Landoni (2010). *Effects and Determinants of the Scientific International Mobility: The Cases of Foreign Researchers in Italy and Portugal*, Paper for the Triple Helix VIII Conference, Madrid: IASP.

4 Vincent Reillon (2016). *The European Research Area, Evolving Concept, Implementation Challenges*, In-depth Analysis, Research Policy, PE 579.097, Strasbourg: European Parliamentary Research Service (EPRS). See also Klaus F. Zimmerman (2013). *The Mobility Challenge for Growth and Integration in Europe*, IZA Policy Paper No. 69, Bonn: IZA.

5 Commission of the EC (1973). *Working Programme in the Field of Research, Science and Education*, SEC(73) 2000/2, (23 May 1973), Brussels: European Commission.

6 European Council (2000). Presidency Conclusions, Lisbon 23 and 24 March 2000, Lisbon: European Council, at: http://www.europarl.europa.eu/summits/lis1_en.htm.

7 Commission of the EC 1973 (n. 5).

wide through the promotion of research, innovation, education and scientific mobility.[8]

Despite the launching of ERA and other landmark programmes and initiatives[9] to maximize the return on investment in research and thus increasing its effectiveness at both the national and EU level a common policy on diploma recognition of Third Country Nationals (TCNs) is still missing. At the same time the purpose of promoting and attracting scientific mobility led to the evolution of the EU free movement provisions regarding EU Researchers and Scientists, and contributed to some intra-EU mobility for non-EU Researchers and Scientists through the EU Migration law Directives.

Ideally the right to free movement for EU nationals through the Citizenship Rights Directive (CRD)[10] and the intra-EU mobility for non-EU nationals result in a *seamless mobility of researchers across institutions, sectors and countries.*[11] Thus mobility of EU scientists and EU citizenship are linked[12] since EU citizenship rights are derivative from MS national citizenship. Likewise, mobility of TCN scientists is connected to the EU legislation that governs it, however, on condition they meet its requirements and on accessing EU citizenship which depends on the national citizenship policies of the MS they are in. Consequently, without doubt states and policies play a significant role not only in shaping migration processes,[13] but also in the correct application of EU laws at the national level thus safeguarding the migrant scientists' and researchers' rights.

Concern about the migration impact on the welfare state[14] and generally about the political dimensions of migration and consequently the role of migration policies prompted a turn in attention of political scientists and legal scholars to migration as

8 Commission Communication, *Towards a European Research Area*, COM (2000) 6, 18 January 2000, Commission of the EC (2001). *A Mobility Strategy for the European Research Area*, COM (2001) 331, 20 June 2001, Brussels: European Commission. See Article 45 TFEU on the freedom of movement of workers and Articles 179-181 TFEU on research and technological development and space. See Commission Communication, *European Research Area Progress Report 2014*, COM(2014) 575 final.

9 See for example: Commission Communication, *EUROPE 2020 A Strategy for Smart, Sustainable and Inclusive Growth*, COM (2010) 2020, 3 March 2010; Council of the EU (2015). *Council Conclusions on the European Research Area Roadmap 2015-2020*, ST 9351 2015 INIT, 29 May 2015, Brussels: European Commission.

10 Directive 2004/38/EE of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States

11 Commission Communication, *The European Research Area: New Perspectives*, Brussels, 4.4.2007 COM (2007) 161 final.

12 Sonia Morano-Foadi (2010). Citizenship and Migration within the European Research Area: The Italian Example, in: Martínez Arranz, Alfonso Pascaline Winand & Natalie Doyle (eds), *'New Europe, New World?: The European Union, Europe and the Challenges of the 21st*, Brussels: P.I.E.-Peterlang, p. 98.

13 Stephen Castles et al. (2014) *The Age of Migration, International Population Movements in the Modern World* (5th ed.), Cham: Palgrave Macmillan, p. 5. See also Hein de Haas (2011). *The Determinants of International Migration, Conceptualizing Policy, Origin and Destination Effects*, IMI Working Paper 32 (DEMIG Project Paper 2), Oxford: University of Oxford, International Migration Institute, p. 4.

14 Grete Brochmann & Anniken Hagelund (2012). *Immigration Policy and the Scandinavian Welfare State 1945-2010 (Migration, Diasporas and Citizenship)*, Cham: Palgrave Macmillan, p. 3.

in how to bring the role of the state back in.[15] However, scholarly research shows that it is hard to measure the effectiveness of the role states and migration policies play in migration processes.[16] This could be attributed to studying migration in terms of policy outcomes and outputs which portrays migrants as 'passive pawns' without any active or inactive role or ability to change structure,[17] leaving social, cultural and environmental factors which have a strong influence on scientific migration[18] unaccounted for.

Against this background, viewing scientific migration as a phenomenon instigated and directed by the behaviour, objectives and policies of many actors involved in it both at a supranational and national level I examine the conditions under which TCN scientists and researchers can enter the EU, and the regulation of their limited free movement right which mainly depends on MSs Immigration law and legislation implementing the relevant EU Migration Directive. More specifically I examine Directive 2005/71/EC[19] also known as the Researchers Directive of 2005 replaced by the Recast Directive 2016/801 of 11 May 2016[20] which merged the Directive on Students 2004/114/EC[21] and the Researchers Directive 2005/71/EC. Our aim is to analyse whether Europe is a truly open and excellence-driven area in which TCN highly skilled and qualified people can move seamlessly across borders to where their talents can be best employed and to the same extent with their EU counterparts. At the national level (Cyprus) our aim is to demonstrate through our empirical evidence[22] the extent of the influence/impact of the domestic research culture and environment,

15 James F. Hollifield & Toom K. Wong (2015). The Politics of International Migration, How Can We Bring the State Back In?, in: Caroline B. Brettell & James F Hollifield (eds.) *Migration Theory Talking Across Disciplines* (3rd ed.), Abingdon: Routledge.

16 De Haas 2011 (n. 13).

17 Hein de Haas (2010). *Migration Transitions: a Theoretical and Empirical Inquiry into the Developmental Drivers of International Migration*, IMI WP 24 DEMIG Project Paper 1, Oxford: Oxford University: IMI.

18 Jeffrey C. Alexander (1988)*Action and Its Environments*, New York: Columbia University Press; Gary Marks & Liesbet Hooghe (2000). Optimality and Authority A Critique of Neoclassical Theory, *Journal of Common Market Studies* 38 (5), pp. 795-816.

19 Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting TCNS for the purpose of scientific research [2005] OJ L289/15.

20 Directive 2016/801 of 11 May 2016 on the entry and residence conditions of TCNs for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing, [2016] OJ L 132/21.

21 Directive 2004/114 of 13 December 2004 on the conditions of admission of TCNs for the purposes of studies, pupil exchange, unremunerated training or voluntary service [2004] OJ L 375/12.

22 This contribution is part of a broader socio-legal research titled 'Free Movement of Scientists within the European Research Area (ERA): An Analysis of the Cypriot Research Market' with two empirical phases: one in Cyprus between 2014 and 2015 and one in the UK between 2015 and 2016. The data for this contribution has been gathered through questionnaires and in-depth, structured (semi-standardized) interviews, containing questions broadly corresponding to the three dimensions of research culture: external adaptation, internal integration and leadership. Basic personal information were asked in relation to interviewees' professional trajectories, mobility choices, and integration in the host country, the impact of the hosting research environment on their present professional situation and that of the home country as well as links with their country of origin. For the empirical research in Cyprus, 20 interviews with EU and non-EU scientists, researchers, doctoral candidates and 8 interviews with policy-makers, government officials and other stakeholders were conducted during the period from August 2014 to January 2015.

on the intra-EU mobility rights of TCN scientists in Cyprus and how this affects their actual mobility.

This contribution is divided in six sections. In section (2) we reflect on scientific migration/mobility within the European Research Area, its aims, evolution and stratification of rights and entitlements. In section (3) we consider the weaknesses and improvements between the old and the new Directive on TCN Researchers and their family members at an EU level. In section (4) we reflect on the national level using Cyprus as the setting for this migration research and a case study. In section (5) we reflect on the empirical findings on the implementation of Researcher Directive 2005/71/EC in the country. We round up with some concluding remarks and recommendations in section (6).

1.2. Scientific Mobility within the ERA: Aims, Evolution, Stratification of Rights and Entitlements

The ERA is defined as 'a unified European research area in which researchers, scientific knowledge and technology circulate freely and through which the Union and Member States strengthen their science, technology, their competitiveness and their capacity to collectively address challenges'.[23] Based on the above definition scientific mobility and migration could be viewed as a component of the strategy to build, develop and implement the ERA concept to achieve an internal research market in Europe.[24] It also aims to be attractive both to European researchers and the best researchers from Third Countries.[25]

Apart from being part of the ERA vision, scientific migration-mobility is important for Europe for several reasons. The first is that unbalanced and unsustainable patterns of scientific mobility within the EU exercise a detrimental effect on its need to maintain advantage in attracting and retaining scientists.[26] The second reason is that at a European and national level Europe is greatly affected by brain drain, causing the loss of scientists and researchers and thus having a negative impact on its competitiveness.[27] The third reason is to address Europe's demographic declining trends which affect the working age population.

However, the ERA is based mainly on policies which include soft law measures such as benchmarking, exchange of good practices and periodic monitoring, evaluation and peer review not binding for Member States.[28] Thus the absence of an ERA

23 Commission Communication, *A Reinforced European Research Area Partnership for Excellence and Growth*, COM (2012) 392, (17 July 2012).

24 Commission of the EC contribution (n. 5).

25 COM (2000) 6 (n. 8).

26 Klaus Zimmermann et al. (2007). *Immigration Policy and the Labour Market: The German Experience and Lessons for Europe*, Berlin etc.: Springer Verlag, p. 2.

27 Frédéric Docquier & Hillel Rapoport (2012). Globalization, Brain Drain, and Development, *Journal of Economic Literature*, 50(3), pp. 681-730, at p. 725; see also Martin Hynes et al. (2012). *Excellence, Equality and Entrepreneurialism Building Sustainable Research Careers in the European Research Area*, Final Report for the European Commission-Directorate General for Research and Innovation, Brussels: European Commission.

28 Commission of the EC (2000). *Development of an Open Method of Coordination for Benchmarking National Research Policies*, SEC (2000) 1842.

legal binding framework due to stakeholders' reticence about the prospect of the use of legislation,[29] limits its potential. Additionally, the prerequisite based on the above ERA definition is an adequate degree of sufficiently integrated and coordinated research collaboration between researchers and related obstacles that impede European and non- European researchers from research engagement. The scope of the ERA concept has been progressively refocused[30] and the deadline for its completion has been reset a number of times. Arguably this undoubtedly impacts negatively on the creation of an open labour market for researchers irrespective of nationality.[31]

1.3. The Old and the New: Weaknesses and Improvements

The regulation of TCN scientists' and researchers' protection and intra-EU mobility rights has expanded through a series of legal initiatives including soft law and binding measures one of which has been the Researchers Directive 2005/71/EC[32] replaced by the recast Directive 2016/801 of 11 May 2016.[33]

The aim behind Directive 2005/71/EC was twofold. One was to promote scientists' and researchers' mobility from third countries by creating more favourable admission conditions to the EU. The other was to address the EU needs for more scientific man power to meet the 2002 European Council target of 3% of gross domestic product (GDP) invested in research.[34] However, a number of shortcomings in this Directive identified by the Commission[35] and commented on by scholars[36] created a need for more effective policies in this area,[37] and led to the adoption of the new Directive 2016/801 of 11 May 2016[38] with a deadline of its transposition into national law the 23rd May 2018.

The main weaknesses identified were as follows. The first shortcoming concerned admission conditions including the obtainment of visas and residence permits. For example, for research projects lasting for less than one year, the residence permit was to be issued for the project's duration.[39] However, a residence permit might be

29 European Council, *Conclusions on the progress report from the Commission on ERA 2013*, ST 6945 2014 INIT, 25 February 2014, Strasbourg: Council of the EU.

30 Reillon 2016 (n. 4), p. 36.

31 Which is one of the ERA priorities see European Council, *Outcome of the Council Meeting*, 3392 and Council meeting 'Competitiveness (Internal Market, Industry, Research and Space)' EN 9385/15 Brussels, 28 and 29 May 2015, Strasbourg: Council of the EU, p. 9.

32 Directive 2005/71/EC (n. 19).

33 Directive 2016/801 (n. 20).

34 Directive 2005/71/EC, para 4.

35 Commission Staff WD on the Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of TCNs for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing, recasting and amending Directives 2004/114/EC and 2005/71/EC COM (2013) 151 final and SWD (2013) 78 final, 10-22.

36 See for example, Anja Wiesbrock (2010). Free Movement of Third-country Nationals in the European Union: The Illusion of Inclusion, *European Law Review* 35 (4), pp. 455-475.

37 European Parliament (2016). *Foreign Students and Researchers: New Rules for Mobility at a Glance*, May 2016, Brussels: European Parliament, at: http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_ATA% 282016%29581990.

38 Directive 2016/801.

39 Directive 2005/71/EC, Article 8.

given for a shorter period than the research project duration potentially leading to unnecessary administrative problems and expenses. The second weakness concerned absence of time limits for evaluating and deciding on applications[40] since regarding procedures MSs competent authorities were to decide on a researcher's application as soon as possible.[41] The third weakness related to the absence of extending residence rights after a research project termination since without the possibility of extending this permit researchers were not able to seek employment or apply for jobs. A fourth shortcoming was that the Directive did not provide for full family reunification rights. For example, when a researcher's family member was granted a residence permit to accompany the researcher the duration was the same as that of the researcher's depending on their travel documents,[42] and there was no guaranteed labour market access. A fifth weakness was considered to be the lack of opportunities to be integrated in the EU labour market and the limited possibilities for intra-EU mobility. A sixth weakness concerned the exclusion of students, applying to reside in a MS for research purposes leading to a doctoral degree from the Directive's scope[43] and finally a large margin of discretion was left to MS since whether or not researchers are allowed to stay was subject to national rules.[44]

Key changes under the new Directive 2016/801 aim to remove the aforementioned legal barriers, thus improving and simplifying the entry and residence conditions of TCNs wishing to come to the EU for research purposes, facilitating their intra-EU mobility[45] and improving their current legal status.[46] These mainly concern procedures, authorizations and rights and are briefly discussed below.

Regarding procedures the requirements for the general admission conditions for research are now set out clearly[47] – with the hosting agreement submission, or the hosting research organisation contract, approved as per national laws, being the main specific admission condition for researchers.[48] While the application procedure is mainly unchanged, new is the processing time of application: maximum of 90 days (60 days if approved host entity) while in Directive 2005/71, no deadlines were indicated.

As for Authorisations (permits, long-stay visa and entry visa) under the old Directive there were only permits and 'facility' to obtain requisite visa for entry while under the new Directive permits and long-stay visa (for one year max) are now possible. In case of renewal a permit has to be given. The rights granted during the stay must be the same under a long-stay visa as they are for permits. Once the conditions to get the permit/long-stay visa are fulfilled, Member States shall grant entry visa. The duration for researchers under programmes or agreements, is at least 2 years.

40 Agne Vaitkeviciute (2017). Migration and Mobility of Third-country Researchers and Students in the EU and Switzerland, *Jusletter* 13, p. 5.
41 Directive 2005/71/EC, Article 15.
42 *Ibid.*, Article 9.
43 Researcher Directive, Article 3b.
44 Commission SWD COM (2013) 151 and SWD (2013) 78 (n. 35).
45 Paras 14 and 44 of the Preamble of Directive 2016/801.
46 Art. 25 para 1 Directive 2016/801.
47 *Ibid.*, Art. 7.
48 *Ibid.*, Art. 8 and 10.

Concerning rights a major improvement of the current legal status of TCN researchers is access to job-seeking or setting-up of a business for at least a 9-month period following research[49] with their family members having work access[50] as well. Furthermore, there is an increase in possibilities for intra-EU mobility but arguably mobility rules are not simplified enough. For example, for mobility for up to 6 months in one or several second MSs a valid authorisation is required, issued by the first MS.[51] A notification including a long list of documents can be required for submission to the second MS(s).[52] Additionally for mobility for more than 6 months per MS a notification or application will be required subject to submitting the same documents as for the first admission to the second Member State(s') competent authorities.[53] For family members the same rules as for the researcher apply.[54] The new Directive provides for the family reunification right for TCN researchers' family members[55] for whom MSs are under the obligation to issue a residence permit[56] in accordance with the Family Reunification Directive if its conditions are met.

Compared to the Researchers Directive, the new Directive preamble encourages MSs to treat doctoral candidates as researchers.[57] However, by the definition of a researcher, under the new Directive, as a TCN holder of a doctoral degree or a higher education qualification having access to doctoral programmes[58] doctoral candidates may not be considered as researchers by Member States. This means that MSs are given direction but have the discretion to interpret this definition as they see fit and regard doctoral candidates as students. Arguably the right approach would be to treat all TCN doctoral candidates as researchers for the purpose of the Recast Directive.

Finally, the new Directive does not apply to TCNs who enjoy a Long Term Resident (LTR) status,[59] TCNs who are studying in the EU, TCNs who reside temporarily or have a formally limited residence permit[60] and those who are admitted as highly qualified[61] under the Blue Card Directive.[62] Evidently the aforementioned provisions create inconsistencies in TCN researchers' and students' status, excluding them from the possibility to obtain the LTR status or to be granted a right of getting a Blue Card in a Member State.

In the light of the above, there is evidence that non-EU researchers and highly skilled migrants including doctoral candidates and their family members are still treated differently from their EU counterparts. Arguably despite the improvements under the new Directive the possibilities for them and their family members to access LTR in the EU as well as their integration chances after completion of their studies

49 *Ibid.,* Art. 25, para 1.
50 *Ibid.,* Arts 26 and 30.
51 *Ibid.,* Art. 28, para 1.
52 *Ibid.,* Art 28, paras 2-10.
53 *Ibid.,* Art. 29, paras 1-7.
54 *Ibid.,* Art 30.
55 *Ibid.,* Art 26, para 1.
56 *Ibid.,* Art. 26, para 4.
57 Para 12 of the Preamble of Directive 2016/801.
58 Directive 2016/801, Art. 3, para 2.
59 *Ibid.,* Art. 2 para 2(d).
60 *Ibid.,* Art 2 paras 2 (e) (f).
61 *Ibid.,* Art 2 para 2 (g).
62 Directive 2009/50/EC of 25 May 2009, [2009] OJ L 155.

or research are very low. This is evident by the fact that researchers' and students' mobility is subject to national law, dependent on a wide margin of discretion of MSs and complex administrative procedures. At the same time the stay for a period of least nine months during which researchers and students are allowed to look for a job or set up a business[63] is subject to the fulfilment of certain conditions and requirements and submission of relevant documentation such as getting residence permits for a job search[64] in such a short period of time.

1.4. Cyprus as the Setting for this Migration Study

Before exploring the challenges to scientific mobility affecting TCN scientists and researchers arising from the application Directive 2005/71 at the national level we reflect on the Cypriot national research landscape and the factors exercising an impact on it. Five main landmarks shaped by exogenous and endogenous causes in the country's modern political existence affect the national research environment and the country's adaptation and organizational reform to new, existing, external and internal challenges. The first major challenge with an adverse impact on the national research landscape and economy is the occupation of 37% of the island's territory by the Turkish military. Cyprus's 2004 accession to the EU[65] as a divided country with its long-standing political problem unresolved and with suspension of the EU law acquis application in those areas of the Republic of Cyprus which are not under the Government's effective control as stipulated by Protocol 10 to the Accession Treaty[66] was the second major challenge. The third major external challenge was the 2011 financial and economic crisis which extended beyond the financial sector[67] and the extensive reforms the State was required to carry out by its creditors. The fourth is the creation of the first public university in 1989 followed by the establishment of other higher education institutions in 1992 marking the beginning of research projects. The fifth is that the research system in Cyprus is young and has been growing mainly over the last two decades. Cyprus' 2004 EU accession was instrumental for the development of a research environment and the main driving force behind increased emphasis on Research and Development (R&D). Although in March 2016 the country exited its three-year financial assistance programme with the economic recovery continuing, there is loss of reform momentum, and stalling of measures.[68] The national Research

63 Art. 25, para 1 of the Recast Directive.

64 Art. 25, paras 2-7 of the Recast Directive.

65 See Accession Treaty of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (2003), Ratifying law No 35(III)/2003, Official Gazette No 3740, 25.7.2003, OJ L 236, 23.9.2003 Document 12003T/TXT.

66 *Ibid.*, Article 1 of Protocol 10 to the Act of Cyprus EU Accession.

67 European Commission (2014). *Assessment of the 2014 National Reform Programme for Cyprus*, 2.6.2014 SWD (2014) 414 final (2014).

68 European Commission (2017). *Country Report Cyprus 2017 Including an In-Depth Review and the prevention and correction of macroeconomic imbalances*, Staff WD Brussels, 22.2.2017 SWD (2017) 78 final, Brussels: European Commission.

Development Innovation (RDI) governance lacks guidance and vision, as well as a coherent strategy.[69]

Regarding scientists' and researchers' migration, Directive 2005/71/EC was implemented via Law N.29 (I)/2009 'Aliens and Immigration (Amending) Law of 2009'. The Competent Authority for granting an approval of research organizations wishing to host TCNs researchers under the Directive is the Research Promotion Foundation (RPF)[70] nominated by the Cyprus Council of Ministers. Known as the 'Cypriot EURAXESS Service Centre', the RPF provides all the required information to incoming researchers[71] Furthermore, the RPF sets clear conditions for the fellows that it funds, including salaries and other benefits visiting the host organisation during the funding duration twice to ensure fair treatment of the individual in line with the employment conditions.[72] Approved research organizations for the purposes of the abovementioned Law N.29 (I) 2009 are included in "the List of Approved Research Organizations," published and regularly updated by the RPF. MSs including Cyprus had until 23 May 2018 to transpose the new Directive 2016/801 into national law. The Commission addressed letters of formal notice to Cyprus in July 2018 to bring its national legislation in line with the Directive and to inform the Commission accordingly.[73] Transposition finally took place in January 2019 with the Aliens and Transport (Conditions of Entry and Residence of third-country nationals with cover of Research, Studies, Practice, Voluntary Service, Pupil Exchange or Education Programmes) Act of 2019 as amended.[74]

1.5. Empirical Findings on the Application of EU Law and Policy in Cyprus

Empirical findings collected between August 2014 to January 2015[75] indicate that despite good rules on free movement for the EU nationals and often verbatim transposition there are still flaws in the implementation of the law pertaining to EU migration Directives and soft law initiatives at the national level due to their implementation and correct application by the Cypriot administrative and immigration authorities.

At the national level historical, political-legal and socio-economic factors constitute external and internal integration challenges the country's system faces in this process. These also constitute sources of difficulties, the impact of which is felt within the Cypriot scientific research environment where political culture, realities,

69 Antonis Theocharous et al. (2017). *RIO Country Report 2016: Cyprus*, JRC Working Papers, JRC105876, Joint Research Centre No. EUR 28500 EN, Seville: JRC, p. 6.

70 Research Promotion Foundation (RPF), Nicosia: Department of English Studies (University of Cyprus), at: http://www.research.org.cy/EN/ipe_info/general_info.html.

71 Euraxess Cyprus, Nicosia: University of Cyprus, https://www.euraxess.org.cy/.

72 Supporting Early Career Researchers in Higher Education in Europe (2013). *Cyprus – Country Report*, Industrial Relations and Social Dialogue, EU DGV Project VS/2013/0399, https://www.researchgate.net/publication/332144488_Supporting_Early_Career_Researchers_in_Higher_Education_in_Europe_The_Role_of_Employers_and_Trade_Unions_-_Final_Report.

73 European Commission, Migration and Home Affairs (2018). *Browse Infringements of EU Home Affairs Law*, Infringement number 2018/0142 of 19/07/2018.

74 Official publication: *Cyprus Gazette*, No. 4683 and 5683, publication date 29/1/2019.

75 See (n. 22).

opportunities, and problems may potentially be encountered in other MSs, but with a substantial difference and diverse implementation results. [76] These political, national, social and cultural variables render the acquis, regulating the migration of TCNs weak and ineffective. In this context, the issue of a law and policy framework pertaining to non-EU scientists' and researchers' scientific migration and its implementation has an impact on the Cypriot research culture and research environment, being an integral part of it. At the same time it is also a determining factor for migrants' entry or exodus in the country and its attractiveness or not for the above mentioned stakeholders.

The reasons causing the flaws in EU law implementation in Cyprus take the form of external and internal challenges which the country needs to address with effective leadership. I first examine the territorial application of EU law provisions, perceived by respondents as an external challenge which impacts on migration laws and policies at the national level (1.5.1). I then deal with those challenges pertaining to scientific migration which are perceived to be internal: (1.5.2) the transposition of EU law into national law and the resulting consequences; (1.5.3) the area of researchers' and highly skilled migration that arise from the implementation of the Directive 2005/71/EC into national legislation. Although Directives 2009/50/EC -Blue Card Directive[77]- and 2003/109/EC -Long-Term Residence Directive[78]- are related for the purposes of this chapter we only focus on Directive 2005/71/EC.

1.5.1. External Challenges: Migration Laws and Policies

As an EU Member State, Cyprus should comply with and implement EU law in such a manner that its people enjoy those rights emanating from it. However, a major problem cited by all interviewees and key informants is the territorial application of EU law provisions as a consequence of the 1974 Turkish invasion. This was considered as having a detrimental impact on the country's EU membership since Cyprus' full integration into the EU and full application of the EU law *acquis* on the whole of Cyprus will happen in the event of a settlement between the Greek and Turkish Cypriot communities.[79] Based on the aspects of participants' perceptions, scientific mobility, and scientific research conduct could create common grounds for more and substantial research collaboration between the two communities thus, compensating for the lack of communal interaction in scientific and intellectual fields due to the country's partition.[80]

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76 Tamara Jonjić & Georgia Mavrodi (2012). *Immigration in the EU: Policies and Politics in Times of Crisis 2007-2012*, European Union Democracy Observatory, Florence: Robert Schuman Centre for Advanced Studies, p. 8. See also Risto Lampinen & Petri Uusikylä (1998). Implementation Deficit - Why Member States Do Not Comply with EU directives?, 21(3) *Scandinavian Political Studies*, pp. 231-249.

77 OJ L 155, 18.6.2009 on the entry conditions and residence of TCNs for highly qualified employment purposes.

78 Replaced by the Recast Directive 2011/51/EU [2011] OJ L132 concerning the status of TCNs, who are long-term residents.

79 Article 4 of Protocol 10 of the EU Accession Treaty of the RoC. See also Stephanie Laulhe Shaelou (2010). *The EU and Cyprus: Principles and Strategies of Full Integration Studies in EU External Relations*, Leiden: Martinus Nijhoff, p. 235.

80 Sezai Ozcelik, (2013). Border Creation in Cyprus: Contested History and the Psychodynamic Perspective of Vamik Volkan, *Peace and Conflict Review* 7(2), pp. 1-11.

1.5.2. Internal Challenges: EU Law Transposition into National Law and the Resulting Consequences

Incorrect or incomplete transposition and application of EU law into national law[81] leads to legal uncertainty for incoming scientists, researchers and/or their family members if they are TCNs and occasionally on EU citizens alike. Empirical evidence shows that frequently, the restrictive practices, excessive national discretion, and cumbersome and lengthy implementation procedures result in EU and non-EU nationals' detention and deportation.[82] This has a negative impact on the country's research culture and environment since the problems arising within the legal and policy framework coupled with the State's protective attitude prevent its flourishing, an issue also reflected in the following section.

1.5.3. Internal Challenges: The Policy and Practices in the Area of Researchers' and HS Migration that Arise from the Implementation of Directive 2005/71/EC

Empirical evidence indicates that there are massive delays in the implementation process and inefficient treatment of incoming TCN researchers. A characteristic example refers to problems regarding distinctions between permits for TCN researchers and other types of permits. Consequently, there is emphasis on the need for a systematic monitoring and reviewing of the implementation process of researchers' free movement stating. The lack of a proper monitoring mechanism of researchers' rights has been also commented on by national migration experts.[83]

Discrepancies particularly with work contracts, durations or rights were also cited along with the need for more attention to the responsibilities of individuals in certain positions especially when it concerns a European partnership for researchers at a European level.

There are issues with the administrative process followed by the RPF[84] the country's competent authority for granting an approval of research organizations. Empirical evidence reports problems when scientists and researchers submit a grant proposal, excessive checks and controls that follow rigid guidelines. Empirical evidence indicates gaps in grants evaluation and generally the need for a more comprehensive Research and Innovation (R&I) evaluation mechanism. The above prob-

81 See landmark case of *Cresencia Cabotaje Motilla v. Republic of Cyprus through the Interior Minister and the Chief Immigration Officer*, Supreme Court Case No. 673/2006 (21 Jan 2008) and *Andriy Popovich v. the Republic of Cyprus*, Case no. 1699/2011, 13 March 2013.

82 See for example: *Guilan Zhou v The Republic of Cyprus,* No. 1079/2014, 23 December 2014,Case No. 1079/2014, *M.A. v the Republic of Cyprus*, ECtHR case, application no. 41872/10 (23 July 2013), *Mitova Zoya Margaritova v. Republic of Cyprus* through the Interior Minister and Chief Immigration Officer, Supreme Court Case application no 67/13, ex parte application 8/8/2013. 20 September 2013, *Deepa Thanappuli Hewage v. Republic*, Case No 869/2002, Decision of 31.3.2004*, Deepa Thanappuli Hewage v. The Republic,* Case No 26/2008, Decision of 18.10.2010, *Nimal Jayaweera v. Republic,* Decision No 27/2008, Decision of 23.2.2010.

83 See for example: Nicos Trimikliniotis (2013). *Report on the Free Movement of Workers in Cyprus in 2012-2013*, National Expert Report for the European Network on Free Movement of Workers within the European Union, Berkeley: Bepress, pp. 102-103, available at: https://works.bepress.com/nicos_trimikliniotis/41/.

84 Research Promotion Foundation (RPF) (n. 70).

lematic issues are also reported and supported in recent studies.[85] Undoubtedly these cause concerns for the scientific community, loss of time and money. Although published reports referenced here are not specifically on TCN researchers, if cooperation with EU research institutions fails over administrative hurdles, it is likely that TCN researchers experience similar difficulties accessing the scientific field in Cyprus.

As for family members, in particular TCN family members encounter a number of obstacles in exercising their right of entry into Cyprus such as excessive delays in obtaining residence cards/registration certificates and use of invalid grounds to justify denials of the right to reside.[86]

Although as evidenced by the European Commission report assessing the application of the Directive 2005/71/EC Cyprus has included most of its key elements in its national law[87] all the above mentioned problematic issues in combination with a lack of a proper monitoring mechanism of researchers' rights, an under-developed mobility policy and weak political support are common barriers to researchers' mobility. This is indeed an issue for concern and a negative factor for attracting TCN researchers.

Regarding Recast Directive 2016/801 it is too soon for Cyprus for produced outputs as to the Directive's efficient implementation and impact. However, Cyprus needs to focus on five key aspects: prolonged residence to find work after graduation/research completion; facilitation of the movement of TCN researchers between the MSs; the right to bring their family members with them during their research period and the right for them to work during their stay; minimum requirements for MSs to adhere to, allowing them to legislate on more favourable conditions should they so wish; simplified procedures and enhanced transparency.

1.6. Concluding Remarks and Recommendations

This chapter examined the mobility/migration of TCN scientists and researchers and their family members within the ERA focusing on the legal and policy framework of Cyprus used as a case study. It set out to determine whether Cyprus has aligned its domestic law and research policy with the EU migration law *acquis*, policy and implementation within the country's regulatory framework and the extent of impact of the Cypriot research culture and environment on the above stakeholders. The overall aim was to explore the challenges to scientific migration affecting TCN scientists and

85 George Strogylopoulos (2015). *Stairway to Excellence Country Report: Cyprus*. JRC Science and Policy Reports EUR 27497, Luxembourg: Publications of the European Union; M. Demetriades & N. Robledo-Böttcher (2018). *RIO Country Report 2017: Cyprus*, EUR 29151, Seville: JRC.

86 See, for example, DG for Internal Policies, Policy Department C (DG IP PD C) Citizen's Rights and Constitutional Affairs, Civil Liberties, Justice and Home Affairs Petitions, (2016). *Obstacles to the Right of Free Movement and Residence for EU Citizens and their Families-Comparative Analysis*, PE 571.375 (EU, September 2016), Brussels: LIBE. See also Nicos Trimikliniotis (2015). *Report on Citizenship Law: Cyprus*, EUDO Citizenship Observatory, Florence: Robert Schuman Centre for Advanced Studies in collaboration with Edinburgh University Law School.

87 European Commission (2011). *Report From the Commission to the Council and the European Parliament on the Application of Directive 2005/71/EC on a specific procedure for admitting third country nationals for the purposes of scientific research*, 20.12.2011 COM (2011) 901 final, Brussels: European Commission.

researchers as they arise from the supranational level (the ERA) and their impact on the national research environment (Cyprus) and to propose recommendations.

The analysis and study of the mobility/migration of TCN scientists and researchers and their family members within the ERA was approached from the perspective of the role the EU, Member States (MSs), migration law and research policy play in scientific migration/mobility and their impact on migrant themselves.

At the supranational level although the EU as an 'organization' promoting the ERA and policies in a joint effort with its MSs has accomplished key achievements towards a European integrated research landscape through the implementation of the ERA concept since 2000,[88] and improvement of scientific mobility through the EU Migration law Directives it cannot fully deliver and implement the ERA concept. This is due to the non-binding policies on which the ERA is based, creating a gap between policies on paper and delivery between the supranational and national level. At the same time the different legal frameworks for European and non-European scientists moving within the EU coupled with Member States' national discretion[89] and the absence of EU-wide standards for non-EU migrants create fragmentation, and flaws in the law implementation. The ERA fails as at the intersection of the ERA framework and the Area of Freedom, Security and Justice there is no clear free movement for TCN scientists, researchers, TCN highly-qualified people, including doctoral candidates and their family members who do not enjoy free movements rights to the same extent with their EU counterparts.

In the light of the above a number of recommendations or proposals could be put forward for action by policy makers. The idea of establishing a more harmonised framework on TCN scientists and researchers as a special category of highly- skilled immigration should be revisited. In addition it is a pity that Directive 2016/801 does not make a reference to the Long-Term Residence Directive. The integration of TCN researchers and students in the labour market of the EU should be related to their possible access of getting long-term residence status in Member States. There should also be reference to the Blue Card Directive in the Recast Directive. Since TCN researchers (including doctoral candidates) in the EU are allowed to search for a job in the EU corresponding to their research activities they should have easy access to a Blue Card status.

At the national level Cyprus' EU accession (2004) has been a crucial factor for the development of a research environment and certainly the main impetus behind increased emphasis on R&D due to building on the ERA priorities. However, historical, political-legal and socio-economic factors that shaped Cyprus' legal and research system have affected the country's national research environment and the alignment of its domestic law and research policy with the EU migration law acquis, policy and implementation within the country's regulatory framework.

Our empirical evidence indicates the relevance of structural constraints and the crucial role MSs, EU institutions and stakeholders play in the shaping of favourable conditions for scientific migration/mobility to occur. The role of the State and the

88 See COM (2000) 6 final (n. 8).

89 See the Recast Directive 2016/801 provisions such as the possibility to renew (Art. 18) reject (Art. 20), or withdraw applications for research or studies (Art. 21).

management of the national research environment and the consequences for the migration/ mobility of scientists appear both as an important determinant of scientific migration/mobility and its consequences.[90] At the same time our empirical findings suggest that Cyprus has not adopted a proactive migration policy towards attracting scientists, researchers and highly-skilled migrants. Despite the need to comply with EU standards, Cyprus has not yet developed a comprehensive migration policy due to existing policies, official rhetoric and the lack of a broad consensus that continue to cause delays in passing and implementing vital laws and policies. The effective implementation of the new Recast Directive 2016/801 is paramount as it will provide an opportunity for Cyprus to revisit and amend those areas in need of amendments. At the same time Cypriot policy makers should revisit the country's migration policy and practices and consider the adoption of a proactive migration policy towards attracting highly skilled migrants, taking into account stimulation of scientific mobility/migration. In terms of monitoring and assessment the State should proceed with the setting up of specific working groups at a national level to monitor the implementation of EU Migration Directives facilitating the task of targeting problems and providing solutions and ensuring proper enforcement. Last but not least the significance of sharing experiences and best practices between authorities and relevant stakeholders together with the involvement of the ministries concerned in Member States should be taken into serious consideration. Such good practices arguably influence the Directive's impact on Member States and have the potential to be transferred to Cyprus' context.

90 Tom Casey et al. (2001). *The Mobility of Academic Researchers: Academic Careers and Recruitment in ICT and Biotechnology*, A joint JRC/IPTS-ESTO Study EUR 19905 EN, Brussels: European Commission; Simona Milio et al. (2012). *Brain Drain, Brain Exchange and Brain Circulation: The Case of Italy Viewed from a Global Perspective*, Washington DC: Aspen Institute; Sonia Morano-Foadi 2010 (n. 12).

Directive 2016/801 in the Netherlands: Policy and Challenges for International Students in Higher Education

*Arno Overmars**

1. Introduction

The Organization for Economic Cooperation and Development (OECD) calculated last year that the number of international students worldwide has doubled in almost twenty years.[1] There were two million international students in 1998, while in 2017 this number had risen to more than five million. In the Netherlands, the percentage of international students has risen sharply as well. In 2010, 4% of the total number of students in the Netherlands were international, in 2017 that was already 10%. In absolute numbers, it concerns more than 85.000 students and 14.000 new residence permits for study purposes each year. Their share varies from 6% in bachelor's degree programs to 25% in university master's programmes. Over 75% of the international students in the Netherlands come from another EU country, almost 25% are non-EU/EEA students. In 2015, 45% of the PhD students working at Dutch research institutes had a foreign nationality; in 2005 this was only 33%.[2]

In this chapter I will outline the regulation regarding the recruitment, selection and admission of international students and researchers, and the influence of higher education and migration policy on the possibilities for high-quality knowledge workers to work in the Netherlands. Paragraph 2 deals with the implementation of Directive 2016/801 in the Netherlands, followed by the internationalisation policy in the Netherlands in four stages: entry (par. 3, incl. the right to family reunification), stay (par. 4, incl. the right to work), mobility (par. 5) and remain (par. 6). The success and the challenges of the internationalisation policy are subject of paragraphs 7 and 8. I will complete the chapter with some closing remarks (par. 9).

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1 OECD (2019) *Education at a Glance 2019*, 10 September 2019, Paris: OECD, via: http://www.oecd.org/education/education-at-a-glance/.

2 This chapter was written and relates to the situation in the Netherlands before the Corona pandemic reached the Netherlands in March 2020. Due to the Corona crisis and the global immobility it likely brings, the number of international students that will start their studies in the Netherlands in September 2020 is estimated to decline by 30% to 50%. It will probably take several years for the number to return to its current level.

2. Implementation Directive 2016/801 in the Netherlands

The Netherlands reacted with mixed feelings to the proposal for this new Directive in May 2013.[3] Researchers and students are highly qualified and Dutch policy already focused on attracting these categories of aliens. The Netherlands therefore supported offering more opportunities for intra-EU mobility and offering a period to look for work after completing the study and/or research. Incidentally, a period of looking for work had already been granted in the Netherlands to graduate students or PhD researchers.[4] The Netherlands can make good use of knowledge migrants and researchers, in particular because of their predominantly technical background and the shortage of technically trained staff. The same applies to the EU admission scheme for paid trainees: a category of foreign nationals who actually performs work and thus contributes to the Dutch economy. With regard to the categories of unpaid trainees, student exchange, volunteers and au pairs, the Netherlands saw no added value from mandatory EU regulations. In addition, according to the Netherlands, it was important that Member States retain sufficient freedom to define this category and that they retain sufficient instruments, such as the obligation to obtain a work permit, to combat displacement on the labour market.

It was of great importance for the Netherlands that the new Directive would make it possible for a Member State to make a recognized sponsor status for educational and research institutions hosting foreigners compulsory. The recognized sponsor plays an extremely important role in the Dutch admission process. This central role means that a significant part of the admission process of researchers and students from third countries is transferred from national immigration services to previously recognised institutions (sponsors). The recognized sponsor applies for a residence permit for the international researcher or student, valid for the duration of the research or study. The recognized sponsor is obligated to keep an administration and to give information, for example they must inform the national immigration services as soon as a foreign student no longer studies. The European Commissions' proposal for a Directive, however, only provided a recognized sponsorship for the admission of researchers, while the Netherlands already had a compulsory reference for the admission of students, au pairs and volunteers. The disappearance of the possibility of recognized sponsorship in all categories except the researchers would mean a substantial increase in the implementation costs for the national immigration services and an extension of the procedures.

Finally, the Netherlands also had great difficulty with the proposal to expand the possibility of work (in addition to the study) from 10 hours to a maximum of 20 hours per week. Although the expansion of the possibility of work makes the Netherlands more attractive for students from outside the EU, the risk of displacing the Dutch/EU labour supply must be sufficiently covered, according to the Netherlands. Periodic research by the Social Affairs and Employment Inspectorate[5] shows that

3 BNC file no. 1626, 31 May 2013.

4 Article 3.42 of the Aliens Decree 2000.

5 See for example (in Dutch): https://www.personeelsnet.nl/bericht/werkgevers-laten-buitenlandse-student-illegaal-werken and https://www.inspectieszw.nl/actueel/nieuws/2014/08/25/onderzoek-inspectie-szw-of-buitenlandse-studenten-mogen-werken.

international students are often employed illegally: over the period 2009-2012 it appears that 50% to 70% of the companies that were inspected were breaking the rules. The number of international students (from outside the EU) working illegally – without a permit issued for the purpose of work – was around 200 in these years. The Netherlands therefore argued that Member States should be able to take the situation of the labour market into account and, if desired, demand a permit for the purpose of work. For international students, the extension of the number of hours that he/she is allowed to work must be accompanied by the monitoring of his/her study progress, to ensure that the performance of work is not at the expense of the study. The Netherlands implemented for that reason the possibility of working for a maximum of 16 hours per week, which almost equals the EU minimum.

The implementation of the Directive into national law in the Netherlands is done in the Decree of 9 April 2018 amending the Aliens Decree and a number of other Decrees,[6] the Decree amending the Aliens Act Implementation Guidelines of 4 May 2018[7] and the regulation of the Minister of Social Affairs of 19 April 2018 amending the Implementation of the Employment of Aliens Act.[8] The consequences of the implementation of the Directive apply in particular to the stay of international students and researchers and there are a number of policy changes with regard to trainees and volunteers. The Netherlands has not implemented the Directive with regard to pupils and au pairs.

3. Entry

The basic principle of the Dutch migration policy is that recruitment and selection of international students can best be organised by the higher education institutions themselves. They know how to assess the quality of prospective students. It is important that the higher education institutions provide the students with a clear picture of the educational system, admission requirements, facilities and costs of study and living. These quality standards have been laid down in the Code of Conduct that was produced jointly by the higher education institutions, and which entered into force on 1 May 2006.[9] Only the higher education institutions that have signed the Code of Conduct may recruit international students and only international students registered at those institutions qualify for a residence permit for study purposes. In this respect, the Code of Conduct is an addition to the requirements of the Dutch Higher Education and Research Act and the Dutch Aliens Act 2000. Signing the Code of Conduct is now also one of the procedures set out in national law as part of the approval procedure under article 15 par. 2 of the Directive.

6 Bulletin of Acts and Decrees 2018, 107.
7 Government Gazette 2018, 26337 of 15 May 2018.
8 Government Gazette 2018, 23392 of 30 April 2018.
9 See: http://www.internationalstudy.nl/ and Articles 1.20 and 3.41 of the Aliens Decree. For further reading see (in Dutch): A.G.D. Overmars (2014). *Codes en convenanten: (zelf)regulering van studentenmigratie naar Europa*, Deventer: Kluwer, Serie Staat en Recht 20.

Fast-track

The Netherlands has a so-called recognized sponsor procedure for the admission of international students and scientific researchers, now within the meaning of the Directive.[10] The recognized sponsor is the organisation that takes an interest in the arrival of a foreign national, which in these cases is the higher education institution, the research institute or the employer. The sponsor, recognised by the national immigration services, checks whether the international student, researcher or employee meets the requirements.[11] The national immigration services, which places its trust in the accredited sponsor, will grant a residence permit within 14 days. Verification by the national immigration services takes place retrospectively and randomly. The higher education institution, the research institute or the employer has the obligation to deregister the international student, researcher or employee with the national immigration services, for example when the study, research or employment contract is – prematurely – terminated.

The residence permit granted to an international student has a duration equal to the length of the studies, including any preparatory period. The duration of a residence permit for scientific researchers ranges from a minimum of one year to a maximum of five years.

Reduction of paperwork

In 2011, the Red Carpet project was started, a project with the aim to reduce the paperwork and improve the reception of international students and researchers after arrival in the Netherlands.[12] This project contains measures to simplify the administrative processes of registration with the higher education institution, the municipality, the national immigration services and the tax authorities. The project aims to inform international students adequately by centralising the information about the administrative procedures they have to deal with. One of the products is a search engine that presents most of the Dutch international study programmes.[13] The number of courses offered in English by the higher education institutions is among the highest in Europe. In the academic year 2017-2018 the number was over 2,100 programmes: 1,280 master's, 370 bachelor's and more than 370 short courses and PhD programmes. Over 75% of the Dutch master programmes are in English. General promotion of Dutch higher education is done through www.studyinholland.nl. Furthermore, the Dutch government offers practical information to international students, scientific researchers and employees.[14]

10 For students see Article 15, for researchers Article 9 of the Directive. The recognition of sponsors for employees falls outside the scope of this Directive. Please see for further reading: De Lange, Tesseltje (2019). A 'Guildian' Analysis Of The Equivocal Trusted Sponsorship Under EU Labour Migration Law, in: Minderhoud, P.E., Mantu, S.A. & Zwaan, K.M. (eds), *Caught In Between Borders: Citizens, Migrants and Humans. Liber Amicorum in honour of prof. dr. Elspeth Guild*, Tilburg: Wolf Legal Publishers, p. 209-216.

11 Chapter 3 of the Aliens Decree.

12 The Red Carpet project was initiated by several relevant organisations in Dutch higher education: Studiekeuze123, Studielink, Kences, DUO, the national immigration services and the umbrella organisations VSNU and The Netherlands Association of Universities of Applied Sciences.

13 See: https://www.studyfinder.nl/.

14 See: www.zorgwijzer.nl/faq/new-to-holland.

Recruiting international talent

The Dutch government intentionally recruits in selected countries, and the higher education institutions make their strategic choices in this as well. In some cases, the eagerness of the countries is the determining factor, at other times the choice is made to recruit specific talents with regard to the shortage in certain knowledge areas in the Netherlands. Dutch higher education agencies, the Netherlands Education Support Offices (NESO), have been set up in Brazil, China, India, Indonesia, Mexico, Russia, South Africa, South Korea, Thailand, Turkey and Vietnam. These NESOs take care of the marketing of Dutch higher education and provide general information, and support international students in making their choice for a suitable study in the Netherlands. They also deploy instruments such as education fairs, campaigns and events in the promotion of Dutch higher education to advance international study programmes abroad.[15] In 2019, the Ministry of Education announced a limitation of the subsidy for the NESOs, so in the future the number of these agencies might change or they all might disappear.[16]

Technology Pact

An important strategy in influencing the future employment of international students is the Technology Pact, concluded jointly by educational staff, employers, employees, youth organisations, the top sectors, local authorities and the Dutch government. One of the lines of action in the pact is attracting (future) employees with a technological background. Furthermore, expat centres in several cities, including The Hague and Amsterdam, together with Nuffic,[17] regularly organise events for international students aimed at career options, for instance *TheHague4Talents* and *Amsterdam4Talents*. Together with local partners and companies interested in international students for future employees, they organise workshops and networking events.

Scholarships

Students from outside the EU/EEA pay (at least) break-even fees to the higher education institutions. In order to break down the financial barrier, the Dutch government provides approximately five million euros for Knowledge Scholarships, to be used by the higher education institutions for achieving their internationalisation targets including grants. Several organisations provide scholarships as well; the offer is presented centrally and online.[18]

15 Nuffic (2012). *International Student recruitment: policies and developments in selected countries*, The Hague: Nuffic, January 2012, pp. 16-20.

16 See: *Parliamentary Papers II* 2018/19, 31 288, no. 782. The intended limitation of the subsidy is a result of the political social debate and the discussion surrounding Nuffic's tasks. For further reading see (in Dutch): https://www.scienceguide.nl/2018/02/nuffic-rijdt-ocw-politiek-wielen/.

17 The Dutch organisation for internationalisation in education. From primary and secondary education to vocational and higher education and research. See: https://www.nuffic.nl/en/.

18 See: http://www.studyinholland.nl/scholarships.

4. Stay

If international students and researchers feel that they have a connection with Dutch society, they are more likely to deploy their talents for the Dutch (knowledge) economy for a longer period.[19] In that respect it is important that as many international students as possible are being stimulated to learn the Dutch language. For this purpose, a so-called serious game and an MOOC Dutch have been developed.[20] Furthermore, the higher education institutions' language centres offer language courses. These are non-obligatory courses though, as both students and researchers are exempted from the obligatory civic integration program and exams applicable to refugees and family migrants.

Another way of binding international students is to allow them to work for a maximum of 16 hours per week on top of their studies, or to work for a maximum of 40 hours in June, July and August. However, the international student who wishes to work must have their employer apply for a work permit.[21] The Social Affairs and Employment Inspectorate supervises the work placement of international students. It checks whether employers comply with the Aliens Employment Act. A scientific researcher does not need a work permit for doctoral research and other work while staying in the Netherlands.[22]

Finally, having family members join their loved ones is also a way of making them feel at home and to increase their tie with the Netherlands. Although the Directive does not prescribe this, in the Netherlands international students are allowed to have their – married or registered – partner and underage children come over. The partner is not allowed to work in the Netherlands, but must be financially supported by the international student and is granted a residence permit with the same duration as that of the international student.[23] Around 13% of the international students in the Netherlands are married and 5% are a parent of one or more children.[24] There are no signs that the possibilities for family reunion are of a major interest when choosing a specific country for study purposes. Researchers also have a right to family reunification, in Dutch law as under the Directive.[25] Family members of the scientific researcher are allowed to work in the Netherlands without a work permit and will be granted the right of residence for the same duration as the researcher.[26]

19 See (in Dutch): Onderwijsraad, (2011). *Weloverwogen gebruik van Engels in het hoger onderwijs [Well-considered use of English in Higher Education]*, The Hague: Onderwijsraad, October 2011.
20 See: https://www.studyinholland.nl/practical-matters/learn-dutch.
21 See: https://www.togetherabroad.nl/index.php/cms_categorie/77678/content/categorie/id/77841.
22 Aliens Act Implementation Guidelines, Chapter B6, Section 3.
23 See Sections 3.13 and 3.22 of the Aliens Decree.
24 MPC/SVR (2012). *Mobile Talent? The Staying Intentions of International Students in Five EU Countries*, Brussels/Berlin: Migration Policy Group/Sachverständigenrat deutscher Stiftungen für Integration und Migration (SVR) GmbH.
25 Article 26 of the Directive.
26 Aliens Act Implementation Guidelines, Chapter B7, Section 4.

5. Mobility

To facilitate intra EU mobility, it has been established in the Directive under which conditions researchers and international students can travel from one Member State to another.[27]

Rights of researchers

The Directive offers researchers the possibility to travel to other Member States during their stay in one Member State to do part of their research there. The period during which they may reside in another Member State under a hosting agreement concluded in the first Member State, which was three months under the old Researchers Directive, has been increased to 180 days (short-term mobility). If the researcher stays in another Member State for less than 180 days, this can be done on the basis of the residence permit already issued by the first Member State. The receiving Member State must be notified. Research activities within the meaning of the Directive must be part of the original program on the basis of which the researcher has obtained a residence permit in the first Member State. It therefore cannot be a completely newly started research. In addition, it is not important how and by whom the research is funded, although it might show whether it is the original research or a new research. The condition is that the researcher has sufficient financial resources and does not pose a threat to public policy, public security or public health.

If the researcher wants to stay in another Member State for research for longer than 180 days (long-term mobility), the other Member State retains the right to request an application for a new residence permit under the Directive.

In the Netherlands, the decision period has been shortened from 90 to 60 days for the purposes of stay covered by the Directive.[28] The Netherlands, as the second Member State, will notify the first Member State if a long-term mobility residence permit is issued.[29] Provided that the residence permit of the other Member State is still valid and all other conditions are met, the short-term mobility of 180 days can be extended to a maximum of 360 days.[30] In all other cases, extension is not possible, and the Netherlands will consider the application to be an application for first admission. The conditions for long-term mobility are identical to the conditions for first admission, with the exception of the visa requirement. The stay in the context of long-term mobility can also be extended again. To this end, an extension of the residence permit must be requested.[31]

Researchers with a residence permit in the Netherlands who stay elsewhere in the EU remain in the possession of a valid Dutch residence permit if their mobility been

27 See Chapter VI of the Directive.
28 Article 3.33 of the Aliens Decree.
29 Article 3.103a, paragraph 6 of the Aliens Decree.
30 Article 3.33 of the Aliens Decree.
31 See (in Dutch): A.G.D. Overmars (2018), in: A. Pahladsingh et al., *Sdu Commentaar Europees Migratierecht*, The Hague: Sdu uitgevers, pp. 718-775. Also digitally available via: https://migratierecht.sdu.nl/.

reported to the national immigration services and the mobility complies with in Article 10 of the Directive.[32]

Accompanied family members may travel with the researcher to the other Member State, provided that the family members meet the requirements laid down in the national legislation of the Member State to which they want to go.[33] Mobility can be reported via the notification procedure and the second Member State may object to the intended mobility of the researcher from the first Member State. In the Netherlands, family reunification has been implemented in the case of long-term mobility.[34] A separate application must be submitted for family members. The permit issued for family members has in principle a validity period that is the same as that of the researcher. When family members of researchers are considered to be a threat to public policy, public security or public health, they are not allowed to exercise the right to mobility.[35] In the case of long-term mobility, the family members of the researcher, who accompany them and reside in the Netherlands, may perform work. For them, work is permitted freely and a work permit is not required. If it concerns short-term mobility, the family members of the researcher may not perform work in the Netherlands.

Rights of students

Student mobility only applies to international students who are already admitted as such to another Member State, and not to third-country nationals who reside in another capacity in that Member State.[36] To facilitate mobility, international students with a study permit issued by a Member State have mobility rights for a maximum of 360 days. So when an international student is enrolled for an entire academic year (= 365 days), the 360-day study period in the context of a mobility program is exceeded and a new application for a residence permit is required. The mobility must take place within an EU or multilateral program of mobility measures, or under a cooperation agreement between one or more higher education institutions. International students who choose to become mobile within the EU on their own initiative cannot rely on the provisions in the Directive. The second Member State may require the higher education institution in the first Member State to inform the higher education institution in the second Member State or the competent authorities in the two Member States about the international student's mobility (notification). International students who are considered a threat to public policy, public safety or public health are not allowed to use their mobility rights. Family members of international students are not entitled to mobility. This means that the normal application procedures apply to them.

32 Aliens Circular B1/6.2.1.

33 Article (28 and) 30 of the Directive.

34 Article 3.13 up to and including Article 3.22a of the Aliens Decree. For short-term mobility see: Article 3.3 of the Aliens Decree.

35 Article 12 of the Aliens Act and Article 3.2 of the Aliens Decree (short-term mobility). Articles 3.20 and 3.21 of the Aliens Decree (long-term mobility).

36 Article 31 of the Directive.

For an international student who is staying in the Netherlands in the context of student mobility, the higher education institution must submit a notification.[37] Incidentally, an incoming student in the Netherlands may only follow education at a higher education institution that is recognized as a sponsor. It is possible, based on the Directive, for an international student (or researcher) to carry out the notification procedure themselves in the context of incoming mobility, but in the Netherlands the recognized sponsor explicitly has the option of acting as a representative. The recognized sponsor who acts as the representative of an international student (or researcher) must assess whether the third country national meets the conditions, like in the 'regular' admission procedure for the international student (or researcher). The representative then submits the notification. An international student who is staying in the Netherlands in the context of student mobility can complete their entire education in the Netherlands. However, if the study exceeds the maximum of 360 days, the international student needs to apply for a new residence permit in time.

In the case of outbound mobility of international students, the recognized sponsor must report this to the national immigration services no later than four weeks before the intended departure of the international student or researcher. The other obligations (to provide information, administration, care and supervision of study progress) apply in full. The international student/researcher does not have to be re-registered upon their return. An international student/researcher may stay outside the Netherlands for a maximum of 1 year in the context of study or internship, without losing their right of residence in the Netherlands.[38] This applies to both inside and outside the EU.

6. Remain

In consultation with employers, the Dutch government tries to retain international graduate students by taking specific measures, such as offering a higher salary than the required minimum salary and a temporary residence permit to seek a job or start their own businesses. Research[39] showed that the Netherlands is one of the few countries with both a central strategy and a mechanism, in which measures to implement the strategy to retain graduate international students are coordinated. Institutions such as the Ministries of the Interior and the higher education institutions are usually involved in retaining international students. According to Directive 2016/801 international students must be granted at least 9 months after graduating to find a job in the host country. The Netherlands allows students to stay for a period of 12 months for this purpose.

37 Article 3.41 of the Aliens Decree. The policy rules on student mobility within the European Union are set out in the Aliens Circular B3/2.1., B3/3 (right to work) and B3/5 (required documentation).

38 Aliens Circular B1/6.2.1.

39 EMN (2017). *Retaining third-country national students in the European Union*, The Hague: European Migration Network, September 2017.

Make it in the Netherlands

In the period 2013-2016, the joint action plan 'Make it in the Netherlands' was implemented, in which the Dutch government, higher education institutions, municipalities, student organisations and companies tried to promote the binding of international talent to the Netherlands.[40] Binding strengthens the national knowledge economy. 'Make it in the Netherlands' was divided into five action lines and has led to some concrete results:

- Everything starts with language. Learning Dutch has been made easy and attractive for international students, both online and in the classroom. For example, in this action line, the Hoi Holland![41] app has been developed.
- From study to career. Study and career opportunities have been made transparent on the basis of labour market perspectives. The link between education and the labour market has been made more flexible by career events, career ambassadors and labour market information at http://www.careerinholland.nl.
- Breaking the bubble. The contact between international students and Dutch students has been strengthened by buddy programmes and an active graduate policy.
- From red tape to red carpet. Where possible, administrative obstacles to study, internship, secondary employment and working in the Netherlands have been cleared. Information has been made widely available in English and the possibilities within the orientation year have been expanded considerably.
- Result in the region. Four regional project plans were supported, scaling up initiatives, reducing fragmentation and setting an example nationwide.

Orientation year

The Dutch government considers it to be important that highly skilled migrants are given time to find a job in the Netherlands after their studies or to start their own businesses. To this end, they can apply for a residence permit for an orientation year.[42] This specific residence permit applies to international students who studied in the Netherlands, who graduated from a foreign top-ranking university, and to third-country scientific researchers who performed their research in the Netherlands. They are given the opportunity to apply for a residence permit for an orientation year within three years after graduation. In this way, a graduate may first go back to the country of origin and then return to the Netherlands. But a graduate can also apply for the orientation year directly. The residence permit enables them to find a job as a knowledge migrant.

Should an international graduate want to start a business, they must apply for a work permit for 'work as a self-employed person', just as other foreign nationals who wish to work as a self-employed entrepreneur.[43] The guiding principle is that a residence permit can be granted if the business serves an essential national interest. This may be the case in the field of public health, economy and culture, and the social and economic spheres. With a view to recruiting highly qualified foreign nationals who

40 See: https://www.nuffic.nl/en/study-and-work-in-holland/make-it-in-the-netherlands.
41 See: https://www.studyinholland.nl/practical-matters/learn-dutch.
42 See: https://www.hollandalumni.nl/orientationyear/.
43 See: https://ind.nl/en/work/Pages/Start-up.aspx.

can make a high-quality knowledge contribution to the economy in the form of self-employment, a points system has been developed to facilitate the admission of this category. The points system forms the basis of the advice given by the Minister of Economic Affairs to the national immigration services about the 'essential contribution' of the foreign national. The points system has a classification and weighting of qualities and capacities based on personal experience, business plan and added value to the economic activities for the Dutch economy.[44] Because the points based system is difficult to comply with for start-ups, a special scheme for innovative start-ups has been developed. In this scheme the facilitators, often university based, guide the start-up through the first year of the business.[45]

Knowledge migrant

If the graduated international study migrant finds a paid job with a gross monthly salary of at least € 2.423, they can obtain a regular permit as a knowledge migrant. This gives students some leeway from the otherwise high income requirements. For highly skilled migrants who are younger than 30 years old, the minimum gross monthly salary is set at € 3.381. For other knowledge migrants aged 30 years and older, the wage criterion is € 4.612.[46] Knowledge migrants may work in the Netherlands without a work permit. A study carried out in 2012 showed that 64% of the international students in the Netherlands had the intention to remain in the Netherlands as a knowledge migrant after graduation.[47] More recent data[48] show that one year after graduation, 49% of the graduated international students is still living in the Netherlands. Five years after graduation, 24% of the graduated international students still remain in the Netherlands.

Guidance to the labour market

Several higher education institutions offer facilities to support international students in finding a job after their studies. Examples include *Connect*, an initiative of Saxion University of Applied Sciences and Twente University, and *Supair* of Delft University of Technology. Immediately after graduation, *Connect* offers graduates from Saxion UAS and Twente University internships at a company or organisation in the Netherlands for a period of six to twelve months. After selection, the trainees are prepared for working in the Netherlands through training sessions in communication, intercultural skills and Dutch language lessons.[49] *Supair* is an intermediary agency affiliated to

44 See: De Lange, Tesseltje (2019). Intersecting Policies of Innovation and Entrepreneurship Migration in the EU and the Netherlands, in: Sergio Carrera, Leonhard den Hertog, Dora Kostakopoulou & Marion Panizzon (eds), *The External Faces of EU Migration, Borders and Asylum Policies: Intersecting Policy Universes*, Leiden: Brill Nijhoff, pp. 224-243.

45 See: EMN (2019) *EMN Synthesis Report for the EMN Study 2019 Migratory Pathways for Start-Ups and Innovative Entrepreneurs in the European Union*, The Hague: European Migration Network.

46 See: https://ind.nl/en/Pages/required-amounts-income-requirement.aspx#Application_for_residence_permit_highly_skilled_migrant_and_European_Blue_Card.

47 MPC/SVR (2012). *Mobile Talent? The Staying Intentions of International Students in Five EU Countries*, Brussels/Berlin: Migration Policy Group/Sachverständigenrat deutscher Stiftungen für Integration und Migration (SVR) GmbH, p. 38 and 46.

48 Mark Vlek de Coningh & Daan Huberts (2018). *Stayrate van internationale afgestudeerden in Nederland*, Den Haag: Nuffic.

49 See: https://www.saxion.edu/connect/.

Delft University, which helps both Dutch and foreign graduates in finding suitable jobs.[50] *YesDelft*, for example, is a facilitator of student start-ups.

Taxes

Employees who come to the Netherlands[51] may, under certain conditions, receive a tax-free allowance of 30% of their wages for the extraterritorial expenses they incur, such as additional costs of living.[52] To benefit from the 30% rule, the employee must have specific expertise that is barely available on the Dutch labour market. Specific expertise is barely available on the Dutch market if the employee has a gross annual salary of at least € 37.296. A reduced income criterion of € 28.350 applies to employees with a completed master's programme who are 29 years of age or younger. There is no salary standard for researchers: if the work in the Netherlands involve conducting scientific research at a designated research institution, the researcher can make use of the 30% facility.

7. Success

The policy to attract more international talent proves to be successful according to the figures.[53] The number of international students doing a full study in the Netherlands has doubled over the past 10 years, from 31.000 in the academic year 2006-2007 to over 85.000 students in the academic year 2018-2019. This group is one of the largest groups of knowledge migrants in the Netherlands. In those years, diversity has also increased to over 160 different nationalities. In 2015, 45% of PhD students working at Dutch research institutes had a foreign nationality; in 2005 this was only 33%. The policy to retain international talent is successful as well. The stay rate for both international students and international PhD researchers is 38% (5 years after graduation or completion of research) and 30% (10 years after graduation or completion of research).[54] The analysis by Nuffic showed that most international graduates who stay in the Netherlands after their studies came from Germany, China, Indonesia, Poland and Belgium. On average, international students in the fields of technology, health and nature stay in the Netherlands in larger numbers and for a longer period.

Research in 2012 into the net impact of incoming and outgoing mobility showed that international students were making a positive contribution to public finances in

50 See: https://www.tudelft.nl/en/supair-jobs-for-engineers/.

51 See for an example about whether (or not) the employee lived in the Netherlands when entering into the employment contract (in Dutch): http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHAMS:2019:4616.

52 See: https://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/belastingdienst/individuals/living_and_working/working_in_another_country_temporarily/you_are_coming_to_work_in_the_netherlands/30_facility_for_incoming_employees/.

53 Nuffic (2017). *Update: Incoming student mobility in Dutch higher education 2016-2017*, The Hague: Nuffic, November 2017 and Nuffic (2019). *Incoming degree student mobility 2018-2019*, The Hague: Nuffic, p. 3.

54 Nuffic (2017). *Update: Incoming student mobility in Dutch higher education 2016-2017*, The Hague: Nuffic, November 2017.

the Netherlands.[55] If 2.5% of all graduated international students were to continue working in the Netherlands, their presence would already have a positive effect. In 2012, the Netherlands Bureau for Economic Policy Analysis estimated that a percentage of 19% of international graduates who stayed in the Netherlands for a few years was more realistic, generating tax revenues of 740 million euros. An additional study in 2015 into the stay rates of international PhD researchers showed that, ten years after obtaining their PhD, 32% of them were still in the Netherlands.[56] The economic effects are considered to be positive.[57] In 2016 it appeared that an estimated 25% of international students continued to live and work in the Netherlands for a lifetime after their graduation.[58] This means an annual positive balance for the Dutch treasury of 1.57 billion euros. Of all international students graduating in 2008, 2009 and 2010; after five years 42%, 38% and 36% respectively still lived and worked in the Netherlands.[59] The share of international scientific personnel has grown over the years, from 19% in 2003 to almost 37% in 2016.[60]

The Netherlands Bureau for Economic Policy Analysis (CPB) published a report in September 2019[61] which shows that an international student who comes to study in the Netherlands, on average, generates 16.700 euros for the Dutch economy. Students from outside the EU/EEA provide more for the Dutch economy than European students, because the Dutch government does not contribute to their training costs. In addition, they continue to work in the Netherlands more often after their studies than EU-students, in particular graduates in natural sciences and engineering.

8. Challenges

Use of mobility rights

One of the objectives of the Directive is to promote the mobility of third-country nationals within the EU. The increase of mobility between Member States would be one of the most attractive elements for international students and researchers from outside the EU. Mainly because through journeys between Member States networks can be established and contacts maintained, as a result of which science in the EU will ultimately compete at a global level. During the negotiations for the new Directive 2016/801 this opportunity was limited for international students and higher education institutions which have a cooperation agreement, like a double or multiple

55 CPB (2012). *Economic effects of internationalisation in higher education*, The Hague: Netherlands Bureau for Economic Policy Analysis, 18 April 2012; *Parliamentary Papers II* 2011/12, 31 288, no. 290.

56 CPB (2015). *Stay rates of foreign PhD graduates in the Netherlands*, The Hague: Netherlands Bureau for Economic Policy Analysis.

57 CPB (2012). *Economic effects of internationalisation in higher education*, The Hague: Netherlands Bureau for Economic Policy Analysis.

58 CPB (2016). *Stay rate analysis of international graduates: 2007-14*, The Hague: Netherlands Bureau for Economic Policy Analysis.

59 Nuffic (2017). *International degree students in the Netherlands: a regional analysis*, The Hague: Nuffic, November 2017.

60 See: https://www.rathenau.nl/en/page/share-foreign-scientific-personnel-netherlands-universities-overall-and-area-origin.

61 See: https://www.cpb.nl/de-economische-effecten-van-internationalisering-het-hoger-onderwijs-en-mbo-0.

degree course. There are not many of those programmes and due to this limitation the provision is not working as effectively as planned. In the Netherlands only about 200 permits were issued last year for mobility based on a cooperation agreement.

Development cooperation versus brain drain

The presence of international students contributes to creating an international context: the international classroom.[62] At the same time, attracting international talent makes an appeal to the sense of social responsibility. Although any consequences for the countries of origin of the study and knowledge migrants are not easy to estimate, research[63] shows that the Netherlands does not cause a large-scale brain drain. While it is clear that the departure of talented individuals can have disastrous effects on some sectors, such as the medical sector, countries of origin may benefit from money transfers and increased direct investments by migrants. The strong economic links in knowledge and development generated by migrants can also lead to economic and social benefits.

One instrument to prevent a brain drain is the Orange Knowledge Programme (OKP)[64], which has been developed for international students who come to the Netherlands as part of a development cooperation programme. The scholarship programme, initiated and financed by the Ministry of Foreign Affairs (using the development cooperation budget), aims to reduce the shortage of skilled manpower in developing countries. The OKP seeks to achieve this by meeting the demand for further training. The target group consists of mid-career professionals working in one of more than 50 participating OKP countries. The demand for education and training should be related to the institutional development of the organisation for which the candidate is working. Scholarships are available for English-speaking master's programmes, short-term courses and PhD programmes, some of which are taken in the country of origin and others in the Netherlands. An analysis by Nuffic[65] showed that most international graduates who stay in the Netherlands after their studies come from Germany, China, Indonesia, Poland and Belgium. Students from sub-Saharan Africa rarely stay in the Netherlands after their studies.[66] This makes it plausible that mobility of African students to the Netherlands does not contribute to a brain drain.

Monitoring study progress

The international (non-EU/EEA) student needs to make sufficient progress in their studies in order to retain the right to a residence permit. Since 2009, the standard for study progress has been specified in the Code of Conduct by the higher education

62 See: https://www.internationalisering.nl/lessons/de-international-classroom/.

63 ACVZ (2007). *Benefits of Study Migration Policy, advice on the labour market position of foreign graduates*, The Hague: ACVZ, February 2007.

64 See: https://www.studyinholland.nl/scholarships/highlighted-scholarships/netherlands-fellowship-programmes.

65 Nuffic (2017). *Stay rate analysis of international graduates: 2007-14*, The Hague: Nuffic.

66 One of the conditions of the OKP scholarship is that the students return to their home country after completing their studies in the Netherlands and enrich their home country with the acquired knowledge. It's questionable whether or not this complies with the conditions of the Directive, under which this group of students should also be eligible for the orientation year.

sector.[67] The international student must obtain at least 50% of the prescribed credits each academic year. A one-time appeal can be made for one of the (exhaustively listed) reasons that lead to excusability. Because of the diversity of the assessment methods at higher education institutions it is impossible to formulate a more precise provision.

Directive 2016/801 also provides a wide discretion for the Member States that have to make a judgment about the course of the study if an international student is re-registered with a higher education institution. For that reason a possible prior consultation was introduced, so that the national immigration services can check the study progress at the higher education institution and can make a well-founded decision about the refusal to renew or the revocation of the study permit. This addition is the result of an amendment by the European Parliament; the Commission's original proposal for the Directive 2016/801 lacked this possibility, as it did in the old Student Directive.[68] The consultation can relate both to the international student's study results and to the reasons that can be given as an explanation for the lack of these results. So, the individual assessment of the situation of the international student determines whether the right of residence must be extended. In several cases judges in the Netherlands ruled that only the higher education institution – and not the national immigration services! – can assess whether or not the student has made enough study progress and evaluate the reasons that can be given as an explanation for (the lack of) that. Recent evaluation makes clear that the higher education institutions are facing difficulties judging the reasons that lead to excusability and find the procedure very time-consuming.[69] The national immigration services do not decide to withdraw the residence permit in all cases in which the higher education institution has informed the national immigration services about an international student that has made too little progress (without a valid reason). That depends – for instance – on the remaining duration of the permit. Problem is that higher education institutions cannot end the registration as a student. So as long as the international student keeps on paying the tuition fees every year, they have the right to continue their study (also without a valid residence permit).

9. Closing Remarks

The Netherlands ranks among the most popular destination countries for international students worldwide. At the same time, international students are of great importance to the Netherlands. Not only for the quality of higher education, but also for the economy because these students contribute to an international classroom, pay tuition fees and spend costs of living. In the last decade, the policy of the Dutch gov-

67 Article 5.5 of the Code of Conduct, see: https://www.internationalstudy.nl/wp-content/uploads/2017/03/Code-of-Conduct-2017.pdf.

68 2013/0081(COD), European Parliament, Committee on Civil Liberties, Justice and Home Affairs, Draft report 3 July 2013, Amendment 16.

69 See: https://www.internationalstudy.nl/vervolg-seminar-gedragscode-ho/?lang=en and (in Dutch): Lodder, G. (2019). *Selectief naast restrictief. Evaluatie van de Wet modern migratiebeleid*, Leiden: WODC, University – Institute of Immigration Law (Europe Institute).

ernment and the higher education institutions was therefore aimed at increasing the percentage of incoming international students, researchers and employees. Specific measures have been taken to bind international talent to the Netherlands. This enhances the quality of the workforce and the attractiveness of the Netherlands as a location for international investors. In addition, the admission of international students is seen as an opportunity to make a positive contribution to the development of the countries of origin. But attracting and retaining international talent is also becoming increasingly important for the development of regions and municipalities. Especially in regions where the population is shrinking, international talent offers opportunities. International students and researchers strengthen the local knowledge economy and they are an important factor in the establishment of knowledge-intensive companies and organisations.

However, internationalisation in higher education sometimes leads to problems or challenges,[70] so concerns are growing louder. These concerns include, but are not limited to, questions about the side-effects of growing amounts of incoming international students, the absorption capacity of higher education institutions, language policies and the academic readiness of some international students. Until approximately 2018, research results show a predominantly positive picture in the field of Dutch policy to recruit and retain international students.[71] In 2019 an Interdepartmental Policy Study was conducted into the opportunities and risks of the internationalisation of the student population and the appropriate policy interventions.[72] The study suggested a number of points for attention, but generally made clear that the effects of internationalisation were positive. For example, international graduates who continue to live and work in the Netherlands contribute to the structural labor supply. This reinforces the scientific research climate and attracts international top researchers. In a negative sense, the study notes increased pressure on the housing market in student cities and a greater demand for facilities (such as buildings and laboratories), threatening the accessibility and quality of education. Finally, the study points out that EU-students are funded by the Dutch government. A growing influx of EU-students is therefore putting increasing demands on public resources, which can put educational resources at risk. So the sentiment has changed. Even from the higher education sector itself[73], in 2018 there was an emphatic call to the Dutch government to take measures. The sector wanted more legal options for selection in the ever-increasing group of international students.

70 See for example: Peter Prud'homme van Reine & Herman Blom (2017). Handling cultural diversity in higher education, in: R. Coelen, W. van der Hoek, H. Blom (eds), *Valorisation of Internationalization: about internationalisation of higher education*, Leeuwarden: NHL Stenden, pp. 111-137.

71 See for example the research conducted by the European Migration Network (EMN), via (in Dutch): https://emnnetherlands.nl/onderzoeken.

72 See: *Parliamentary Papers II* 2018/19, 35 000, no. 2.

73 See for example (in Dutch): K. Baele (2018). Het is hoog tijd voor een revisie van de wet op het hoger onderwijs, *ScienceGuide*, 21 november 2018, via: https://www.scienceguide.nl/2018/11/het-is-hoog-tijd-voor-een-revisie-van-de-wet-op-het-hoger-onderwijs/.

New legislation

In a legislative proposal[74] the Minister of Education, Culture and Science announced measures in line with the request of the higher education sector. If higher education institutions want to offer a substantial part of their education in English, they must demonstrate the 'added value' of this in advance. Higher education institutions are, according to this new legislation, also required to offer international students the opportunity to learn the Dutch language. This should increase the chance that they will stay in the Netherlands after their studies, which is advantageous for the labor market and the Dutch treasury. More far-reaching is that higher education institutions are given the option of entering a *numerus fixus* only on an English-taught track of a study program, in order to protect the accessibility of education for Dutch students (who can enroll in the Dutch-speaking track of the study program). Please notice that the Directive states that as regards students, volumes of admission should not apply since they seek admission to the territory of the Member States to pursue as their main activity a full-time course of study.[75] Selection options for European students will not be widened, but a general volume of admission, meaning a cap on the number of non-EU/EEA students, may be applied. In this regard (legal) advice has been requested on how maximizing the number of students from outside Europe (in particular with a certain nationality) within a study program, does relate to European and international law.[76] Finally, there will be a maximum tuition fee for European students, which will at the same time be the minimum tuition fee for non-EU/EEA students.

Comment: HEI cooperation instead of competition?

The internationalisation policy faces challenges, because the downside of being an attractive destination for studying, living and working for international talent, is the increasing problem of housing. In cities such as Amsterdam, little suitable living space is available and high rents are charged for rooms and studios. We need to provide not only an international classroom but also an international living room. That's necessary in order to remain attractive as a destination for study and research. But active recruitment of international students has become less necessary and the policy of both the higher education institutions and the Dutch government must therefore change.

What do higher education institutions themselves do to limit the influx of international students, in particular students from outside Europe? The higher education institutions reserve budgets and employees for the promotion of their institution and the recruitment of international students.[77] The alumni network is also being used for

74 Language and Accessibility Act (*Wet taal en toegankelijkheid*), *Parliamentary Papers I* 2019/20, 35 282, no. A.

75 Preamble 39 of the Directive.

76 *Parliamentary Papers I* 2019/20, 35 282, no. D, 3 March 2020.

77 See: Education Inspectorate (2019). *Report on the outcome of a thematic study into the development of the number of international students and its effects on the financial position of the higher education institutions*, Utrecht: Education Inspectorate (June 2019). Some higher education institutions spend a budget of several tons to profile themselves on international fairs, on online marketing and on agents who receive a registration fee per recruited international student. The higher education institutions have 2 to 15 →

this purpose. In addition, the higher education institutions annually accept hundreds of international students (often recruited through commercial agencies) that are not yet admissible, but are prepared for the desired entry level via preparatory courses. For the Technical University of Twente, for example, in 2019-2020 it involved more than 200 international students, 45% of all new international students that year.[78] So to me it is incomprehensible that the higher education institutions called upon the Ministry to investigate the opportunities to reject the admission of non-EU/EEA students. More than 75% of all international students in Dutch higher education come from European countries. So why would the higher education institutions want to limit the relatively small group of students from outside Europe?

The higher education institutions should only reject the admission of international students on objective reasons without discrimination by selection only based on nationality. Didn't we learn at all from the *Ben Alaya* case,[79] in which the CJEU made clear that an international student, meeting all the conditions, must be granted a visa or permit? The new EU Directive 2016/801 even explicitly regulates the right of a residence permit to be granted, when the general and specific admission conditions are met (Article 5). So instead of advocating the introduction of selection instruments, higher education institutions should endeavor to find a solution to an imminent capacity shortage in collaboration with other institutions. Some higher education institutions face serious capacity problems. My suggestion would be not to reject the admission of international students in that situation, but to distribute them among the higher education institutions. The battle for talent is about cooperation instead of competition. It is quite conceivable that higher education institutions, in line with the differences within the Netherlands, would opt for a regional approach or sectoral cooperation (e.g. technology). We need more cooperation between higher education institutions. When they connect with each other in a region, they do not see each other as competitors but act together, and they do not need the Dutch government to regulate their problems. The Corona crisis, and the global immobility it likely brings, might put the development of such co-operations on hold. Higher education institutions might actually face shortages of funds due to less international students arriving, fueling the competition amongst them in the near future.

More in general, higher education institutions should focus more on the legal position of the non-EU/EEA students. The Directive contains provisions regarding the possibility to appeal. But the international student is often young, there is a language barrier and we also must not forget the cultural differences between international students. International students are not used to the Dutch way of addressing a prob-

FTEs each for employees who are engaged in the recruitment, communication and supervision of international students (see p. 27 and 30).

78 See: https://www.twentepathway.nl/ and the research conducted by the National Commission (June 2020), via: http://www.internationalstudy.nl/.

79 CJEU, 10 September 2014, C-491/13, *Ben Alaya*, ECLI:EU:C:2014:2187, *JV* 2014/345, r.o. 31, m.nt. Fernhout. See also: Roel Fernhout **(**2015). An analysis of the Ben Alaya case (C-491/13): when conditions of the Students Directive are met, that directive confers entitlement to a student visa, without leaving the national authorities any discretion in that regard, *European Journal of Migration and Law (EMJL)*, pp. 151-159.

lem or a complaint.[80] Of course, there is the Code of Conduct (which contains a complaint procedure) but that framework is rather unknown.[81] The independent supervisory Commission is conducting research to check the behaviour of the higher education institutions, but the legal position of the international students is a challenge!

80 For example see (in Dutch): ABRvS 26 april 2018, 201701272/1/V1, ECLI:NL:RVS:2018:1425, *JV* 2018/8, nr. 113, 15 June 2018, pp. 647-654, m.nt. A.G.D. Overmars. Non-EU/EEA students must report any study delay immediately, providing full information about the underlying reasons. Late or incomplete reporting has major consequences for the right of residence. The legal position of non-EU/EEA students is therefore extremely vulnerable on this point and our Western attitude ignores the cultural barrier that may be experienced by the student.

81 Average of two complaints per year. See: http://www.internationalstudy.nl/.

Intra-EU Mobility of International Students and Researchers to Germany under Directive (EU) 2016/801

Ingeborg Spiegeler Castañeda[*]

I. Introduction

This chapter focuses on the intra-EU mobility provisions specified in Directive (EU) 2016/801 for international students and researchers in the European Union (with the exception of Denmark and Ireland), and its implementation in Germany.

According to Directive (EU) 2016/801, third-country nationals holding a valid residence title of an EU Member State for the purpose of conducting research or studies, and intending to carry out part of their research project or studies in Germany, can use their mobility rights and reside in Germany for a certain period of time without a German residence title.

This chapter is divided in six key themes; the first theme *'Residence law in Germany and institutions involved in the immigration process'* explains the legal framework in which the Directive was transposed. The second theme *'Intra-EU mobility for students and researchers'* defines the role of the Federal Office for Migration and Refugees as the national contact point. In this context, the mobility notification procedure and the relevance of a safe data exchange will be described. Additionally, the third and fourth themes show statistics on the mobility of international students and researchers. The fifth theme, *'Challenges in implementing Directive (EU) 2016/801'* covers some of the challenges faced so far and the respective solutions applied in the implementation of the Directive in regards to mobility in Germany. Finally, the sixth theme provides a conclusion and presents some of the new provisions for international students in Germany made by the Skilled Labor Immigration Act, which entered into force in 2020.

The Directive also provides a legal framework for third-country nationals who come to the EU for other purposes such as training and voluntary service in the *European Voluntary Service*. However, the mobility aspect of the Directive and the consequences it had so far in the Member States deserve special attention, particularly, since already three EU Directives (Long Term Residents Directive 2003/109/EC, Blue Card EU Directive 2009/50/EC and ICT Directive 2014/66/EU) provide mobility rights to third-country nationals.[1]

The interest of the European Union is to become more attractive for international qualified professionals, as described in recitals Nos. 8 and 53 of Directive (EU) 2016/801. Considering that the intra-EU mobility aspect of the Directive can be a relevant advantage for third country nationals to come to the European Union for

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1 Müller, Andreas (2013). *Intra-EU mobility of third-country nationals*, Working Paper 51 of the Research Section of the Federal Office, Nuremberg: Federal Office for Migration and Refugees.

study and research purposes, it is relevant to analyze how Member States are dealing with this aspect.

Detailed information on the strategies Germany is following to attract and retain international students, as well as the structure of the higher education system in the Federal Republic can be found in the 2019 EMN Study *'Attracting and retaining international students in Germany'* (Hoffmeyer-Zlotnik, Paula/Grote, Janne).[2]

II. Residence Law in Germany and Institutions Involved in the Immigration Process

The German Residence Act (*AufenthG*)[3] contains provisions on the entry of foreigners into the federal territory, their residence and integration in the country and termination of residence.

The Residence Act is structured according to residence purposes stated in the Act, such as education or training, gainful employment, humanitarian, political or family reasons. Residence permits are issued in Germany according to the purposes mentioned above. In general, settlement permits (i.e. permanent residence titles, including the Long Term Residence Permit EU) are issued if a foreigner has possessed a residence permit for five years and meets the additional requirements (e.g. secure subsistence, no criminal record, sufficient command of the German language, Section 9 and 9a of the Residence Act).

Under German law, the missions of the country, i.e. its embassies and consulates-general abroad are responsible for issuing visas according to Section 71 (2) of the Residence Act. The missions abroad follow instructions from the Federal Foreign Office. Furthermore, the local foreigners' authorities (*Ausländerbehörden*) under the responsibility of the '*Federal Länder'* are responsible to issue the residence titles once the person has arrived in Germany according to Section 71 (1) of the Residence Act. The competence of the local authority depends on the area in which the applicant will reside (*Ratione loci competence*).

Another central body dealing with immigration topics in Germany is the Federal Office for Migration and Refugees (*BAMF*). The BAMF is a Federal authority within the portfolio of the Federal Ministry of the Interior responsible *inter alia* for processing asylum applications, ensuring refugee protection and acts as a national contact point for topics related to intra-EU mobility. Furthermore, it is also in charge of the nationwide promotion of integration of immigrants and research about migration topics.

2 Hoffmeyer-Zlotnik, Paula & Grote, Janne (2019). *Attracting and retaining international students in Germany. Study by the German National Contact Point for the European Migration Network (EMN).* Working Paper 85 of the Research Centre of the Federal Office for Migration and Refugees, Nuremberg: Federal Office for Migration and Refugees.

3 Aufenthaltsgesetz entered into force on the 1st of January 2005, as published on 25 February 2008, *Federal Law Gazette (BGBl.)* I, p. 162), last amended by Art. 26a para. 1 of Act of 12 June 2020, *BGBl.* I, p. 1248. An English translation by the Federal Ministry of Interior can be found https://www.gesetze-im-internet.de/englisch_aufenthg/, and https://www.gesetze-im-internet.de/englisch_aufenthg/index.html [last access: 02 July 2020].

III. Intra-EU Mobility for Students and Researchers

The German Residence Act entered into force in 2005, which replaced the previous regulations regarding immigration. The 2005 Residence Act included, among others, residence regulations and provisions for international students. The first EU Student Directive of 2004 was transposed into German law in 2007 and later the Students and Researchers Directive (EU) 2016/801 provided further advantages for third-country national students, particularly in the area of EU-wide mobility.[4] The Students and Researchers Directive, as well as the ICT Directive 2014/66/EU, were simultaneously implemented in German law in 2017.

The Students and Researchers Directive (EU) 2016/801 provides that Member States shall appoint contact points which shall be responsible for receiving and transmitting the information needed to implement the provisions of the Directive dealing with intra-EU mobility (Article 37). In relationship to the advantage of intra-EU mobility for study or research purposes, a significant change in the legislation was made by extending the responsibilities of the Federal Office for Migration and Refugees as the National Contact Point (according to Section 75 No. 5 and No. 5a of the Residence Act).

Articles 28, 29 and 31 of the Directive give Member States the choice between different options for implementing the mobility provisions. In the case of Germany, for mobility for study and short-term mobility for research purposes, a 'notification procedure' is required (according to Section 16c and Section 18e of the Residence Act). In the case of long-term mobility for research purposes, an 'application procedure' is required, with the outcome of the issuance of a residence title (Section 18f of the Residence Act).

As a national contact point, the BAMF is in charge of processing the mobility notifications and is the central contact point for research and higher education institutions. Additionally, BAMF also acts as the connector between the local immigration authorities in Germany and the EU Member States on all topics related to mobility for study and research purposes.

Mobility Notification Procedure for Mobility

In order to use the intra-EU mobility for study or research purposes to Germany, the hosting institution in Germany must submit a notification of the intended stay to the national contact point. This notification must be received no later than 30 days prior to the applicants entering Germany.

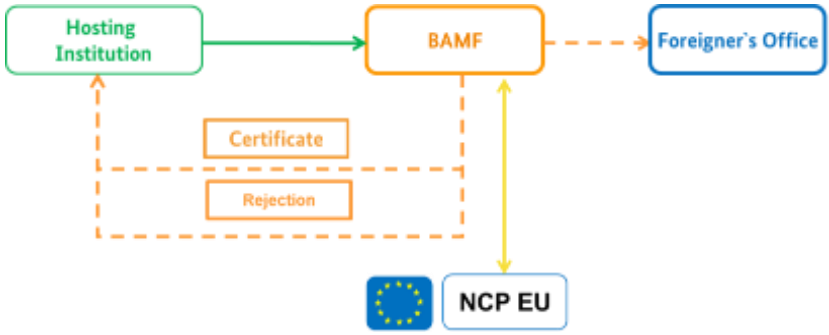
If all the requirements are fulfilled according to Sections 16c or 18e of the Residence Act (e.g. residence title within the meaning of the Directive, proof of subsistence including health insurance, etc.) the national contact point issues a certificate

4 Hoffmeyer-Zlotnik, Paula & Grote, Janne (2019). *Attracting and retaining international students in Germany. Study by the German National Contact Point for the European Migration Network (EMN).* Working Paper 85 of the Research Centre of the Federal Office for Migration and Refugees, Nuremberg: Federal Office for Migration and Refugees, p. 11.

confirming the entitlement to enter and stay in Germany for the purpose of studies or research. After the mobility notification is processed by the BAMF, and the contact point has either issued a mobility certificate or rejected the mobility, the notification of the third-country national and the respective decision on the mobility is forwarded to the local foreigner's authority in which the person is expected to have her/his domicile. From this moment onwards, the third-country national falls into the jurisdiction of the local foreigners' office and this office is in charge of further eventual decisions regarding the residence of the person in Germany. The third-country national is obliged to notify the local foreigners' office of any changes regarding the mobility requirements, in particular, changes regarding the status of their residence title from the first EU Member State, the admission at the hosting institution in Germany, and the proof of subsistence. Additionally, during the verification of the requirements for the mobility the national contact point can contact another Member State, if clarification regarding the residence title of the third-country national is needed.

Figure No. 1 visualizes the notification procedure, making evident the central role of the BAMF as a national contact point.

Figure 1: Notification procedure in Germany intra-EU mobility for students and researchers



Source: National Contact Point Germany.

In March 2020, the Skilled Labor Immigration Act[5] entered into force in Germany, this act amends amongst others the Residence Act (*AufenthG*) and includes modifications to the notification procedure. The new regulations enable the BAMF to carry out the notification procedure without the participation of the local foreigner's office. Previous to March 2020, the BAMF was in charge of verifying, if the notification was complete, and then the local foreigners office would have 30 days to confirm or reject the mobility. If the mobility was not rejected, the BAMF would issue the mobility certificate. The new legislation has therefor smoothened the process.

The notification procedure is advantageous for international students and researchers because of various reasons. For instance, the international students do not have to apply for a visa, and later on, they do not have to present themselves at the local foreigner's office. Through the provisions in the law, international students can

5 Skilled Labor Immigration Act: *Federal Law Gazette (BGBl.)* 2019, I, p. 1307.

reside in Germany without a German residence title for a maximum of 360 days and international researchers for a maximum of 180 days. For their residence in Germany, the residence title issued by the first Member State is sufficient. Furthermore, the BAMF is obliged to provide an answer within 30 days after the complete notification has been submitted. Students and researchers also do not have to pay any fees for their notification being checked. Hereby, third-country nationals gain time and flexibility in comparison to applying for a visa.

Secure Data Exchange

Since the contact point is expected to communicate and share personal data with diverse institutions and local foreigners' offices across the country, the issue of a secure data exchange played an important role in the implementation of the law in Germany. Consequently, for the technical implementation of the data exchange, a cloud solution was designated to communicate with the host institutions, as well as with the local foreigners' offices. This cloud solution guarantees that the information being exchanged reaches only the persons registered in the system, who are as per law allowed to provide and receive the information.

Also at a European level, data is expected to be exchanged according to Articles 28-32 and 37 of the Directive. In order to guarantee a secure data exchange at this level, Germany actively participated in the meetings of the *Contact Group Legal Migration* under the leadership of the European Commission to conceptualize how the data exchange can be done in an effective manner respecting data protection and security. The outcome of these meetings has been the communication via a platform, which encrypts the information being exchanged. In addition, special attention has been paid on the persons who are allowed to access and communicate via this channel.

Rights of the Mobile Students and Researchers in Germany

Once third-country national students are using mobility rights to come to Germany, they can pursue employment that may not exceed a total of one third of their period of residence, or take up part-time student employment (according to Section 16c (2) of the Residence Act). This means that if the student comes to Germany for a maximum of 360 days in the context of intra-EU mobility, this person is allowed to work for one third of the mobility time, which in this example would be 120 days.

If third-country nationals wish to do an internship in Germany, in order to use their mobility rights according to Section 16c of the Residence Act, among other requirements, they have to be accepted in a German higher education institution and be covered by an agreement between universities or a mobility program. If these requirements are not fulfilled, a German national visa for internship purposes is required.

Mobile researchers coming to Germany are entitled to carry out research at the hosting institution as well as take up teaching activities. Family members shall be included in the mobility notification of the researcher. In contrast, for international students family reunification is not foreseen.

IV. Statistics on Students Coming to Germany and Europe

In order to analyze the impact of European immigration policy in Germany on international students using their mobility rights within the EU Member States, diverse sources of statistics have to be consulted to provide a more holistic view on different levels of EU-wide mobility. Consequently, the data presented in this chapter is structured in three parts, Tables 1 and 2 present national data on the issued resident permits to third-country nationals for education purposes and according to nationality. This data is derived from the Central Register of Foreigners (*Ausländerzentralregister*, AZR). Figures 2 and 3 demonstrate data on issued German mobility certificates according to the Directive for a maximum of 360 days. These statistics originate from the German national contact point. Subsequently, statistics on granted residence permits to third-country nationals in 2018 in EU Member States or EFTA countries and the United Kingdom are shown. The main source for these statistics is *Eurostat*. Finally, statistics are presented on student mobility to Germany. This information originates from the Erasmus+ Annual Report 2018.

Residence Titles Issued in Germany for the Purpose of Education

In the first half of 2019, 74.551 residence titles were issued for the purpose of education in Germany. Among these, 60.354 residence titles were issued for the purpose of studies at a higher education institution or for measures to prepare for studies. 5.008 residence titles were issued for the purpose of basic and advanced vocational training (see Table 1).[6]

Table 2 shows that from the 74.551 residence permits issued for education purposes in the first half of 2019, the largest proportion of permits were issued to Chinese nationals (19.2%) followed by the countries of origin India (10.1%) and the Republic of Korea (4.0%). While the number of nationals from China, Iran and the Republic of Korea decreased slightly (-2.7%, -1.5% and -1.0% respectively), in comparison to the same period last year, the numbers of nationals from India, Cameroon and Vietnam show above-average increases (+28.0%, +14.3% and +8.8% respectively).[7]

6 The paragraphs mentioned in table 1 refer to the Residence Act in 2019 before the amendments were made by the Skill Labor Immigration Act in 2020. In the amended Residence Act the paragraphs numbers and content have changed.

7 Graf, Johannes (2020). *Wanderungsmonitoring: Bildungs- und Erwerbsmigration nach Deutschland. Halbjahresbericht 2019*. Berichtsreihen zu Migration und Integration, Reihe 1. Nürnberg: Forschungszentrum Migration, Integration und Asyl des Bundesamtes für Migration und Flüchtlinge, p. 12 and 18.

Table 1: Issued residence permits for the purpose of education in the first half of 2019 according to type of permit

	Residence titles issued in the first half of 2019
Course of study, preparation for studies (Section 16 (1),(6),(9) Residence Act)	60.354
Job seeking after completed studies (Section 16 (5) Residence Act)	3.854
Application for course of study (Section 16 (7) Residence Act)	303
Language courses, school attendance (Section 16b (1) Residence Act)	3.465
Vocational training (Section 17 (1) Residence Act)	5.008
Job seeking after completing vocational training (Sections 16b (3) and 17 (3)Residence Act)	76
Measures to obtain recognition for foreign professional qualifications (Section 17a (1),(5) Residence Act)	1.284
Job seeking following recognition of foreign professional qualification (Section 17a (4) Residence Act)	49
EU study-related internship (Section 17b (1) Residence Act)	158
Total	**74.551**

Source: Ausländerzentralregister

Table 2: Issued residence permits for the purpose of education in the first half of 2019 and 2018 according to nationality

		Residence titles issued in the first half of 2019		**Residence titles issued in the first half of 2018**		
Rank	**Nationality**	**Amount**	**Percentage**	**Amount**	**Percentage**	**Rank**
1	China	14.310	19.2%	14.701	20.9%	1
2	India	7.566	10.1%	5.913	8.4%	2
3	Republic of Korea	3.005	4.0%	3.036	4.3%	3
4	Iran	2.638	3.5%	2.679	3.8%	4
5	Vietnam	2.629	3.5%	2.416	3.4%	6
6	USA	2.625	3.5%	2.628	3.7%	5
7	Indonesia	2.206	3.0%	2.085	3.0%	9
8	Turkey	2.204	3.0%	2.121	3.0%	8
9	Russian Federation	2.182	2.9%	2.147	3.0%	7
10	Cameroon	2.108	2.8%	1.844	2.6%	11
	Others	33.078	44.4%	30.839	43.8%	
Total		**74.551**	**100.0%**	**70.409**	**100.0%**	

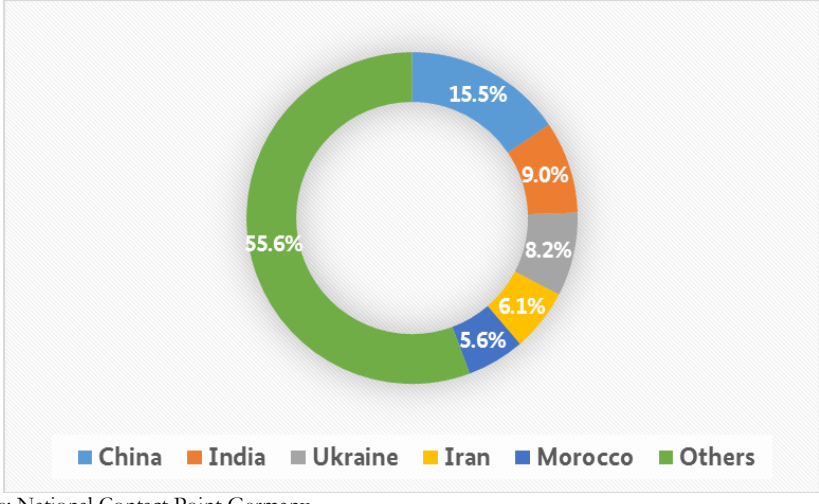
Source: Ausländerzentralregister.

Intra- EU Mobility for Study Purposes to Germany

Concerning intra-EU mobility according to Directive (EU) 2016/801, in 2019, the national contact point was provided with 608 cases for the purpose of studies by the higher education institutions in Germany out of which 478 resulted in mobility certificates. In comparison, in 2018, a total of 229 notifications were received by the national contact point out of which 140 resulted in mobility certificates. The reasons for which a mobility certificate was not issued can vary, e.g. the requirements were not fulfilled or the residence title was not within the meaning of the Directive.

In 2019, students from 68 nationalities around the globe, including country nationals from Togo, Madagascar and El Salvador, among others, applied for mobility to Germany. In the same year, with regards to issued mobility certificates, the five most important countries of origin were China (15.5%), India (9.0%), Ukraine (8.2%), Iran (6.1%) and Morocco (5.6%). The figures presented here refer to the issued mobility certificates because this is a clear indicator for the mobility which actually took place.

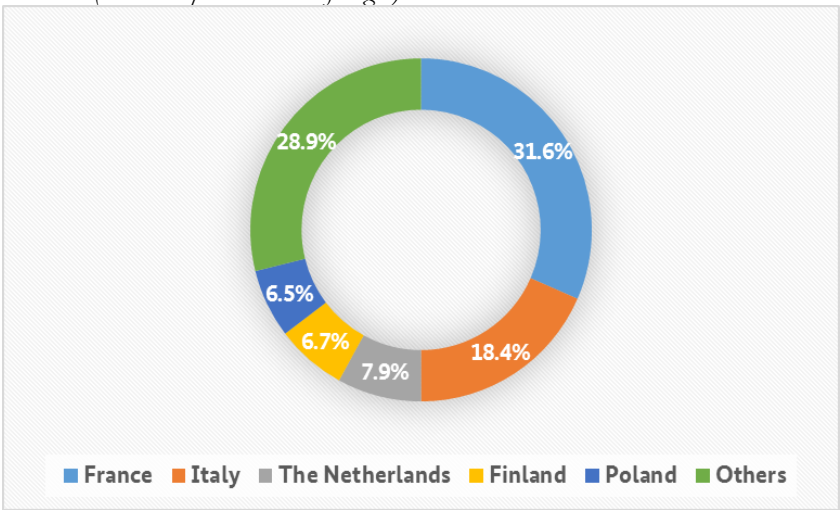
Figure 2: Issued mobility certificates for study purposes according to nationality (2019: Top 5 countries of origin)



Source: National Contact Point Germany

In context of EU-wide mobility, it is important to take into consideration the first Member States from which the international students were coming from. Figure three shows that the majority of the mobility certificates issued for study purposes had, as a basis, a residence title from France (31.6%), followed by Italy (18.4%), the Netherlands (7.9%), Finland (6.7%) and Poland (6.5%).

Figure 3: Issued mobility certificates for study purposes according to residence title issued by first EU Member State (2019: Top 5 countries of origin)



Source: National Contact Point Germany.

Both figures show that there is no predominant country of origin or first EU Member State. This illustrates a considerable diversity among the nationality of international students using their mobility rights to Germany and the first EU Member State.

European Statistics on Issued Residence Titles for Study Purposes and Intra-EU Mobility

At European level, the most recent data available from 2018 shows that the number of first residence permits issued in the EU-28 for education purposes was 644.000, which accounts to 20% of the total first residence permits issued to third-country nationals. It is worth mentioning that 2018 was the year with the highest amount of first residence permits issued to third-country nationals since the beginning of this type of recording in 2008. Namely, 3.2 million first residence permits were issued in the EU-28 to nationals of third-countries.[8]

Furthermore, data from the Erasmus+ annual report 2018 showed that for the call 2017, Germany can be placed 2nd among the receiving countries with 32.693 student mobilities, followed by the United Kingdom with 31.396 and France with 28.476. Spain is the country with the highest amount of student mobilities received with 49.692 students. The grand total for all the participating European countries, accounts to 325.495 higher education student mobilities. According to this report, from the 32.693 recorded mobilities to Germany, 21.678 mobilities were for study purposes while 11.015 were for traineeship purposes.[9] It is important to bear in mind that the data available in the report does not differentiate between European nation-

8 Eurostat (2018). *Residence permits – statistics on first permits issued during the year.*
9 Erasmus + Annual Report (2018). *Statistical Annex EC (Annex 15 and 18)*, p. 34 and 38.

als and third-country nationals. Therefore, it is difficult to estimate how many third-country nationals were mobile within the Erasmus programs to Germany.

In general, the various reports and statistics for 2018 and 2019 demonstrate that the inflow of migrants coming for study purposes to Europe and Germany is increasing. Between March and May 2020 the number of mobility applications received by the national contact point decreased due to the Covid-19 pandemic, at this point it is difficult to predict the long lasting effects the pandemic might have on the intra-EU mobility of third-country nationals.

V. Statistics on researchers coming to Germany

The data concerning the international researchers coming to Germany and Europe is not as extensive as the number of international students. According to *Eurostat,* specific data collection on Directive 2016/801 covering researchers and students will begin in 2020 with the year 2019 as the first reference. Currently, reports covered by *Eurostat* entail information on 'First permit issued for remunerated activities' or 'Employment' under which research might fall.[10] Since the data has not been differentiated, it is not possible to provide numbers for international researchers coming to Europe for the years 2018 or 2019.

National data available on the issued residence permits for the purpose of research in the first half of 2019 amounts to 1.549; this is an increase of 41.3% in comparison to the first half of 2018.[11] The intra-EU mobility to Germany in 2019 was used in limited numbers by international researchers; only 10 mobility certificates were issued.

VI. Challenges in Implementing Directive (EU) 2016/801

During the implementation of the Directive regarding the intra-EU mobility, the German national contact point faced diverse challenges at different phases of the implementation. This contribution exemplifies three of them.

A major challenge has been an appropriate channel of communication at national and European level. At the beginning, in 2017, during the preparation for the amendment of the German immigration law, the contact point was concerned on how to communicate digitally with hundreds of foreigner's offices and hosting institutions nation-wide. As described before, secure IT cloud solutions were implemented at national and European levels. The German national contact point keeps working on improving the channel of communication at national level to streamline the processes of information exchange for all the participants.

Secondly, less information on the required mobility process in the other Member States was available due to the different implementation speeds of the Directive in

10 Eurostat (2018). *Residence permits – a methodological and analytical interview*.

11 Graf, Johannes (2020). *Wanderungsmonitoring: Bildungs- und Erwerbsmigration nach Deutschland. Halbjahresbericht 2019*. Berichtsreihen zu Migration und Integration, Reihe 1. Nürnberg: Forschungszentrum Migration, Integration und Asyl des Bundesamtes für Migration und Flüchtlinge, p. 14.

other Member States. Thus, especially at the beginning in 2017 and 2018 the German national contact point could only provide limited information to host institutions in Germany, as well as to international students and researchers about intra-EU mobility regulations in other Member States.

Concerning the notification procedure, the Directive states that the residence permit issued by the first Member State for study and research purposes shall be valid for the duration of the mobility period in the second Member State (Article 18). However, often third country nationals receive residence permits valid for one year, in these cases the mobility certificate is issued for the validity of the residence title and the hosting institution has to apply for a prolongation of the mobility certificate once the new residence permit has been issued. Furthermore, some Member States provide third country nationals with preliminary residence titles, which are valid in connection with the expired residence title. In this manner, it is visible for the contact point if the residence title was issued according to the Directive.

VII. Conclusion and Perspectives for International Students in Germany

To conclude, Directive (EU) 2016/801 is still relatively young in its implementation in Germany and therefore its effects cannot be appropriately evaluated so far. This chapter, however, provides a first indication on intra-EU mobility developments in Germany, showing a relevant steady increase in the inflow of persons coming to Germany especially for study purposes. The statistics presented also show that the mobility aspect of the Directive is of interest for third-country nationals to come to the European Union. In addition to the provisions made in the Directive, Member States may also provide at national level further regulations to attract international students.

In Germany, legislation on migration for study purposes was developed further in the context of the Labor Skilled Immigration Act. This Skilled Immigration Act entered into force in Germany in March 2020 and provides new possibilities for international students and skilled workers to enter and to be employed in Germany. The aim of the Act is to address the shortage of skilled workers in the Federal Territory, which has affected companies, as well as, small businesses.[12]

In regards to international students, the possibility of change of status while studying is now more flexible. Students can, under certain conditions and with the recommendation of the Federal Employment Agency, accept a job offer as a qualified professional during their studies or receive vocational training. This implies a change of residence permit (Section 16b (4) of the Residence Act).

An additional relevant change in the Act, which also affects third-country nationals with an academic German degree, is that they can be employed in jobs which are related to their qualification and which normally require a vocational, non-academic qualification. Previously, foreigners with a German academic degree were limited to

12 Federal Ministry for Economic Affairs and Energy (2020). *Skilled Professionals for Germany* (accessed on 16.04.2020, https://www.bmwi.de/Redaktion/EN/Dossier/skilled-professionals.html).

seek employment corresponding with their academic qualification (Section 18b (1) of the Residence Act). The provision regarding the job-search period of 18 months remains valid and corresponds to Article 25 of the Directive (Section 20 (3) of the Residence Act).

The intra-EU Mobility aspect of Directive (EU) 2016/801 and the new regulations affecting third-country nationals coming to Germany for study purposes and research promote the Union as an attractive location and ensure well qualified-workforce for the future.

Executive Provisions of Directive 2016/801 – The Polish Perspective

*Izabela Florczak**

Introduction

This contribution focuses on the regulations which implement Directive (EU) 2016/801 of the European Parliament and the Council of 11 May 2016 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) into the Polish legal system. It has to be pointed out that over the past decades Poland used to be a country of emigration. This did not change after accession to the European Union. The largest increase in immigration to Poland was associated with two factors that coincided in time – the outflow of Polish employees to the labour markets of other member countries (mainly the United Kingdom) and the crisis in Ukraine. The Polish labour market needed new employees who began to come in massively from Eastern directions. Directive 2016/801 focuses on the admission of highly qualified persons to the Member State, indicating that immigration from outside the Union is one source of highly skilled people, and it is students and researchers that are in particularly high demand. They play an important role in forming the Union's key asset, human capital, and in ensuring smart, sustainable and inclusive growth, and therefore contribute to the achievement of the objectives of the Europe 2020 Strategy. However, from the Polish perspective, there is no doubt that the increased demand for labour force concerned mainly employees performing simple jobs, which was confirmed by data illustrating the areas of employment of migrants.[1]

The changing attitude to internationalization of scientific research conducted in Poland[2] gives grounds for acknowledging that there will be a gradual increase in the

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1 See: I. Florczak & M. Otto (2020). *Peripheralisation of Migrant Workforce in Poland: Inbetween Policy Paths and Regulatory Approaches*, Studies on Labour Law and Social Policy Volume 1/27/2020, Tilburg: Tilburg University, p. 41-52.

2 New legal regulations regarding the organization of higher education were adopted in 2018. They are in force in the most part from the academic year that began in 2019. The low level of internationalization of Polish science was indicated as one of the problems to be resolved by those new regulations. The justification of new statutes also indicated the control over the improvement of the activities of scientific units in the field of internalization as one of the determinants of their future qualification assessments. See: Justification to the Government bill – Law on higher education and science, print 2446 of the Sejm of the 8th term, http://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=2446 (accessed: 29.03.2020).

share of highly qualified science representatives and students from third countries in Poland. Therefore, addressing the subject matter is most justified and, apart from the theoretical value, it also has significant applicability.

2. Legal Basis of Implementation of Directive 2016/801

Directive 2016/801 has been introduced mainly through an amendment of the Act of Foreigners.[3] The implementing statute – Act of February 22, 2019 on amending the act on foreigners and some other acts[4] – amended also:

1. acts regarding the recognition of qualifications:
   a) act of 22 December 2015 on the principles of recognition of professional qualifications acquired in Member States of the European Union;
   b) act of 21 December 1990 on the profession of a veterinarian and chambers of medicine and veterinary medicine;
   c) act of 19 April 1991 on chambers of pharmacies;
   d) act of 5 December 1996 on the professions of physician and dentist;
   e) act of 15 December 2000 on professional self-governments of architects and construction engineers;
   f) act of 15 July 2011 on the professions of nurse and midwife;
2. acts regarding access to benefits provided for under national law:
   g) act of 28 November 2003 on family benefits;
   h) act of 11 February 2016 on state aid in raising children
3. acts to ensure that scientists, students or doctoral students can work in the territory of the Republic of Poland
   i) act of 20 April 2004 on employment promotion and labour market institutions;
4. acts in the scope of adaptation to changes regulating the functioning of higher education
   j) act of 20 July 2018 – Law on Higher Education and Science.

The predominant area of changes was made by amending the Act on foreigners regarding, among others:

- introducing new definitions, enabling the implementation of the provisions of the Directive 2016/801, as well as changing certain definitions of the Act on foreigners, in particular the definition of 'mobility', to include the types of mobility of foreigners regulated in Directive 2016/801;
- adding a new task for the Head of the Office for Foreigners, which is to act as a national contact point for the purposes of using the mobility provided for in Directive 2016/801 by foreigners;
- introducing, as part of the principles of crossing borders, solutions enabling students, researchers and family members of researchers to take advantage of the mobility provided for in Directive 2016/801;

3 12.12.2013, *J.L.* 2020, it. 35. (Journal of Laws – the official journal of the acts of law).
4 *J.L.* 2019, it. 577.

- introducing new objectives for which visas are issued, such as completing an internship and participation in the European Voluntary Service program, as well as specific regulations regarding the requirements for issuing visas for the implementation of Directive 2016/801, grounds for refusing to issue annotations and annotations therein placed;
- clarification in the scope of issuing temporary residence permits also including solutions for mobility of foreigners, regulation of temporary residence permits for the purpose of studying and distribution of temporary residence permits for the purpose of scientific research. Provisions regulating the granting of temporary residence permits for trainees and temporary residence permits for volunteers have also been added. Provisions on family reunification of researchers and the possibility for a researcher's family member to use mobility within the European Union to accompany the researcher have been changed. By implementing art. 25 of the Directive, students and researchers are allowed to stay for a period of at least nine months on the territory of a Member State in order to seek employment or establish a business after graduation or a period of scientific research;
- introducing regulations enabling new annotations such as 'researcher mobility', 'student', 'trainee' and 'volunteer' to be added to the temporary residence card.

3. Types of Visas Executing Provisions of Directive 2016/801

A foreigner, i.e. a person without Polish citizenship who is not a beneficiary of the freedom of movement regulation, can be issued a Schengen visa or a national visa. A national visa entitles one to enter the territory of the Republic of Poland and to stay there permanently or to several consecutive stays in this territory for a total of more than 90 days during the period of the validity of the visa. A Schengen visa may be issued, inter alia, for the purpose of undergoing first-cycle studies, second-cycle studies or uniform Master's studies, or doctoral education; conducting scientific research or development works; undergoing an internship; participation in the European Volunteering Program.

According to art. 60 point 3 of the Act on Foreigners, the following annotations shall be placed on the visa sticker in the 'comments' field, next to the purpose of issuing the visa:

1) *student* – in the case of a visa issued when the purpose of the foreigner's stay on the territory of the Republic of Poland is to undertake or continue full-time: first-cycle studies, second-cycle studies or uniform master's studies, or study at a doctoral school and if the foreigner is covered by the EU program or a multilateral program involving mobility measures or an agreement between at least two recognized higher education institutions providing for intra-EU mobility, including an annotation to that program or agreement;
2) *scientist* – in the case of a visa issued for the purpose of conducting scientific research or development works and if the foreigner is covered by an EU multilateral program or a program involving mobility measures or an agreement between at least two recognized higher education institutions providing for intra-EU mobility. There is also an annotation about that program or agreement;

3) *intern* – in the case of a visa issued for undergoing an internship;
4) *volunteer* – in the case of a visa issued for the purpose of participation in the European Voluntary Service.[5]

The grounds for refusing to issue the above visas may include, among others, the absence of the unit to which the foreigner is assigned in the index or a failure to present a certificate (in the case of a student) or contract (in the case of a scientist, trainee, volunteer). Detailed information on these conditions is presented in the next section.

4. Types of Temporary Residence Permits Executing Provisions of Directive 2016/801

The subjective scope of Directive 2016/801 covers several types of residence permits for which third-country nationals can apply. The first type is a *temporary residence permit for the purpose of studies*.[6] Such a permit can be issued to foreigners whose purpose of stay in Poland is to undertake or continue studies in a higher education institution approved by the Minister of the Interior,[7] unless this institution is not subject to mandatory approval, or in a higher education institution,[8] which is not subject to mandatory approval, and which is not prohibited to accept foreigners. It has to be noted that the circumstances justify the residence of the foreigner on the territory of the Republic of Poland for a period exceeding 3 months.

5 The European Voluntary Service is an international volunteer programme funded by the European Commission which enables all young people legally resident in Europe, aged between 18 and 30 years, to carry out an international volunteer service in an organization or in a public body in Europe, Africa, Asia or South America for a period ranging from 2 to 12 months.

6 This institution is regulated in article 144 and following of the Act of Foreigners.

7 The first list of study units approved for the admission of foreigners by the Minister of the Interior was published on February 28, 2020. The unit conducting studies can be approved for the purpose of admitting foreigners for the purpose of taking or continuing studies, by way of a decision, at the request of this unit, if numerous conditions met, i.e.:
1) the unit running the studies has existed for at least 5 years before submitting the application and at that time it was conducting the activity of conducting studies;
2) are not opposed by reasons of national defence or security or the protection of public safety and order;
3) the interests of the Republic of Poland do not oppose this.
The obligation to approve for the purposes of admitting foreigners for the purposes of taking up or continuing studies is not subject to academic universities within the meaning of art. 14 of the Act of 20 July 2018 – Law on Higher Education and Science; vocational universities within the meaning of art. 15 of the Act of 20 July 2018 – Law on Higher Education and Science, which are public vocational universities; military universities, referred to in art. 433 paragraph 1 point 1 of the Act of 20 July 2018 – Law on Higher Education and Science; universities of state services, referred to in art. 433 paragraph 1 point 2 of the Act of 20 July 2018 – Law on Higher Education and Science; universities run by churches and religious associations whose attitude towards the Republic of Poland is regulated by an international agreement or statute.

8 The obligation to approve does not apply to academic colleges and vocational colleges which are public vocational colleges, military colleges, state service colleges and colleges run by churches and religious associations whose relationship to the Republic of Poland is regulated by an international agreement or statute.

This type of a temporary residence permit is also granted to the foreigner when the studies are the continuation or complementation of studies previously undertaken on the territory of another EU Member State and are not covered by an EU programme or a multilateral programme covering mobility measures or an agreement between two or more higher education institutions providing for intra-EU mobility. In that case the foreigner has to meet the abovementioned conditions for granting the temporary residence permit for the purpose of studies.[9]

The first temporary resident permit for the purpose of studies for a foreigner undertaking studies on the territory of the Republic of Poland during the first year of education is granted for a period of 15 months, and in the case when the studies are covered by an EU programme or a multilateral programme covering mobility measures or an agreement between two or more higher education institutions providing for intra-EU mobility, the first permit is granted for a period of 2 years.

When the studies justify the residence of a foreigner on the territory of the Republic of Poland for a period not exceeding 1 year, the first permit is granted for the duration of an academic year or the whole course, extended by 3 months. The subsequent temporary residence permit for studies is granted for the duration of the studies, extended by 3 months, but not exceeding 3 years.

If the application for a temporary residence permit was submitted during the legal stay of the foreigner and this application had no formal defects or such formal defects were remedied on time, the *voivode* (the head of local government) places a stamp in the travel document of the foreigner, which confirms submitting the application. The residence of the foreigner is considered legal from the day of submitting the application to the day on which the decision on temporary residence permit becomes final. This applies to all types of residence permits in question.

The second type of residence permit executing provisions of Directive 2016/801 is a *temporary residence permit for an intern*.[10] This type of permit can be issued to those foreigners whose purpose of stay in Poland is to undertake an internship at an internship organiser authorised by the Minister of the Interior if the circumstances justify the foreigner's stay within the territory of the Republic of Poland for a period longer than 3 months.

The permit shall be granted for a period necessary for the execution of the contract (internship agreement) on the basis of which the foreigner shall be undertaking internship, but not longer than for 6 months. The internship agreement shall be concluded between the foreigner and the internship organiser authorised by the Minister of the Interior.[11]

Internship as the basis for a temporary residence permit for an intern shall mean performance of tasks by the foreigner, for the purpose of acquiring knowledge, prac-

9 The temporary residence permit for studies shall be granted also when the purpose of stay at the territory of the Republic of Poland is completing the preparatory course to take up full-time Master degree studies and the doctoral course, provided that the foreigner holds the citizenship of one of the states specified by the ordinance of the Council of Minister. At the moment, such ordinance has not been issued yet, therefore, it is currently not possible to obtain a permit for studies for the purpose of completing the preparatory course.

10 This institution is regulated in article 157a and following of the Act of Foreigners.

11 The first list of internship organiser authorised by the minister competent for internal affairs was published on February 28, 2020.

tical skills and professional experience, and not performance of work on the basis of a contract with the internship organiser. Internship should be adequate to the field and level of the completed or ongoing studies.

The third type of residence permit executing provisions of Directive 2016/801 is a *temporary residence permit for a volunteer*.[12] This type of permit is granted to foreigners whose purpose of stay in Poland is to take part in the European Voluntary Service if the circumstances justify the foreigner's stay within the territory of the Republic of Poland for a period longer than 3 months. The organisational unit for which the foreigner is to provide voluntary services should be authorised by the Minister of the Interior.[13] The organisational unit for which the foreigner is to provide the services and the foreigner shall sign a contract as the basis of voluntary work.

The fourth type of residence permit executing provisions of Directive 2016/801 is a *temporary residence permit for the purpose of scientific research*.[14] Such a permit can be issued to a foreign researcher holding at least a professional title equivalent to a Master's degree in the Republic of Poland or one that enables applying for a doctoral degree. This type of permit can be issued for the duration of the stay in Poland for the purpose of scientific research or development works in a research organisation having its seat on the territory of the Republic of Poland and approved by the Minister of the Interior.[15]It is granted provided that the circumstances forming the basis to apply for it justify the stay of a foreigner on the territory of the Republic of Poland for a period exceeding 3 months.

Just as is the case for the previously discussed permits, a temporary residence permit for the purpose of scientific research is granted for a period necessary to deliver the purpose of stay of the foreigner on the territory of the Republic of Poland for more than 3 months. This period cannot exceed 3 years but gives the possibility of applying for subsequent permits.

A foreigner has to sign a hosting agreement for scientific research or development works with the research organisation. The research organisation can conclude the hosting agreement with the researcher for the purpose of scientific research or development works provided that the performance of such research or works was approved by the competent authorities of this research organisation.

A temporary residence permit for the purpose of scientific research entitles one to perform any kind of work without the need for obtaining a work permit. A residence card issued to the foreigner with the temporary residence permit gives them access to the labour market by default.

12 This institution is regulated in article 157g and following of the Act of Foreigners.

13 The first list of organizational units for which foreigners are to perform benefits as volunteer authorised by the minister competent for internal affairs was published on February 28, 2020.

14 This institution is regulated in article 151 and following of the Act of Foreigners.

15 The first list of research units approved for the admission of foreigners for the conduct of research or development works by the minister competent for internal affairs was published on February 28, 2020.

5. Rights and Obligations During Stay on the Basis of Residence Permits Executing Provisions of Directive 2016/801

In any case a foreigner who obtained a temporary residence permit is obliged to notify the *voivode* who granted this permit within 15 working days that the reason for the permit no longer applies. If a temporary residence permit was granted by the Chief of the Office for Foreigners in the second instance, this notification is submitted to the *voivode* who decided on granting the permit in the first instance. Failure to comply with this obligation may result in refusal of a subsequent temporary residence permit provided that the application for a subsequent temporary residence permit was submitted within a year from the date of expiry of the validity of the previous permit or from the day on which the decision to withdraw the temporary residence permit became final.

In the case of some of the discussed types of permits, special rights are granted to foreigners, and additional obligations are imposed on the institutions with which a foreigner is associated. They all will be discussed below when analyzing different types of permits in the context of rights and obligations during stay on the basis of residence permits executing provisions of Directive 2016/801.

Upon obtaining a *temporary residence permit for the purpose of studies*, a foreigner is given the right to perform work without the need for obtaining a separate work permit. A residence card issued with regard to granting the foreigner a temporary residence permit gives them access to the labour market by default.

If a student is expelled or fails to complete the study year before a specified date, the rector of the university or head of another higher education institution is obliged to issue an immediate written notification to the *voivode* who granted the research permit for studies.

The research organisation is obliged to notify the *voivode* who granted the *temporary residence permit for the purpose of scientific research* to the foreigner or before whom the case on the temporary residence permit is proceeded, of any events that may impede the performance of the hosting agreement for the purpose of scientific research or development works made with the foreigner.

6. Rights to Continue Residence Executing Provisions of Directive 2016/801

The Act of Foreigners (article 186 point 1 number 6 and 7) provides two types of a temporary residence permit due to the so-called 'other circumstances' which implement article 25 of Directive 2016/801. Such a residence can be granted to a foreigner if the foreigner is a graduate of a Polish university and is looking for a job in the territory of the Republic of Poland or plans to start doing business in that territory (*a temporary residence permit – for a graduate of a Polish university looking for work or planning to establish an economic activity*) or for a foreigner staying on the territory of the Republic of Poland who, immediately before submitting an application for granting this permit on the basis of a temporary residence permit for the purpose of conducting scientific research, has completed scientific research or development work and is looking for work on the territory of the Republic of Poland or plans to start doing business on

this territory (a *temporary residence permit – for a scientist looking for work or planning to establish an economic activity*).

The first of the abovementioned permits – the temporary residence permit for a graduate of a Polish university looking for work or planning to establish an economic activity – can be granted to a foreigner who is a graduate of a Polish university and is looking for work in Poland or plans to establish an economic activity within the territory thereof. Such a permit can be granted if the circumstances which constitute the basis for application for the permit justify the foreigner's stay within the territory of the Republic of Poland for a period longer than 3 months. This type of permit shall be a one-time permit granted directly after graduation for a period of 9 months.

A temporary residence permit for a graduate of a Polish university looking for work or planning to establish an economic activity does not grant the right to perform work within the territory of Poland. Yet, it has to be pointed out that graduates of full-time studies at Polish universities shall be exempt from the obligation to obtain a work permit.[16]

The second type of a temporary residence permit granted to a scientist looking for work or planning to establish an economic activity can be issued to a foreigner who, directly prior to submitting the application for this type of temporary residence permit resided within the territory of Poland on the basis of a temporary residence permit for the purpose of conducting research, has completed the research or development works and seeks employment within the territory of Poland or plans to establish an economic activity within the territory. It can be granted if the circumstances which constitute the basis for application for the permit justify the foreigner's stay within the territory of the Republic of Poland for a period longer than 3 months, and shall be a one-time permit granted directly after the completion of the research or development works for a period of 9 months. After obtaining such a permit, the foreigner may perform work in Poland without having a work permit as the residence card issued in relation with its granting shall be annotated with 'access to labour market'.

7. Long-term Mobility Executing Provisions of Directive 2016/801

The first type of a long-term mobility permit which executes provisions of the Directive 2016/801 is a *temporary residence permit for the long-term mobility of the researcher*. Such a permit is granted to a foreigner who is a researcher when the purpose of his stay in the territory of the Republic of Poland is to conduct part of scientific research or development works in a research unit based in the territory of the Republic of Poland approved by the Minister of the Interior. The researcher has to have a residence permit referred to in art. 1 clause 2 lit. a Regulation No. 1030/2002, or a long-term visa with the note 'scientist', issued by another Member State of the European Union, and a health insurance as well. To get such a permit a foreigner has to prove

16 § 1 point 15 of the regulation of the Minister of Labour and Social Policy of 21 April 2015 on cases in which entrusting work to a foreigner on the territory of the Republic of Poland is permissible without the need to obtain a work permit (*L.J.* 2018, it. 2273).

that he or she has a place of residence in the territory of the Republic of Poland, sufficient financial resources to cover the cost of living and return travel to a Member State of the European Union which issued the residence permit to the foreigner or a long-stay visa or present documents confirming the possession of these funds. Such a person has to possess a contract for the admission of a foreigner for the purpose of conducting scientific research or development works.

The second type of a long-term mobility permit which executes provisions of Directive 2016/801 is a *temporary residence permit for the long-term mobility of a researcher's family member*. Such a permit is granted to a foreigner who is a member of the researcher's family, if the purpose of his/her stay on the territory of the Republic of Poland is to stay with the researcher using the long-term mobility of the researcher. To get such a permit, a scientist using or intending to use the long-term mobility of a scientist with whom a foreigner who is a member of his family is to stay on the territory of the Republic of Poland, has to have a residence permit referred to in art. 1 clause 2 lit. a Regulation No. 1030/2002, or a long-stay visa, with the note 'scientist', issued by another Member State of the European Union. The stay of a family member of a researcher for the purpose of long-term mobility is closely related to the method of legalization of the stay of a foreign researcher. Therefore, the possibility of granting a temporary residence permit depends, first of all, on the appropriate form of legalizing the stay of a foreign researcher.[17]

A foreigner who is a member of the researcher's family has to have a residence permit for family reunification and a residence permit issued in connection with this permit, referred to in art. 1 clause 2 lit. a Regulation No. 1030/2002, granted by a Member State of the European Union that issued the residence permit to the researcher, referred to in Art. 1 clause 2 lit. a Regulation No. 1030/2002, or a long-stay visa, with the note 'scientist', health insurance and sufficient financial resources, described the same as above.

8. Short-term Mobility Executing Provisions of Directive 2016/801

There are three types of short-term mobility which execute the provisions of Directive 2016/801 – student mobility, short-term mobility of a researcher and short-term mobility of a researcher`s family. This regulation in relation is fully determined by the provisions of Directive 2016/801.[18]A beneficiary of the *mobility of the student* on the territory of the Republic of Poland can be a holder of a residence permit referred to in Article 1(2)(a) of the Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals[19] or a long-stay visa, with the annotation 'student', issued by another European Union Member State applying Directive 2016/801 including a state which does not belong to the Schengen Area. Such a person, for a period not exceeding the validity

17 M. Kumela-Romańska (2019). Art. 161(b). W: Ustawa o cudzoziemcach. Komentarz. *System Informacji Prawnej LEX*.

18 M. Kumela-Romańska (2019). Art. 151. W: Ustawa o cudzoziemcach. Komentarz. *System Informacji Prawnej LEX*.

19 OJ EU L 157 of 15.06.2002, p. 1, as amended.

of the abovementioned residence permit or a long-stay visa, has a right to enter and stay in order to continue or complete studies taken up in the territory of another European Union Member State for up to 360 days**,** regardless of the possibility of benefiting from this mobility in other EU Member States applying Directive 2016/801/EU, under certain conditions.

A foreign national who is a student or a doctoral candidate can benefit from student mobility if the following conditions are met cumulatively:

1) the purpose of the stay on the territory of Poland is to continue or complete studies taken up in the territory of another European Union Member State;
2) the foreign national is covered by an EU programme or a multilateral programme including mobility measures or an agreement between at least two higher education institutions providing for intra-EU mobility;
3) the residence permit, referred to in Article 1(2)(a) of Regulation No 1030/2002, or the long-stay visa issued by another Member State of the European Union held by the foreign national has the annotation 'student';
4) the period of stay in Poland does not exceed 360 days.

Researcher mobility concerns holders of a residence permit referred to in Article 1(2)(a) of the Council Regulation (EC) No. 1030/2002 or a long-term visa, with 'researcher' annotation, issued by another Member State of the European Union applying Directive 2016/801 including a state not belonging to the Schengen area. Such a person may benefit from the short-term mobility of researchers in the period not exceeding the validity of the abovementioned residence permit or a long-term visa, which translates into the right of entry, stay and conduction of a part of scientific research or development works in the research organisation having it seat at the territory of Poland within the period of up to 180 days in any period of 360 days.

A foreign researcher is entitled to benefit from the short-term mobility of researchers provided that the following conditions are jointly met:

1) the purpose of stay on the territory of the Republic of Poland of the foreigner being the researcher is performance of a part of scientific research or development works in the research organisation having it seat on the territory of Poland approved by the Minister of the Interior;
2) the residence document, referred to in Article 1(2)(a) of the Regulation No. 1030/2002 and held by the foreigner, or a long-term visa, issued by another EU Member State, contains the "researcher" annotation.

The last type of short-term mobility is a *mobility for researchers' family members*. Family members holding the residence permit referred to in Article 1(2)(a) of the Council Regulation (EC) No 1030/2002 or long-stay visas with the annotation "researcher" issued by another European Union Member State applying Directive 2016/801 including a state which does not belong to the Schengen Area can benefit from the short-term mobility of researchers' family members on the territory of the Republic of Poland for a period not exceeding the validity of this residence permit or the long-stay visa issued for family reunification, which gives the right to enter and stay as a member of the family of the researcher carrying out part of research or development in a research unit established in the territory of Poland for up to 180 days in any pe-

riod of 360 days, regardless of the possibility of benefiting from this mobility in other EU Member States applying Directive 2016/801/EU, under certain conditions.

A foreign national who is a researcher's family member can benefit from the short-term mobility of researcher's family members if the following conditions are met cumulatively:

1) the purpose of the stay on the territory of Poland of a foreign national being a family member of a researcher who benefits or intends to benefit from the short-term mobility of a researcher is a stay with that researcher in that territory;
2) a foreign national being a family member of a researcher has a residence permit for the purpose of family reunification and a residence permit issued in connection with this permit, referred to in Article 1(2)(a) of Regulation No. 1030/2002, issued by another European Union Member State which issued a residence permit, referred to in Article 1(2)(a) of Regulation No 1030/2002, or a long-stay visa with the annotation 'researcher', to that researcher.

The condition for a foreign national to benefit from all types of short-term mobility is also that the Head of the Office for Foreigners receives a notice of intention of the foreign national to benefit from this mobility from – depending on the circumstances – either the research unit established or the unit conducting the studies in the Republic of Poland approved by the Minister of the Interior.

9. Conclusions

Poland was reluctant to fulfill the obligations to transpose and implement the Directive 2016/801. On 20/07/2018 the European Commission sent a letter of formal notice for failing to communicate national legislation which fully transposes Directive 2016/801.[20] As this action was not sufficient on 07/03/2019 the European Commission sent a reasoned opinion for failure to notify of any national measures taken to implement the provisions of Directive 2016/801.[21] Luckily, proper legislative actions were taken in the end.

Because the discussed regulation has been in force for less than a year, and its full form (e.g. in terms of publishing lists of units) even shorter than a year, it is currently impossible to estimate its real impact on the functioning of migration to Poland. It is to be hoped, however, that it will properly fulfill the provisions of Directive 2016/801.

20 https://ec.europa.eu/commission/presscorner/detail/EN/MEMO_18_4486 (accessed 30.03.2020).
21 https://ec.europa.eu/commission/presscorner/detail/EN/MEMO_19_1472 (accessed 30.03.2020).

Directive 2016/801 in Romania: Foreign Students and Researchers in a Human Capital Exporting Country

*Sandra Mantu & Roxana Ruja**

Introduction

Among the stated aims of Directive 2016/801 are the simplification and streamlining of the existing legal framework regulating the mobility of third country national (TCN) students and researchers with a view to enhance the attractivity of the EU as a destination in the global race for talent. TCN students and researchers are described as a source of highly skilled people who play an important role as human capital. They represent one of the Union's key assets in ensuring smart, sustainable and inclusive growth in line with the Europe 2020 Strategy (Recital 3). Creating an open labour market for Union researchers and researchers from third countries is presented as a key aim of the European Research Area in which researchers, scientific knowledge and technology circulate freely (Recital 8). In this contribution, we discuss the transposition of Directive 2016/801 in Romania in light of the Directive's stated objectives of simplification and streamlining while equally bearing in mind that although other categories are envisaged by the personal scope of the Directive, students and researchers enjoy the most developed legal status. While Romania continues to be a country of net emigration, the number of foreign students has increased steadily over the last decade. Until 2018, TCN students outnumbered TCN labour migrants. The contribution is divided as follows: section 1 gives some general data and context on migration in Romania. Section 2 discusses the transposition of Directive 2016/801 into national law. Section 3 discusses the main conditions of admission and residence for the categories addressed by the Directive. Section 4 deals with the transposition of the intra-EU mobility provisions, while Section 5 focuses on the interaction between immigration legislation and labour law in the context of the Directive. Section 6 concludes.

1. General Data on Migration

Romania is a net emigration country. Between 2007-2015, an estimated 3,4 million Romanians counting for 17% of the population have emigrated. The total number of Romanians abroad is estimated at a much higher figure of 10 million persons, a figure that includes the historical diaspora. This higher number is relevant for the topic of this chapter since TCN ethnic Romanians who want to study in Romania benefit

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from preferential treatment in comparison to other TCNs concerning fees or access to scholarships to finance their studies. While the pool of foreign students interested in studying in Romania could be quite large, existing data shows that Romania exports more students than it manages to attract.[1] The overall number of students enrolled in higher education shows a negative trend, with a minor improvement in the academic year 2017-2018,[2] explained by emigration and Romania's shrinking population. The Romanian educational and research systems are chronically underfunded and in a state of continuous reform. Data for 2017 shows that 36.000 Romanian students studied abroad. Pupil emigration is becoming a new trend: approx. 4500 pupils leave annually for university studies abroad and 90% do not intend to return citing as reasons the poor facilities offered by Romanian universities and a lack of prospects on the labour market. The Romanian research system has contracted with 30% between 1995-2015, while in 2017 Romania spent only 0,49% of its GDP on research, well below the EU average of 2,06% of GDP in 2017.[3] At the same time, public and private employers fail to retain highly skilled and educated persons in the national labour market leading to brain drain in domains such as healthcare, research, engineering and IT.

The (un)attractiveness of the Romanian labour, educational and research markets is reflected by the low number of migrants present in Romania. As a result of reforms aimed at making labour migration more attractive, in 2019 there was an increase in the number of TCN labour migrants, but immigration is far from replacing emigration. At the end of 2019, there were 137.619 foreigners in Romania, 61% of them were TCNs (84.228 persons) and 39% from EU and EAA countries (53.331 persons). The main countries of origin are Moldova, Turkey and China. Compared with 2018, the number of foreigners increased by 14,3% which is explained by the increase in the number of TCN labour migrants that entered the Romanian labour market in 2019.[4] Most of the new labour migrants are Asian (Vietnam, Nepal and India).[5] Most of these migrants work as permanent workers, while categories such as au pair workers or paid trainees can be described as statistically irrelevant: in 2019, the Romanian General Inspectorate for Immigration (IGI) has issued 2 work authorisations for au pair workers and 1 work authorisation for a paid trainee. In 2018, IGI issued 4 work authorisations for paid trainees, and in 2017, 3 work authorisations.

1 Ministerul Educatiei Nationale (2019) *Raport privind starea invatamantului superior din Romania 2017-2018*, available at https://www.edu.ro/rapoarte-publice-periodice (last accessed 7 April 2020).

2 *Idem*.

3 L. Lazarescu (2017) *Emigrația forței de muncă înalt calificate din România. O analiză a domeniilor cercetare – dezvoltare, medicină și tehnologia informației și a comunicațiilor. Raport de cercetare*, available at http://www.cdcdi.ro/files/services/25_0_EMINET_Emigratia%20fortei%20de%20munca%20inalt%20calificate_2017.pdf). Eurostat (2017) *R&D expenditure*, Brussels: European Commission, available at https://ec.europa.eu/eurostat/statistics-explained/index.php/R_%26_D_expenditure#Gross_domestic_expenditure_on_R_.26_ D.

4 In 2019 the Romanian Inspectorate General for Immigration issued 31.169 work notices compared to 8.694 in 2018, IGI (2020) *Analiza activitatii Inspectoratului General pentru Imigrari in anul 2019*, Boekarest: IGI, available at http://igi.mai.gov.ro/sites/default/files/evaluarea_activitatii_in_anul_2019.pdf.

5 IGI (2020).

From the categories of TCNs covered by Directive 2016/801, the most relevant category, at least numerically, is that of students. Romanian universities have discovered foreign students as a source of much needed income to supplement their funding, with quite some efforts made towards the internationalization of education.[6] According to data from the Romanian immigration authorities (IGI) in 2019, students accounted for 20% of all migrants and their number increased by 1000 compared to 2018.[7] Until 2019, students were the second main group of migrants in Romania after family members. The most recent comprehensive data concerning migrant students is available for the academic year 2017-2018. There were 93 higher education institutions accredited or provisionally authorised by law and 538.000 students enrolled at all education levels.[8] The majority of these students were enrolled in state institutions and 75% of them followed an undergraduate course of study.

The data publicly provided by the Ministry of National Education for the academic year 2017/2018 describes the percentage of foreign students in two different manners. Firstly, from the total number of all students registered for undergraduate studies 93,9% are Romanian and 6,1% are foreign. Secondly, in relation to all students enrolled in state universities 5,4% were foreign students: 7.759 students came from EU/EEA/Switzerland and 21.085 from non-EU countries.[9] Almost half of all non-EU students are from the Republic of Moldova, while from the remaining non-EU students, about 40% come from Middle Eastern countries (Israel, Syria, Iraq, Jordan, Lebanon, Palestine and Iran). From the total of foreign students, 14.670 paid their own tuition fees, another 4.131 foreigners were ethnic Romanians who studied with a scholarship from the Romanian government.[10] The main study areas of foreign students (EU and non-EU) are general medicine, dental medicine and pharmacy.[11] This is explained by the relative low costs of tuition, which vary between 3500 euro to 6000 euro per year combined with the relative low cost of living in Romania when compared with other EU countries. 65% of foreign students follow programmes in French and 29% in English; the rest presumably follow courses in Romanian, which requires either prior knowledge or following a preparation year to learn Romanian.[12]

While 30% of all study places at medical universities are designed for foreign students (that is, they are places for tuition in French or English), only 4% of medical residents are TCNs who have graduated in Romania.[13] Explanations for this differ-

6 See for example the centralised portal offering info about studying in Romania, www.studyinromania.gov.ro.

7 IGI (2020) Retrospective anului 2019, *Migratia si azilul Editia* 51/2020, p. 21.

8 Both the number of HEI and the number of students is decreasing: compare the academic year 2013/2014 when there were 103 HEI and 578.000 students. Data from Ministerul Educatiei Nationale (2019), p. 4.

9 Mnisterul educatiei Nationale (2019), p. 10 & 32.

10 *Idem*, p. 35. The majority of them are from the Republic of Moldova.

11 *Idem*, p. 32.

12 S. Melenciuc (2019) *ANALIZĂ: Cum a ajuns școala românească de medicină una dintre cele mai internaționalizate din Europa, pe fondul nevoii de finanțare*, 23 septembrie 2019, https://360medical.ro/ stiri/ analiza-cum-a-ajuns-scoala-romaneasca-de-medicina-una-dintre-cele-mai-internationalizate-din-europa-pe-fondul-nevoii-de-finantare/2019/09/23/.

13 OECD (2019) *Recent Trends in International Migration of Doctors, Nurses and Medical Students*, Paris: OECD, https://www.oecd.org/health/recent-trends-in-international-migration-of-doctors-nurses-and-medical-students-5571ef48-en.htm.

ence include poor working conditions and infrastructure in Romanian hospitals and language barriers since TCN medical residents need to speak Romanian. This seems to confirm that foreign students are primarily seen as a source of financing rather than one of human capital that could be absorbed by the Romanian labour market which is in dire need of doctors. Data published by the Ministry of Education shows the concentration of TCN students at the undergraduate level: 80,9% BA, 15,5% Master and 3,6% PhD. This is in line with the overall structure of the student population. How this data translates into absorption rates by the labour and research markets is unclear as there is no data published on the number of TCN students or researchers who use the possibility to obtain a residence permit in order to seek work or open a business. Attracting foreign researchers to Romania is officially part of the government's national immigration strategy but seems to be mainly declaratory.[14] Prior to the transposition of Directive 2016/801 into national law, one of the main complaints about the recruitment of foreign researchers concerned the lengthy and complicated administrative procedures that potential employers had to go through in order to hire foreign researchers. The director of a Pan-European research project that expected to recruit over 200 international researchers to work in Romania complained that the obligation to meet the national labour market test for jobs that required highly specialised knowledge was burdensome and stalling the procedures for hiring the necessary research staff.[15]

2. The Transposition of Directive 2016/801 into Romanian Law

The deadline for the transposition of the directive was 23 May 2018. Romania transposed the directive late and did so after having received an official letter from the European Commission concerning the failure to communicate in time the national measures transposing in full Directive 2016/801. The obligation to transpose the directive was met by the adoption of Law 247/2018 on 5 November 2018[16] which introduced the necessary changes to the legal regime applicable to foreigners in Romania, namely Government Emergency Ordinance (GEO) 194/2002 and to foreigners' right to work in Romania, namely Government Ordinance (GO) 25/2014.[17] The main institutions with competences on the transposition and implementation of the

14 *HOTARARE* nr. 780/2015 pentru aprobarea Strategiei naţionale privind imigraţia pentru perioada 2015-2018 şi a Planului de acţiune pe anul 2015 pentru implementarea Strategiei naţionale privind imigraţia pentru perioada 2015-2018.

15 Un nou laborator de cercetare și dezvoltare din România va efectua cercetări în domeniul fizicii nucleare, https://ec.europa.eu/regional_policy/ro/projects/major/romania/new-r-d-facility-in-romania-to-undertake-research-in-nuclear-physics; E. Mihalcea, Cercetătorii: la stat pe bani puțini, la privat fără joburi!, *CARIERE*, nr. 232/noiembrie 2016, https://revistacariere.ro/leadership/piata-muncii-employment/cercetatorii-la-stat-pe-bani-putini-la-privat-fara-joburi/.

16 Lege nr. 247 din 5 noiembrie 2018 pentru modificarea și completarea unor acte normative privind regimul străinilor în România, publicata in *Monitorul Official* nr. 941 din 7 noiembrie 2018.

17 In total there are 31 pieces of legislation which are relevant for the full transposition of the Directive. These concern various aspects ranging from the level of fees levied for the issuing of visas to the minister order setting out the procedure for designating higher education establishments as hosts for TCN researchers. The full list is available at https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX: 32016L0801.

directive are the Ministry of Internal Affairs, the Ministry of Labour and Social Justice, the Ministry of National Education and the Ministry of Research and Innovation. The Ministry of Education and the Ministry of Research and Innovation, respectively are designated as national contact points in relation to EU institutions and with the authorities of other EU states when it comes to the exchange of information and documents relevant for the application of the directive.[18]

The Romanian legislator decided to apply the Directive to all categories defined as part of its personal scope, not only to the mandatory ones.[19] Consequently, Law 247/2018 introduced new legal concepts or definitions such as pupil, student, (unpaid) trainee, education project, host entity, host family, au pair worker, host agreement for researchers. New provisions have been introduced to regulate the right of temporary residence for foreigners participating in volunteer programmes, education programmes, vocational training, pupil exchange programmes or educational projects and au pairs. For some categories, this correlates with the obligation for the host entity or the host family to bear the costs incurred with the return of overstaying foreigners. Likewise, the provisions on students and researchers' mobility and the notification procedure accompanying such mobility are new.

In addition to the changes linked with the transposition of Directive 2016/801, Law 247/2018 made a series of amendments with a big impact on TCN labour migration. The fees for issuing work or secondment authorisations were reduced by 50% and the procedures for obtaining such authorisations have been simplified for several categories of workers, including a relaxation of the obligation to publish available jobs as part of the labour market test. Among the most important changes was the lowering of the salary threshold for permanent workers in order to extend their right to stay from the level of the average gross salary to the national gross minimum salary.[20] This change made TCN labour attractive for employers as the pay threshold became the same as for national workers. Together with a growing economy, it explains the 177% increase in the number of work authorisations issued in 2019 compared to 2018.

3. Conditions for the Admission and Residence of TCNs Falling under Directive 2016/801

Generally, TCNs who wish to enter Romania need to possess a visa. Romanian legislation differentiates between short-stay and long-term visas, both of which can be issued for different purposes. While both types of visas are issued for 90 days, only the long-stay visa allows the holder to request the extension of the temporary right to

18 Article V of Law no 247/2018.

19 Recital 21 and Article 2 of Directive 2016/801 leaves the national legislator freedom to decide whether it extends the application of the directive to TCNs who apply to be admitted for the purpose of a pupil exchange scheme or educational project, voluntary service other than the European voluntary service or au pairing.

20 In 2019, the gross minimum salary was 446 EURO, while the gross average salary was a bit more than 1000 EURO (5163 RON). For EU Blue Card holders, Romania lowered the required salary threshold from 4 to 2 times the average gross salary in the economy.

reside for a period longer than 90 days.[21] Thus, to be able to reside in Romania for study, research or other purposes, TCNs must first obtain a long-stay visa and once in Romania, they can apply for a residence permit certifying their right to reside at the local office of the Romanian Inspectorate for Immigration (IGI) or online.

3.1. Admission and Residence for Study Purposes

3.1.1. Admission

Article 45 of GEO 194/2002 stipulates that the following categories of TCNs can apply for a long-stay study visa: student, (unpaid) trainee, pupil or foreigner who participates in a pupil exchange programme or educational project. For each subcategory special conditions apply.

The category 'student' is defined in Article 2/n^2 of GEO 194/2002 as including BA and MA students, PhD students and post-doctoral students. The category 'trainee' is defined by Article 2/n^3 of GEO 194/2002 as a foreigner who has a higher education diploma or pursues a course of study leading to such a diploma who has been admitted to a training programme in order to gain knowledge, practical skills and experience in a professional setting. Trainees with a higher education diploma need to be distinguished from another category of unpaid trainees who lack a higher education diploma and who can enter Romania with a long-stay visa for other purposes. Moreover, the legislation that regulates foreigners' right of work in Romania, sets out the conditions in which a paid TCN trainee can work in Romania. A paid trainee will need to obtain a long-stay visa for work purposes, which will require the employer to obtain first a work authorisation.[22] 'Pupils' are defined as foreigners who have been accepted by a pre-university educational entity accredited or provisionally authorised by law as part of a pupil exchange programme or educational project.[23]

To obtain a long-stay study visa, a TCN student must make a visa application for this purpose, at least 2 months before the intended departure but not earlier than 3 months.[24] The application can be made online or in person at Romanian diplomatic missions or consular offices abroad. The latter will issue a long-stay visa with the approval of the National Visa Centre (which is part of the Romanian Ministry of External Affairs) and the authorisation of the Romanian Office for Immigration that will check whether the general and special conditions attached to each type of visa are met.[25] A long-stay study visa is issued for 90 days with one or multiple entries. It allows the holder to enter Romania and apply for a short stay right of residence for study purposes.

Students must also meet a series of special conditions to obtain a visa.[26] These include proof of being accepted for study issued by the Ministry of National Educa-

21 Article 2/g^/1 GEO 194/2002.
22 Article 9 GO 25/2014.
23 Article 2/n^1 GEO 194/2002.
24 Article 29(4) GEO 194/2002 stipulates that the visa application is inadmissible when the application is made longer than 3 months prior to the intended entry. The processing time for a visa application is a maximum of 60 days (Article 31 GEO 194/2002 stipulates that a long-stay visa request is solved in a max of 60 days from the date of the request).
25 Article 30/7 and 8 GEO 194/2002.
26 Article 45/2/a GEO 194/2002.

tion; proof of having paid the study enrolment fee for at least one year, proof of sufficient means for the duration of the visa, no criminal record, medical insurance for the duration of the visa, in the case of minor students or pupils, parental approval, and proof of knowledge of the language of tuition except for those TCN students enrolled in a Romanian language study programme during the language preparation year. Special rules apply to TCNs who are ethnic Romanians and to TCNs with a scholarship from the Romanian government (they are exempt from paying fees and from having to show sufficient resources).

The application for a study visa must be accompanied by proof of acceptance in a study programme with frequency by a state or private higher education institution (HEI) which is accredited or provisionally authorised by law.[27] The conditions for entry and acceptance to study vary depending on the language of instruction (Romanian or foreign) and the study programme. If a student is accepted to a study programme, the Ministry of Education issues a letter of acceptance to study that serves as the required proof. Without this letter universities cannot enrol TCN students. Informal information obtained by the authors suggests that this is the first bottleneck that TCN students must deal with if they wish to study in Romania. Because the Ministry of Education is sometimes late in issuing the letter of acceptance, the visa procedure is delayed and the student obtains the visa only after the start of the academic year leading to delays in the start of their study programme. Universities must find ways to work around these practices. For study programmes with mandatory attendance (e.g. medical studies), universities may adopt informal or special decisions to ensure that failure to attend classes does not lead to negative consequences (e.g. being expelled from study). Informally, universities may allow TCN students who can enter Romania without a visa to attend lectures but in the absence of the letter of acceptance to study these students are not enrolled officially; in their case, the study visa procedure is also delayed until the letter has been issued by the Ministry of Education. A TCN student who enters without a visa must be careful not to overstay the 90 days period and to obtain the study visa prior to the expiration of the 90 days, otherwise s/he risks becoming irregular and issued with a return decision.

For foreigners who participate in a pupil exchange programme or educational project, special conditions include: the age of the TCN must be between 13 and 19;[28] proof of being accepted to study issued by the Ministry of National Education; proof of participating in a pupil exchange programme or educational project led by an entity that is constituted by law and authorised for this purpose; proof from the entity that it will cover maintenance costs for the foreigner, including schooling costs and costs linked with the foreigner's potential removal; medical insurance for the duration of the visa; proof of accommodation with a family selected by the entity or in a special housing unit, and parental approval.[29]

For unpaid trainees who participate in a professional training programme, the following special conditions are relevant: a professional training agreement; the written commitment of the host entity that it will cover the cost made with the for-

27 In the Romanian system, BA, MA and PhD study programmes can be organized as studies with frequency, reduced frequency or distance learning.

28 Article 45/4 GEO 194/2002.

29 Article 45/2/b GEO 194/2002.

eigner's removal; proof of higher education diploma issued in the past 2 years or proof of enrolment in a study leading to obtaining such a diploma; proof of means of support for the duration of the visa and proof of accommodation.[30] The essential elements of the professional training agreement are also detailed. They include the description, duration, conditions and number of hours of the training, and the legal relationship between the trainee and the host entity.[31]

3.1.2. Residence

The general conditions that have to be met by all TCNs who apply for a temporary residence permit are detailed in Article 50 of GEO 194/2002. TCNs must continue to meet the conditions linked with their entry into Romania in relation to the purpose of their stay; sufficient means at the level of the gross minimum salary; no Schengen alerts; they do not constitute a danger for national security and public health; they possess a valid travel document; they request a right of residence for the same purpose as the long-stay visa; in case of extension of the right to reside, no violation of the purpose for which they enjoyed a right of residence; proof of legal accommodation; proof of social health insurance and proof of payment of fees. According to Article 51/3 GEO 194/2002 the following documents can be relied upon as proof of sufficed resources: a salary slip, pension slip, a tax declaration, bank statement or other equivalent documents. The application has to be submitted with at least 30 days prior to the expiration of the visa at the local office of the IGI; the deadline for solving the application is 30 days, which can be extended with 15 days in case extra verifications are necessary.[32] The foreigner can be asked to attend an interview at the local IGI and failure to attend may constitutes a ground for refusal of the permit. Article 51/4^1 stipulates that if the information or documents presented by the TCN are insufficient or inadequate, IGI should communicate this to the applicant and set a new deadline for submitting extra documents within a maximum 30 days deadline. Failure to provide the extra documents may constitute a ground for rejecting the application.

As a general rule, Article 50 of GEO 194/2002 stipulates that the temporary right to reside can be extended successively for periods of a max of 1 year provided that the general and special conditions attached to each stay purpose are met. However, Article 50/4 introduces the possibility to derogate from this general rule in line with special provisions of GEO 194/2002 or based on reciprocity. For several categories of TCNs covered by Directive 2016/801 (e.g students, researchers) there are special provisions on the duration for which the residence permit is issued. The residence permit is to be issued within 30 days after the application has been lodged, with the possibility to extend the deadline with 15 days.

The right of residence for study purposes is conditioned by the presence of a valid long-stay visa for study purposes. TCN students who are nationals of countries exempt from the obligation to obtain a visa when crossing the external borders can enter Romania for a maximum of 90 days in any 180 days period. Romanian courts

30 Article 45/2/c GEO 194/2002.
31 Article 45/3 GEO 194/2002.
32 Article 51 GEO 194/2002.

have clarified that the study visa gives a right of entry that is different from that stemming from Regulation 1806/2018. A TCN student can enter and stay in Romania for 90 days based on Regulation 1806/2018 followed by another period of residence of 90 days stemming from a long-stay study visa. The application for the residence permit for study has to be submitted within the validity period of the long-stay study visa.[33] Failure to apply within the study visa's validity period means that upon the visa's expiration the TCN becomes irregularly present on Romanian territory. IGI will issue a return decision, accompanied by an interdiction to enter Romania and sometimes an administrative fine.

Students and pupils can apply for a right of residence for the *total* duration of their studies provided that they meet the general conditions of Article 50 GEO 195/2002 and the following special conditions: proof of enrolment at a state or private educational institution for the purpose of study with frequency and proof of sufficient means at the level of the gross minimum salary for at least 6 months. Although the residence permit is usually issued for the duration of the study, in practice problems arise when students fail to pay their yearly tuition fees at the start of each academic year and they get expelled. The HEI informs the local IGI that the student was expelled, while IGI revokes the residence permit and issues a return decision. When students later pay their study fees and are re-admitted to study, IGI refuses to annul the return decision. Some courts have annulled such return decisions.[34]

Based on existing jurisprudence, a common ground for IGI to adopt a return decision against TCN students is failure to apply for a first-time residence permit for study prior to the expiration of the long-stay study visa or failure to apply within the legal time limit for the extension of the right to reside. If the student already has a residence permit, s/he must apply for an extension at least 30 days prior to the expiration of the residence permit. IGI practise suggests that it will refuse to register an application if some of the documents are missing or in the case of the sufficient means condition, the entire amount required is not available.[35] This seems contradictory to Article 51/4^1. This provision states that if the information or documents presented by the TCN are insufficient or inadequate, IGI should communicate this to the applicant and set a new deadline for submitting extra documents within a maximum 30 days deadline. Failure to provide the extra documents may constitute a ground for rejecting the application. When the Ministry of Education issues the letter of acceptance to study late, or when the HEI issues the proof of study enrolment late, students are unable to initiate the necessary procedure to obtain a residence permit within the prescribed time limit since IGI will refuse to register their application.[36]

33 Decision no. 290/2019 from 21.06.2019, Court of Appeal Bucuresti.

34 Decision no. 445/2019 din 16.12.2019, Court of Appeal Craiova and Decision no. 451/2019 from 20.12.2019, Court of Appeal Craiova.

35 Decision no. 290/2019 from 21.06.2019, Court of Appeal Bucuresti (in this case, the student had less money than the required amount); Decision no. 28/2019 from 12.02.2019, Court of Appeal Bucuresti (proof of accommodation was missing).

36 Based on the jurisprudence consulted for this chapter, TCN students are aware of IGI practice and do not submit applications. If the application is done online, it will be registered and the applicant will be given time to complete the missing documents. See, Decision no. 578/2019 from 11.10.2019, Court of Appeal Bucuresti.

There is no unitary jurisprudence on this issue. Some courts have annulled return decisions issued by IGI for failure to apply for an extension of the right to reside provided that by the time the case came to court the letter of acceptance to study or the proof of study enrolment was available because the conditions stipulated by the legislation – in this case, enrolment – were met .[37] In one case concerning volunteers, the court annulled the return decision arguing that IGI showed a lack of due diligence since it failed to inform the applicant that the proof of sufficient means was insufficient and instead proceeded to reject the application for a residence permit and issue a return decision.[38] This case is exceptional in the sense that IGI registered the application to start with.[39] In other cases, courts have upheld return decisions emphasizing the student's obligation to submit an application on time and the performance of due diligence in obtaining all the necessary documents in line with the general obligations imposed by Article 4 of GEO 194/2002 on all foreigners.[40] In these cases, delays in obtaining the letter of acceptance to study or the proof of enrolment were caused by students missing the deadline for enrolment or because the documents sent to the Ministry of Education contained errors due to translation. In one case, the TCN student first had a right to reside based on acceptance to follow a preparatory year in Romania after which he requested to have his medical studies completed in the country of origin equivalated.[41] This led to a delay and the Ministry issued the letter of acceptance to study after the expiry of the first residence permit. Although the student explained his situation to IGI, they nonetheless issued a return decision once the residence permit expired and the student failed to leave Romania. The court upheld the decision and argued that IGI must issue a return decision if the TCN's right of residence has expired since IGI cannot decide on the opportunity of the return decision. Moreover, in this case the court found that although at the moment of the hearing the student met the conditions for the extension of the right to reside, this was not a ground for annulling IGI's initial decision since at that moment the conditions were not met. This is contrary to jurisprudence where courts annulled return decisions justified by the students' readmission to study following expulsion for failure to pay the study fee. Students who transfer from one university to another can experience delays in issuing the necessary documents leading to failure to apply for an extension of the right to reside on time. They can also be faced with return decisions on grounds that there are no longer enrolled at a HEI.[42] Although in such cases, students are expected to perform due diligence and ensure they have the necessary documents, especially if this is not their first residence permit, there is no unitary

37 Decision no. 10/2020 from 14.01.2020, Court of Appeal Craiova; Decision no. 658/2019 from 22.10.2019, Court of Appeal Bucuresti; Decision no. 578/2019 from 11.10.2019, Court of Appeal Bucuresti.

38 Decision no. 123/2019 from 19.04.2019, Court of Appeal Bucuresti.

39 See footnote 35.

40 Decision no.19/2020 from 27.01.2020, Court of Appeal Craiova; Decision no. 99/2019 from 9.04.2019, Court of Appeal Bucuresti; Decision no. 28/2019 from 12.02.2019, Court of Appeal Bucuresti.

41 Decision no. 991/2019 from 17.12.2019, Court of Appeal Bucuresti.

42 Decision no. 757/2019 from 06.11.2029, Court of Appeal Bucuresti (IGI's return decision was upheld); Decision no. 97/2020 from 17.02.2020, Court of Appeal Bucuresti (IGI's return decision was annulled).

jurisprudence explaining how students' due diligence obligation should be interpreted in the context of bureaucratic procedures at the level of the Ministry of Education or of universities.

TCNs who have a right of residence for study can change their study profile or professional training provided that the initial duration of residence is not exceeded. Where that is the case, a new long-stay study visa needs to be obtained and a new residence permit issued.[43] Based on existing jurisprudence, IGI interprets this provision as requiring the student to obtain a new study visa even if the first right to reside has not expired. Lack of a new study visa leads to IGI's refusal to extend the right of residence and the adoption of a return decision. Some courts have upheld this interpretation.[44] However, the Bucharest Court of Appeal has interpreted this provision as allowing a TCN student who changed her study to submit an application for extension of her right to reside within the duration of validity of her residence permit without the study visa obligation invoking the teleological interpretation of the relevant provisions. The Court found that IGI had interpreted restrictively the provisions of Article 50/2 of GEO 194/2002 by requiring the student to apply for the extension of the right to reside before or at the very latest at the same time as the change of the study profile.[45] TCN students who suspend their studies for reasons other than medical ones will have their right of residence revoked by the IGI.[46]

TCNs part of a pupil exchange programme or educational programme can apply for a right of residence for a max of 1 year provided that they are enrolled at a state or private educational institution, they are participating in an exchange programme or educational programme led by an entity that is constituted by law and authorised for this purpose and the entity takes responsibility for the pupil's accommodation, support means and costs linked with his/her potential removal.

There is no specific provision on the extension of the right to reside for unpaid trainees who enter with a long-stay study visa. It is unclear if this is an omission or intentional. In this situation, the general rule of successive extensions of a maximum of 1 year applies.

Romanian legislation foresees the possibility of extending students' right of residence in several situations. Firstly, TCNs who fail to graduate within the period for which the right of residence is initially granted can request the extension of the right to reside to finalise their studies for a max of 1 year.[47] Secondly, after graduation TCNs can request the extension of the right to reside with a max of 6 months with a view to finalise their school or university situation and to authenticate their study documents.[48] Thirdly, the temporary right of residence for study purposes can be extended with 9 months after the completion of studies in order to seek a job or start a business based on documents that show the completion of studies. In this case,

43 Article 59 GEO 194/2002.

44 Decision no. 5/2019 from 8.01.2019, Court of Appeal Craiova; Decision no. 18/2020 from 14.02.2020, Court of Appeal Alba Iulia.

45 Decision no. 981/2019 from 17.12.2019, Court of Appeal Bucuresti.

46 Article 77/1/a^2 GEO 194/2002.

47 Article 58/1^1 GEO 194/2002.

48 Article 58/3 GEO 194/2002.

there is no obligation to obtain a long-stay visa for work or business purposes as a pre-condition for obtaining the right of residence.[49]

3.2. Admission and Residence for Research Purposes

Romania has introduced an approval procedure for institutions that can host TCN researchers. The methodology for approval is detailed in a decree of the Minister of Research and Innovation and the full list of approved research and development organisations is available online.[50] A researcher is defined as a TCN who holds a PhD diploma or a diploma that entitles him to enrol in a research or post-doctoral research programme who is accepted to perform scientific research activities as part of a programme by an accredited higher education institution, a research institute or a research and development unit.[51] There is an overlap between the legal definition of 'students' and 'researchers' at the level of post-doctoral students.

The scientific research visa is a long-stay visa (marked DICS) which gives the foreigner the right to work on the national territory for a period exceeding three months with the purpose of carrying out a scientific research project. It is conditioned on the existence of two authorisations: one from the Ministry of Research and Innovation and one from the Inspectorate General for Immigration.[52] The Ministry of Research and Innovation will issue the authorisation at the request of the host research and development institution if that institution is attested by law and there is a host agreement between the institution and the TCN researcher that has agreed to perform research activities as part of a scientific research project. The host agreement must contain info concerning the title or purpose of the research, the foreigner's engagement that s/he will make all efforts to finalise the research, the research-development institution's engagement that it will receive the foreigner, the start and end date of the research activity; if known, info concerning mobility during research and a mention about the automatic termination of the hosting agreement if the foreigner is not admitted or if the legal relationship between the researcher and the host institution ends.[53]

In order to obtain a right of temporary residence for scientific research purposes the TCN researcher must meet the general conditions of Article 50 of GEO 194/2002 and as a special condition must show the hosting agreement authorised by the Ministry of Research and Innovation.[54] The right to reside is awarded for the duration of the research as stipulated in the hosting agreement, but no longer than 5 consecutive years. TCN researchers who possess a residence permit for research purposes issued by another EU state present on Romanian territory can apply for a residence permit without the obligation to obtain a long-stay visa first. Similar to

49 Article 58/4 and 5 GEO 194/2002.

50 *ORDIN* nr. 1006 din 5 decembrie 2018 pentru aprobarea Normelor metodologice privind procedura de avizare a acordului de primire pentru cercetătorii din ţări terţe în scopul desfăşurării în România de activităţi de cercetare- dezvoltare-inovare.

51 Article 2/o GEO 194/2002.

52 Article 48 GEO 194/2002.

53 Article 48/4 GEO 194/2002.

54 Article 67 GEO 194/2002.

students, at the end of the research period, TCN researchers can apply to extend their right of residence in order to look for a job or start a business for max 9 months.[55] In order to be eligible for the search period, they must show documents that attest the completion of their research activity.

3.3. Admission and Residence for Other Purposes

Volunteers and unpaid trainees participating in a professional formation programme (vocational training) without a higher education diploma will need to obtain a long-stay visa for other purposes[56], which will allow them to obtain a right of residence for other purposes once in Romania. Special conditions have to be met by both categories in order to obtain the long-stay visa and later on, the right of residence.

For the visa, trainees must have a training contract with an accredited provider of professional training or a private or state company authorised by law to provide such training and show sufficient resources at the level of the gross minimum wage for the duration of the visa. If the trainee is a minor, parental approval is necessary. The training must be unpaid.[57] If paid, the trainee will need to obtain a long-stay visa for employment purposes which will require first obtaining a work authorisation from IGI. To obtain the residence permit besides the general conditions stipulated in Article 50, trainees must present the training contract, proof of medical insurance for the duration of the visa, proof of accommodation and of no criminal record, and proof of sufficient means at least the level of the average gross salary for the duration of the residence permit.[58] The residence permit will be issued for a maximum of 1 year and as an exception from the general rule, without any possibility of further extension.[59]

For volunteers, the visa is conditioned by the following: the TCN must be 14 years or older; parental approval for minors; there is a contract between the TCN and the host entity; the host entity is responsible for housing, maintenance and medical insurance for the entire visa period, as well as for pocket money or expenses and potential costs in case of the TCN's forced removal; proof that the host entity has a civil insurance policy, proof of health insurance, proof of accommodation and no criminal record. TCNs participating in the European Voluntary Service are exempt from the last condition. The volunteering contract must specify the activity to be performed, the conditions for monitoring the performance of duties, work hours, and if necessary for the performance of the volunteering contract the training activity that is undertaken by the TCN. When applying for the right of residence, besides the general conditions of Article 50 GEO 194/2002 volunteers will need to show the civil insurance policy of the host entity, the volunteering contract and prove sufficient means at the level of the average gross salary for the duration of the residence permit. The right to reside is obtained for the duration of the volunteering contract but not longer than 1 year.[60]

55 Article 67/4 GEO 194/2002.
56 Article 49 GEO 194/2002.
57 Article 49/d GEO 194/2002.
58 Article 69/1/e and Article 69/3 GEO 194/2002.
59 Article 69/5 GEO 194/2002.
60 Article 69/6 GEO 194/2002.

3.4. Admission and Residence for Au Pair Workers

Based on the manner in which Romania has transposed the relevant provisions from Directive 2016/801, it can be concluded that au pairs are treated as atypical workers. Law 247/2018 introduced the notion of 'host family', which is defined as the family that temporarily hosts an au pair worker and allows him/her to participate it its daily life.[61] Since the au pair is seen as a worker, to enter Romania the TCN will need to apply for a long-stay visa for work purposes. This requires a member of the host family, which acts as the employer, to obtain a work authorisation from IGI. To obtain a work authorisation for an au pair worker, the following conditions and documents must accompany the application: copy of employer's ID; fiscal certificate issued by competent authority; employer's criminal record; job description; individual part-time work contract for a max of 1 year to perform light household work and child caring; the TCN must be 18-30 years old; the TCN has completed lower secondary education; the employer undertakes the obligation to cover costs for the au pair's maintenance, housing and health care insurance and the employer has a different nationality from the au pair and no family links with him/her.[62] Besides the work authorisation, the other necessary documents for the visa application include proof of sufficient means at the level of the gross minimum salary for the duration of the visa, the TCN's criminal record and medical insurance. Once the work authorisation has been issued, the TCN must apply for the visa within 60 days, and the visa will be issued within 10 days.

To obtain a temporary right of residence, the au pair worker must lodge an application with the local IGI accompanied by the individual work contract, which is registered with the employment authorities. The work contract is for part-time work only (a max of 25 hours per week). The pay is at least at the level of the gross minimum salary calculated in relation to the number of hours worked.[63] The right to reside will coincide with the duration of the employment contract but no longer than 1 year. In principle, it is possible to switch legal categories but this requires an employment contract as regular (permanent) worker which depends upon obtaining a new work authorisation from IGI for permanent work.

4. Intra-EU Mobility for Students and Researchers

In line with the provisions of Directive 2016/801, Romania has introduced in its legislation provisions regulating intra-EU mobility for TCN students and researchers who hold a long-stay visa or residence permit for study or research issued by another EU state. In practice, this means that such TCN students or researchers can enter Romania and apply for a temporary right to reside without having to obtain first a long-stay visa for study or research. For both students and researchers, Romania has

61 Article 3 Law 247/2018 and Article 2/o^3 GEO 194/2002.

62 Articles 12^2 and 12^3 GO 25/2014. Besides these special conditions several general conditions will also need to be met: copy of employer's ID, fiscal certificate issued by competent authority, criminal record and the job description.

63 Article 11^1 GEO 194/2002.

introduced a notification procedure that requires cooperation between higher education institutions (students) or research and development units (researchers) and the immigration authorities.

TCN students who can benefit from intra-EU mobility must be attending the courses of a HEI as part of an EU or multilateral programme that includes mobility measures or where there is an agreement between several HEIs. Their stay in Romania is for a max of 360 days. The higher education institution must send a notification to the local immigration authority at least 30 days prior to the start of the course. The student is allowed to start his studies from the moment the notification is transmitted to IGI. The notification must contain the following elements: copy of valid passport; copy of the long-stay visa or permit issued by the first EU state; proof that the study is part of an EU programme that includes mobility or based on an agreement between two or more higher education institutions; proof of study enrolment issued by the Romanian higher education institution; proof and duration of mobility; proof of health insurance; proof of sufficient means at the level of the gross minimum salary for at least 6 months, and the TCN's address in Romania.

The immigration authority has 30 days to object to the notification and the grounds are listed expressly. They include: the foreigner has attempted to enter Romania illegally; s/he has violated the provisions on employing foreign workers; s/he suffers from an illness that is a threat to public health and refuses to undergo treatment;[64] the notification is incomplete; the long-stay visa or residence permit issued by the other EU state are expired, or in case of failure to notify within the 30-day limit. IGI's objections must be communicated in writing within 5 days to the competent authorities of the first EU state and to the higher education institution that made the notification. If an objection is formulated, the student is not allowed to attend courses.

For researchers a similar notification procedure is in place that allows the TCN researcher to enter and stay in Romania without the need to obtain a long-stay visa for research purposes. Unlike in the case of students, family members who have a permit or long-stay visa for family reunification issued by the first EU state can join the TCN researcher. The procedure reflects the differences between short-term mobility (for a max of 180 days in any 365 days) and long-term research mobility (for a period longer than 180 days). The notification procedure is applicable in case of short-term mobility. Research can be performed from the moment the research and development institution hosting the researcher notifies IGI. For long-term mobility no notification is needed, the TCN researcher can start his/her research activity from the moment s/he lodges the application for the extension of the right to reside.

The conditions that have to be met in terms of the elements of the notification that the research and development institution and the reasons for which IGI can object to the researcher's mobility are less stringent than in the case of students. Since there is no express deadline for the institution to send the notification, logically IGI cannot object to the researcher's mobility for being notified late. In the case of short-term mobility, the notification needs to include a copy of the authorisation issued by the Ministry of Research and Innovation to the hosting agreement between the TCN

64 Article 58/3 read together with Article 77/3/b and c GEO 194/2002.

researcher and the research and development institution but there are no conditions as to proof of health insurance or sufficient resources. Proof of sufficient means is required only in the case of long-term research mobility and set at the level of the gross minimum wage for at least 6 months.[65]

The quality of the transposition is rather poor as there are some baffling differences between the requirements for short-term and long-term mobility. For short-term mobility, the documents that need to accompany the notification sent by the research and development institution can be presented in copy. For long-term mobility, the word 'copy' is missing in relation to the long-stay or residence permit issued by the first state and the authorisation issued by the Ministry of Research and Innovation;[66] *per a contrario* the originals need to be presented. For short-stay mobility, IGI can formulate objections to the researcher's mobility within 30 days; these need to be communicated in writing to the first state but no deadline is mentioned.[67] Concerning long-stay mobility there is no provision dealing with the possibility for IGI to object to the researcher's mobility. However, there is a provision stating that the extension, revocation or annulment of the right to reside needs to be communicated in writing to the competent authorities of the first state within 30 days. There are no details as to what grounds can be invoked to annul or revoke the right to reside.[68]

5. Equal Treatment and Access to the Labour Market

GEO 194/2002 which regulates the legal regime of foreigners in Romania provides for equal treatment with Romanian nationals in respect of foreigners with a long-term right of residence.[69] Since the categories that are addressed by Directive 2016/801 enjoy a temporary right of residence in Romania this provision is not relevant for them. However, as a result of the transposition of Directive 2016/801, GEO 194/2002 was amended and now provides that foreigners with a temporary right of residence who are employed, registered jobseekers and researchers enjoy equal treatment with Romanian nationals in respect of:

- conditions of employment and protection against loss of employment and other forms of adverse treatment by employers, outstanding payments and measures concerning health and safety at work and access to services offered by employment agencies
- access to all forms of education and professional training, including scholarships
- equivalence of studies and diploma recognition
- social security, social assistance and social protection
- health care
- tax benefits

65 Article 67^1 GEO 194/2002.
66 Article 67^1/3/b and c versus Article 67^1/7/a and d GEO 194/2002.
67 Article 67^1/5 GEO 194/2002.
68 Article 67^1/10 GEO 194/2002.
69 Article 80^1/1 GEO 194/2002.

- access to public goods and services, including social housing
- freedom of association.[70]

This provision is relevant for researchers, au pairs and paid trainees for whom a work authorisation has been obtained by their employers.

In terms of access to the labour market, TCN students can work part-time during their studies for 4 hours a day without a work authorisation issued by IGI.[71] If students want to work longer, their employer will need to obtain a work authorisation from IGI similar to hiring other TCNs, including a labour market test. Working longer than the allowed maximum of hours constitutes a ground for the revocation of the residence permit.[72] The employer has an obligation to communicate to IGI within 10 days from the start of employment that it has employed a foreign student with reduced hours and forward a copy of the employment contract and of the temporary residence permit. In addition, the employer must communicate the termination or modification of the employment relationship. Failure to meet the communication obligation can lead to the imposition of sanctions, a fine between 1500 and 3000 RON (approx. 300 -620 EURO). The foreigner has an obligation to declare to the IGI that issued the residence permit any changes concerning his/her work situation within 30 days. Failure to communicate changes can lead to the imposition of a fine between 100-500 RON (approx. 20-100 EURO).[73] As mentioned earlier, after the completion of studies, it is possible to apply for an extension of the right to reside in order to find a job or to open a business. This provision should be understood as an exemption from the obligation to obtain a long-stay visa for work or commercial activities and not as an exemption for the employer to obtain a work authorisation or as exemption from the legal regime applicable to foreigners performing commercial activities in Romania. In my view, since during the 9 months orientation period the TCN student enjoys an extension of the right to stay for study purposes, s/he should be entitled to work part-time similar to 'regular' students.[74]

Au pair workers and paid trainees have access to the Romanian labour market and in their case a work authorisation is needed. Under the labour legislation applicable to foreign workers, a TCN worker who has a temporary right of residence for work based on an individual work contract for full-time work can work part-time (max 4 hours a day) for another employer without the need to obtain a work authorisation. This situation is not applicable to au pair workers who are not employed full-time. Researchers are also not covered by this provision since their right to reside is for research; however they are allowed to perform teaching activities, provided that they meet the legal conditions.

Unpaid trainees, volunteers and pupils do not have access to the labour market.

70 Article 80^1/3 GEO 194/2002.

71 Article 60 GEO 194/2002.

72 Article 77/3/a GEO 194/2002.

73 Employing a foreigner who lacks the work permission or who is irregularly present constitutes a contravention sanctioned with a fine of 10.000-20.000 RON per worker.

74 Article 58/4 GEO 194/2002 expressly states that this is an extension of the right to reside for study purposes but fails to detail if the TCN enjoys a right to work.

6. Concluding Remarks

The attraction and retention of foreign students and researchers is one of the stated goals of the Romanian migration policy. The transposition of Directive 2016/801 and its provisions on facilitated entry and residence for TCN students and researchers as well as the legal treatment to which these categories are entitled to post-entry should help achieve these aims. However, the Directive does not aim to fully harmonise the higher education or research systems of the EU25 nor their immigration systems. In the Romanian context, some of the relevant practical issues, such as the failure of relevant institutions to issue documents in time or the complexity of the administrative procedures aimed at obtaining a right of legal residence, are beyond the scope of the Directive. The Romanian administrative system is experienced by Romanian citizens as bureaucratic and complex. Foreign students or researchers will have a similar if not worse experience. Moreover, the new provisions on au pairs require Romanian citizens who wish to bring a TCN au pair to go through the work authorisation procedure applicable to TCN workers. The fact that in 2019 only one such permit was issued says a lot about the attractiveness of bringing in TCN au pairs through this procedure.

As a result of the transposition of the Directive into Romanian law, the procedure that TCN researchers must follow in order to enter and reside in Romania is much simpler than the previous situation where researchers were treated as TCN workers in respect of whom a work authorisation had to be obtained. TCN researchers are entitled to equal treatment, which should contribute Romania's attractiveness as a research destination. The new legal treatment of researchers should solve some of the complaints voiced previously by research institutes interested in hiring foreign researchers. The effect of the new provisions on intra-EU mobility for researchers and students are not clear at the time of writing of this chapter; there is no publicly available data on how many persons have benefited from this possibility.

If we refer to the volume of foreign students in Romania, the trend has been positive for a number of years, even before the transposition of the directive. Since most foreign students prefer medical studies, their volume seems more linked with the maximum study capacity of medical faculties than with the legal regime applicable to foreign students in general. As part of the effort to internationalise its educational market, Romania could develop more student-friendly immigration procedures by requesting less documents, improving cooperation between involved institutions or by introducing shorter terms for issuing a visa or residence permit. The directive's implementation shows that the retention of students in the Romanian labour market was not a priority since the orientation period is set at only 9 months. Moreover, there is no equal treatment with Romanian graduates when accessing the labour market since the obligation to obtain a work authorisation was not waived. For a country that suffers from brain drain at all levels of skills, this is a missed opportunity.

Finally, the immigration authorities apply the law rigidly, there is little cooperation between universities and the immigration authorities, while jurisprudence in this area of law is far from unitary. In practice, this means that TCN students and researchers may not always experience Romania as an attractive destination. If simplifying admin-

istrative procedures and streamlining the existing framework were the aims of Directive 2016/ 801, then Romania still has work to do to meet these goals.

A Legal Jungle for Third-country National Students and Researchers: Multilayered Intersections and Directive 2016/801

Tesseltje de Lange[*]

1. Introduction

On 15 November 2019 a group of experts came to the Radboud University Nijmegen to take stock of the implementation in the EU Member States of the EU Directive 2016/801 *on the conditions of entry and residence of third-country nationals (TCN) for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing.* A mouthful. Only the first three purposes, research, studies and trainees,[1] are to be implemented; the other purposes can be implemented by the Member States by choice. Our seminar was part of the Jean Monnet Centre of Excellence program of the Centre for Migration Law. We discussed the, in short, Students & Researchers Directive which had to have been implemented on 23 May 2018.[2] The contributions to the seminar, as the chapters in this book,

In my concluding address, drawing from the contributions presented and the discussions with legal practitioners present as well as from my previous research into the legal position of both non-EU students and researchers coming to the EU, I delineated five episodes in a legal jungle in which these third country nationals (TCN) coming into the EU under this Directive may find themselves. These episodes are divided in pre-admission; during their stay in one MS, or while mobile in the EU and finally, and after their studies or research, looking for a future career, possibly also in the EU (see figure 1). In each episode the rights accrued under the Directive, which is based on article 79 of the Treaty of the Functioning of the EU, interact with educational law or with other bits of migration law and (national or EU) laws on migrant labour market access. This is, thus, not just a horizontally multilayered legal jungle of EU law and its implementation in and interaction with national law, it is a highly intersectional field of different sets of laws and practices. Subsequently, this practice introduces the international students and researchers to different authorities, both public and private, that possibly rule their fate: a teacher influencing study progress, an employer (not) applying for a work permit, the school's administration not contacting the immigration authorities in time etcetera. By way of illustration, some Dutch case law will be discussed.

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1 As we did not discuss them much during the seminar, I will leave aside the trainees and refer to the chapter by Correia Horta & Antoons in this volume, paragraph 3.2.3.

2 This new Directive repealed and replaced the Students Directive 2004/114 and the Researchers Directive 2005/71. The Directive applies to 25 Member States, Denmark and Ireland opted-out.

Before I continue, two preliminary remarks: first, at the time of our conference, the European Migration Network had just presented its reports on attracting and retaining international students.[3] Most countries in the European Union were experiencing an economic all-time high, and international students paying high tuition fees, welcomed (to some extent) as future high skilled migrant workers, were part of the economic high. I pose that, like the beam of a flash light, the EMN report shines a strong light on the success of that moment, but failed to see the full picture, which appears to me as less attractive; my discussion of the legal jungle should explain. Second, drawing a more complete picture (although by no means do I pretend to be complete, this contribution is, if anything, intended to be the start of a line of investigation where migration policy and the legal consequences are analyzed), one must probably look beyond the current state of legal affairs and acknowledge a historical policy shift in international student migration. Admitting foreign students was once a form of 'development aid': foreign students would come to the 'West' to receive excellent education but they had to promise to return home upon completion of their studies. The acquired knowledge would 'develop' their countries of origin. At the time of the turn of the century, international student migration turned into a "battle for brains", a booming business for receiving countries. This historical shift has economic and labour market consequences, another research angle to the study of international student and research migration. The relevance of this type of migration for the economy and the labour market is for instance stressed by Spiegeler Castañeda on Germany, which sees the Directive as a tool to ensure a well-qualified workforce for the future. Overmars also stresses how the Netherlands can make good use of the migrants coming under this Directive, many of whom are receiving a technical, sought-after training. A third field of literature relevant to this study is that of migration studies. This literature shows how international student and research migration is not just an educational or professional career, but also shapes peoples' migratory careers: obtaining a foreign diploma is a step towards another (country of) destination.[4] Stepwise migration, coined by Paul and developed further for the study of international student migration by Zijlstra, shows that migration trajectories show different stages, duration, intentionality etcetera. I will touch on this briefly in so far the Directive facilitates or might hinder such trajectories.[5] For this address, I will focus on the legal jungle some of the contributions touch upon and which I wish to (begin to) untangle.

Also, at the time of finalizing the written version of my address, almost a year onwards, the COVID-19 pandemic is still raging across the world. COVID-19 has

3 European Migration Network, *EMN Synthesis Report for the EMN Study 2019 on Attrackting and Retaining International Students*, 2019, http://proxy.lib.sfu.ca/login?url=http://search.ebscohost.com/ login.aspx?direct=true&db=eue&AN=95938607&site=ehost-live.

4 Judith Zijlstra, Stepwise Student Migration: A Trajectory Analysis of Iranians Moving from Turkey to Europe and North America, *Geographical Research*, no. September 2019 (2020): 1-13, https://doi.org/10.1111/1745-5871.12434; Anju Mary Paul, Stepwise International Migration: A Multistage Migration Pattern for the Aspiring Migrant, *American Journal of Sociology* 116, no. 6 (2011), https://doi.org/10.1086/659641.

5 Judith Zijlstra, Stepwise Student Migration: A Trajectory Analysis of Iranians Moving from Turkey to Europe and North America, *Geographical Research*, 2020: 1-13, https://doi.org/10.1111/1745-5871.12434.

hugely impacted international mobility, also of students and researchers. In its June 11, 2020 communication, the European Commission presented a roadmap to opening up travel from outside the EU, after the Member States had locked down. The European Commission called on the Member States to 'ensure that those travelling to study are exempted, together with highly skilled non-EU workers, if their employment is necessary from an economic perspective and the work cannot be postponed or performed abroad'.[6] It is yet too early to make any claims on the future of international student migration and migration for research, but it is unlikely that things will go 'back to normal' soon if at all.

In the next section I will discuss the five episodes in the legal jungle and in the final section I will draw some conclusions and suggest some directions for future research.

2. Five Episodes in A Legal Jungle

It is especially third-country national students that end up in this jungle.[7] I see (at least) three stages in which international students, and to a lesser extent researchers (although this requires further research) can get lost in a legal jungle, which could possibly hurt their educational, migratory and work career in the EU. The first stage is the stage of admission to the educational institution and subsequently, the country.[8] This stage is a legal jungle because of the interaction between migration law and educational law. I call into memory the *Ben Alaya* case, where the Higher Education Institution (HEI) granted the migrant admission and the immigration authorities de facto challenged the HEIs judgement of the students capacities to undertake the planned studies.[9] The CJEU ruled that the question of admissibility to the HEI, whether the student is fit to study, was not for the migration authorities to decide.

The second stage during which TCN can get lost in a legal jungle is during their **studies**: study progress, intra-EU mobility, the right to work: rights following from the Directive but interacting with educational law, the laws of other EU member states (migration as well as education) and the laws on access to the labour market. The importance of activities undertaken during this stage for the next stage appears to be underestimated. The third stage regards what comes after the study is finished and the international student (or researcher) uses the right to a **search year** to find a

6 European Commission, On the Third Assessment of the Application of the Temporary Restriction on Non-Essential Travel to the EU, *Communication*, vol. COM(2020) (Brussels 2020).

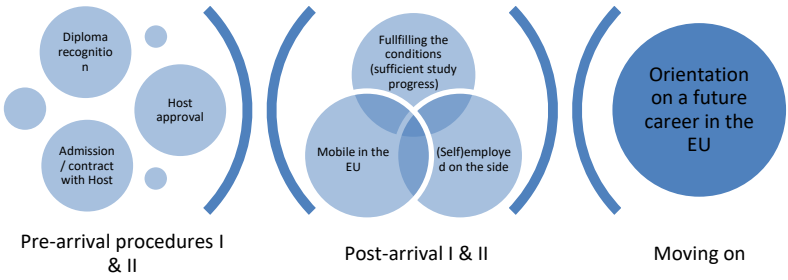
7 During the seminar I interviewed Maryam Chebti in her capacity of Chairwoman of the Disputes Advisory Committee of The Hague University of Applied Sciences.

8 An obstacle Directive 2018/601/EU does not address, but which is, in practice, a root cause of limited harmonization between the EU member states and lacking transparency, is the pre-admission stage of diploma recognition.

9 CJEU C-491/13, 10 September 2014, ECLI:EU:C:2014:2187; While the Egyptian *Ben Alaya* was admitted to a HEI, the German Immigration authorities doubted his capacity to study and refused his permit, which was precluded by the then in force Student Directive 2004/114/EC; In CJEU C-544/15, 4 April 2017, ECLI:EU:C:2017:255 the Iranian PhD student *Fahimian* was also refused admission by the German immigration authorities, this time they had not overstepped their limited discretionary powers for she posed a 'threat to public security'.

job in the Netherlands. This stage is actually also open to students graduated elsewhere from certain universities.

Figure 1: Five episodes of migration related procedures (in part) covered by Directive 2016/801/EU



2.1. Pre-arrival Procedures I: Diploma Recognition & Host Approval

The European Union has harmonised legislation regulating the recognition of European professional qualifications: A Union citizen or Egyptian national acquiring a diploma from, for instance, a Bulgarian HEI must see their diploma valued equally across the EU.[10] This is part of the European Research Area (ERA) initiative, discussed more extensively by Borg Haviaras in this volume. As she reiterates, there is no harmonised European legislation regulating the recognition of diplomas obtained outside the EU.[11] This means one Member State might refuse to recognise a non-EU diploma as the equivalent of a pre-university level diploma, thereby barring admission to university, while the same diploma may provide access to a university education in another Member State. The European Commission does strive towards developing an instrument for mutual recognition as part of the European Education Area by 2025.[12]

Another pre-arrival procedure is, in case of admission for research and study purposes, the procedure in which a public and/or private research organisation is approved as host (article 9; article 15). Member States may decide to provide for an approval procedure for those wishing to host a researcher under the procedure laid

10 Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications.

11 TCN who acquire an EU diploma must be treated equally to an EU national holding the same diploma

12 Tesseltje de Lange et al., *Labour Migration and Labour Market Integration of Migrants in the Netherlands : Barriers and Opportunities* (Amsterdam, 2019), http://www.seo.nl/en/page/article/knelpunten-op-de-nederlandse-arbeidsmarkt-en-potentieel-arbeidsaanbod-uit-afrika-en-het-midden-ooste/, p. 28.

down in this Directive, described more extensively by Calers in this volume.[13] This approval shall be in accordance with procedures set out in the national law or administrative practice of the Member State concerned. The reference to national law or administrative practice leaves the Member States a wide margin of discretion in the design of an approval procedure.[14]

2.2. Pre-arrival Procedures II: Admission Facilitating Authorisation

Next, the admission to the HEI (in the case of international students) or closing of a research agreement (in case of researchers), *and* the subsequent admission to the Member State are key. Especially if an entry clearance visa is required, timely application and receiving of the visa is key in order for the student to travel to Europe before classes start (pre-COVID-19 obviously). Chapter II of the Directive lists general conditions for admission and category specific conditions. The essence is that where all the general conditions and relevant specific conditions are fulfilled, the third-country national *shall* be entitled to an authorisation (a residence permit or long-term visa) to stay in the Member State. If a HEI refuses admission of a TCN to a certain study program, this decision falls within the scope of educational law and it can be challenged in accordance with educational law procedural regulations. If admission to the HEI is arranged, immigration procedures should more or less follow suit. In the introduction I referred to the *Ben Alaya* and the *Fahimian* cases setting boundaries to the level of the immigration authorities' discretion in authorizing entry. However, Mantu and Ruja in this volume, describes how the admission to the HEI and getting the proper paper work done is the first bottleneck for TCN students coming to study in Romania.

According to article 7(5) of the Directive, Member States may determine whether applications are to be submitted by the TCN, by the host entity, or by either of the two. HEI, as host entities of students and researchers, can have a significant impact on timely obtaining of visa. In some countries, like the Netherlands, students and researchers depend on the HEI for this; a dependency that can have downsides.[15] And although article 33 allows the Member States to provide for effective, proportionate and dissuasive sanctions against host entities not living up to their obligations under the Directive, such sanctions do not necessarily protect the international students from uncertainty over or loss of rights due to (mis)behaviour of the host.

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13 Correia Horta & Antoons in this volume report that the following countries scrutinized by them have implemented an approved host and privileges procedures: Austria; Czech Republic; Italy; Luxembourg; The Netherlands; Poland; Spain; Malta & Portugal, but not Germany and France.

14 Likely, a fee may be levied for this application procedure; article 36 on the right to levy reasonable fees applies to all applications in accordance with the Directive. Article 9, on the approval of the host for researchers, does refer to an application by the research organization. However, Article 15 on the approval of the host for students, does not mention an application. It would seem illogical to allow for a fee for the one and not for the other. From the discussions following the seminar, I take it this was not raised during the drafting stage.

15 C.A. Groenendijk, The Risks of Increased Third Party Involvement in the Application of Immigration Law, in: D. Faber (ed.), *Trust and Good Faith Across Borders, Liber Amicorum Prof.Dr. S.C.J.J. Kortmann*, Series of Law of Business and Finance (Deventer: Wolters-Kluwer, 2017), p. 31-45.

If the Member State refuses an authorisation, the procedural requirements are listed in article 34 of Directive 2016/801/EU. When the authorisation was applied for by the HEI as host entity, the international student, researcher or – if applicable au pair - will not necessarily be informed but they will be the one with the obvious interest to challenge a possible rejection in an immigration law procedure. The intersection between education law, the concept of hosting in migration law and applicable administrative law likely create uncertainty over what legal remedies are open to what decision and for whom. The TCN has not even arrived but might well already be lost in a bureaucratic and legal jungle partly created, or at least not prevented, by the Directive and the central position of the HEI.

2.3. Post-arrival I: Study Progress and Work

Once admitted, and when the authorisation to stay in the EU for e.g. study or research is granted, the legal position of the TCN is covered by yet another set of intersecting laws.

For students, the Directive dwells on withdrawing the permit if they are not making sufficient progress in the relevant studies in accordance with national law or administrative practice, or when the time limits imposed on access to economic activities are not respected.[16] In the event of withdrawal, when assessing the lack of progress in the relevant studies, Member States may consult with the host entity.[17] The HEIs have their own set of rules, either internal regulations or formal educational laws, on the required study progress. Also, there may be rules on reasons that call for some clemency on the students for not making the required progress. In case of such clemency, the HEI might not report the lack of progress to the authorities, thus preventing the immigration authorities from knowing there may be a reason to withdraw. But if such reporting is part of the role of an approved host, not reporting a student is a risky endeavor, as the HEI will not be keen on losing their status as approved host. A different issue, noted by Mantu and Ruja discussing Romania in this volume, is that yearly tuition fees have to be paid at the start of each academic year and if not, students get expelled, which supposedly may lead to a withdrawal of their residence permit.

I briefly discuss three examples from Dutch case law, in part typical cases like the ones discussed in the interview with Maryam Chebti during the seminar, each brought before a different entity. A Togolese student studying in Rotterdam held a residence permit as of September 1, 2015 for "study". The permit was withdrawn from 31 August 2016 on because the Erasmus University Rotterdam withdrew itself as the migrants' sponsor because he made insufficient progress.[18] The University had discussed his lack of progress and sent him several emails, but apparently to no avail, so in judicial review the withdrawal of his residence permit was upheld by the administrative court. Another HEI in Rotterdam threatened to report to the IND the lack of progress of one of its Chinese students. This student then sued the school before

16 Article 21(2) Directive 2016/801/EU.

17 Article 21(3) Directive 2016/801/EU.

18 Administrative District Court The Hague 03-04-2018, http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBDHA:2018:4326.

the civil court for negligence in the timely supervision of his Bachelor Thesis. The civil court denied this claim and, repeated after the school, that it was the students' responsibility to take care of his study progress.[19] It was wise of the Chinese student to challenge the decision over study progress before the civil court, because once the HEI has established a lack of study progress, the immigration authorities are likely to follow suit. In a third case, a student filed a complaint with the complaints Committee under the International study Code of Conduct; a Code of Conduct HEIs have to adhere to in order to be approved as a host.[20] The complaint was that the student had not been properly informed by the University of Tilburg as to when a retake could be taken and thus lack of progress could be repaired. Although the complaint was inadmissible, the committee mediated a solution. In an *obiter dictum* it claimed that "From the perspective of the Code of Conduct international students are in a vulnerable position and therefore need extra guidance during their studies, this is all the more true when these students experience difficulties in obtaining their diploma." The result of mediation may have the student re-enrolled, but a possible gap in the continuity of her legal residence cannot easily be mediated.

The second issue at stake in this episode after admission is, again especially for the students, the right to work. According to article 24 of Directive 2016/801/EU outside their study time and subject to national rules and conditions, students *shall* be entitled to be employed and *may* be entitled to exercise self-employed economic activity. The Directive allows the Member States to take into account the situation of their labour market. The Single Permit Directive applies to researchers and students,[21] however, a separate work authorisation may be required (e.g. to apply the labour market test).[22] Poland grants the students a right to work without the need for obtaining a separate work permit.[23] In the Netherlands however, a work permit is required. The question was even raised whether a work permit is required for extracurricular activities such as to sit on the (unremunerated) student council. Indeed, that is 'work' according to the Dutch rules, thus a work permit is required.

If a separate authorisation or work permit is required, but employers fail to apply for this (if it is the employer who has to do so) or the student failed to do so, the employment may be deemed illegal and sanctions may follow.[24] Depending on national law, such sanctions may negatively impact the right to remain or a future extension of the residence permit. Hence, the laws on access to the labour market add to the relevant legal jungle.

19 Civil District Court Rotterdam 27-06-2018, http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBROT:2018:6227.

20 See Overmars in this volume for a more elaborate discussion of the Code of Conduct.

21 Preamble 54 Directive 2016/801/EU.

22 Article 24(2) Directive 2016/801/EU.

23 See Florczak in this volume.

24 This type of illegal employment does not fall within the scope of Directive 2009/52, which only applies to employer sanctions for illegally employed and illegally staying migrants.

2.4. Post-arrival II: Intra-EU Mobility

By now, almost all the Directives on legal migration (except for the Family reunification and the Seasonal Workers Directive) allow for some sort of intra-EU mobility. Chapter VI of this Directive deals with the mobility between Member States. The legal basis of the mobility schemes was an issue during the drafting process, an issue which was resolved not by having the Schengen borders *acquis* as its legal basis but article 79 TFEU, which includes the right to set conditions governing freedom of movement and of residence in other Members States (Chavrier & Bury in this volume). Researchers and their family members can use the facility for short term mobility (a period of up to 180 days in any 360-day period per Member State) or long term mobility (more than 180 days per Member State).[25] A very detailed list of conditions for both types of mobility is given in the Directive. Students can also carry out part of their studies in another Member State for up to 360 days without the need to apply for a new authorization if they are covered by an EU or multilateral study programme or by an agreement between two or more higher education institutions that includes studying in the other Member States. Although this can be done without authorization, Correia Horta & Antoons in this volume explain how many Member States do require a notification to be submitted to the competent authorities of the first and second Member State.[26] This surely is an administrative burden, although so far the registration or lack thereof, has not presented itself as an intangible legal jungle. Spiegeler Castañeda in this volume, on the German implementation, draws attention to the needs for secure data-exchange to make mobility work, for which a special platform was designed. The risk of an insecure data jungle might thus have been prevented, the future will show if indeed the platform properly facilitates mobility. Finally, Calers identifies as a gap in the mobility scheme for students: the mobility provisions do not cover mobility for training purposes. E.g. an international student in France cannot go to Luxembourg for training, nor does the student, because they are still a student, fit the definition of a trainee.[27]

2.5. Moving on: Orientation towards a Future Career in the EU

After finalizing their studies, students and researchers are entitled to a search period to orient themselves towards a future career in the EU. Such a search period is necessary as 'part of the drive to ensure a well-qualified workforce for the future'.[28] The students should have the possibility to remain on the territory of the Member State concerned for the period of time with the intention to identify work opportunities or to set up a business. The Directive makes clear how 'the authorisation issued for the purpose of identifying work opportunities or setting up a business should not grant any automatic right of access to the labour market or to set up a business. Member States should retain their right to take into consideration the situation of their labour market when the TCN applies for a single permit or an employer applies for a work

25 Article 28-30 Directive 2016/801/EU.
26 Article 31(2) Directive 2016/801/EU.
27 Article 3(5) Directive 2016/801/EU.
28 Preamble 53 Directive 2016/801/EU.

permit to fill a post'.[29] Facilitating the opportunity to remain has become an important tool in attracting international students. Many Member States allow for a longer job-search duration than the minimum duration of 9 months.[30] And in line with this aim, Overmars elaborates on practical measures taken to increase bonding of international students with the Netherlands to retain them, such as non-obligatory language lessons, as part of a "train and retain" strategy.[31]

While the rights under the Directive and many practical efforts are engaged with the retaining of students, legal procedures can throw a spanner in the works. Again, drawing on Dutch case law, it shows students and researchers sometimes end up with a 'gap' in their legal residence period which closes the gate to obtaining a long term residence permit or acquiring nationality of the Member State, or at least it requires them to sit out another five consecutive years.

A graduate in technical drawing found a job during her search period and, when the period was almost over, applied for an extension and a residence permit for work.[32] This permit was denied because a labour market test was applied. They should have applied for a permit as high skilled worker, for which her employer had to be an approved sponsor. By the time they realized their mistake, her search year permit had expired. And because she did not apply for the permit as high skilled worker while still in the search year, she was no longer eligible for this favourable permit and was without legal residence. If she would obtain legal residence again, she would have to wait at least another five years before being eligible for permanent residence. She argued that the authorities had not made information sufficiently accessible for her to know her rights. While according to preamble 60 and article 35 Directive 2016/801/EU, on transparency and information, Member States are to ensure that adequate and regularly updated information is made available to the general public, notably on the internet, this information should concerning "amongst others the conditions and procedures for admission of third-country nationals to the territory of the Member States for the purposes of this Directive". The "amongst others" supposedly includes information on the search period but not necessarily on how to access national labour migration schemes after the search period is over.[33]

Some general recommendations by Borg Haviaras, while discussing the implementation in Cyprus, are of great interest in this respect. She calls it a missed opportunity, and I share this thought, that Directive 2016/801 does not facilitate access to a Blue Card (Directive 2009/52) for researchers and students searching for jobs. Nor

29 *Ibid.*

30 Article 25(1) Directive 2016/801/EU. According to Correia Horta & Antoons in this volume, the following countries allow for 12 months search period for students: Portugal, Spain, Italy, France, Austria and the Netherlands. Germany allows 18 months, Spiegeler Castañeda in this volume.

31 Brigitte Suter and Michael Jandl, Train and Retain: National and Regional Policies to Promote the Settlement of Foreign Graduates in Knowledge Economies, *Journal of International Migration and Integration* 9, no. 4 (December 2008): 401-18, http://search.proquest.com/docview/213856751/; Permanent Labour Migration to Austria, in: OECD, *Recruiting Immigrant Workers: Austria 2014*, Recruiting Immigrant Workers (Paris: OECD Publishing, 2014), p. 75-129.

32 District Court Rotterdam 23 June 2017, AWB 17/2960 (unpublished).

33 In the Dutch case, such information is made available on the website of the Immigration and Naturalisation Department in the format of Frequently Asked Questions and answers, see https://ind.nl/en/documents/faq_orientation_year_highly_educated_persons.pdf, last accessed 21 September 2020.

does Directive 2016/801 facilitate access to Long-Term Residence under Directive 2003/109/EU: On the contrary, the time migrants remain in the EU Member State as students only counts for half.[34] So, moving on towards a future career in the EU, with an EU migration status, is hardly facilitated by the Directive.

3. Concluding Remarks

The chapters in this book describe the making of Directive 2016/801/EU and its implementation in selected Member States. The chapters provide a wealth of material on legislating at the EU level, on multi-layered legal systems and on intersection with other fields of law and policy, especially on education and research. With these chapters we hope to contribute to scientific and more policy oriented literature, to further implementation, evaluation of this policy field, and the development of new policies on the myriad of migration categories covered by the Directive.

We hope to also stimulate future research on migration covered by this Directive. The chapters provide plenty evidence of pitfalls, barriers and limitations, in other words of a "legal jungle" which migrants coming to the EU (as well as the institutions where they will study, work, train etc.) might face. Such future research, is likely of a comparative nature and should move beyond the black letter law of implementation, and include case law from the Member States and on the ground experiences. Secondly, future research could draw hierarchies between students (based on country of origin, type or location of educational institution, gender etcetera) as has been done by Gilmartin et al.[35] They studied legal precarisation of international students in Ireland, which opted out from the Directive. Their research has shown higher education students are more privileged than language students; the latter more insecure about frequent changes in the laws and policies that define their opportunities, not just to study, but to remain, to develop a migration career. Third, future research into the functioning of the mobility schemes (and again, what hierarchies does such use show), possibly in comparison with mobility schemes in other EU migration Directives. Finally, to what extent does the mobility scheme, or the search period, which are both important for the notion of stepwise migration, increase opportunities to remain and build a future career in the EU?

34 Article 4(2) Directive 2003/109/EU.

35 Mary Gilmartin, Pablo Rojas Coppari, and Dean Phelan, Promising Precarity: The Lives of Dublin's International Students, *Journal of Ethnic and Migration Studies*, April 2, 2020: 1-18, https://doi.org/10.1080/1369183X.2020.1732617.

Annex

DIRECTIVE (EU) 2016/801 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 11 May 2016

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 EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular points (a) and (b) of Article 79(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee (1),

Having regard to the opinion of the Committee of the Regions (2),

Acting in accordance with the ordinary legislative procedure (3),

Whereas:

(1) A number of amendments are to be made to Council Directives 2004/114/EC(4) and 2005/71/EC(5). In the interests of clarity, those Directives should be recast.

(2) This Directive should respond to the need identified in the implementation reports on Directives 2004/114/EC and 2005/71/EC to remedy the identified weaknesses, to ensure increased transparency and legal certainty and to offer a coherent legal framework for different categories of third-country nationals coming to the Union. It should therefore simplify and streamline the existing provisions for those categories in a single instrument. Despite differences between the categories covered by this Directive, they also share a number of characteristics which makes it possible to address them through a common legal framework at Union level.

(3) This Directive should contribute to the Stockholm Programme's aim of approximating national legislation on the conditions for entry and residence of third-country nationals. Immigration from outside the Union is one source of highly skilled people, and students and researchers are in particular increasingly sought after. They play an important role in forming the Union's key asset, human capital, and in ensuring smart, sustainable and inclusive growth, and therefore contribute to the achievement of the objectives of the Europe 2020 Strategy.

(4) The implementation reports on Directives 2004/114/EC and 2005/71/EC pointed out certain insufficiencies, mainly in relation to admission conditions, rights, procedural safeguards, students' access to the labour market during their studies and intra-EU mobility provisions. Specific improvements were also considered necessary regarding the optional categories of third-country nationals. Subsequent wider consultations have also highlighted the need for better job-seeking possibilities for researchers and students and better protection of au pairs who are not covered by Directives 2004/114/EC and 2005/71/EC.

5) For the gradual establishment of an area of freedom, security and justice, the Treaty on the Functioning of the European Union (TFEU) provides for measures to be adopted in the fields of asylum, immigration and the protection of the rights of third-country nationals.

6) This Directive should also aim at fostering people-to-people contacts and mobility, as important elements of the Union's external policy, notably vis-à-vis the countries of the European Neighbourhood Policy or the Union's strategic partners. It should allow for a better contribution to the Global Approach to Migration and Mobility and its Mobility Partnerships which offer a concrete framework for dialogue and cooperation between the Member States and third countries, including in facilitating and organising legal migration.

(7) Migration for the purposes set out in this Directive should promote the generation and acquisition of knowledge and skills. It constitutes a form of mutual enrichment for the migrants concerned, their country of origin and the Member State concerned, while strengthening cultural links and enhancing cultural diversity.

(8) This Directive should promote the Union as an attractive location for research and innovation and advance it in the global competition for talent and, in so doing, lead to an increase in the Union's overall competitiveness and growth rates while creating jobs that make a greater contribution to GDP growth. Opening the Union up to third-country nationals who may be admitted for the purpose of research is also part of the Innovation Union flagship initiative. Creating an open labour market for Union researchers and for researchers from third countries was also affirmed as a key aim of the European Research Area, a unified area in which researchers, scientific knowledge and technology circulate freely.

(9) It is appropriate to facilitate the admission of third-country nationals applying for the purpose of carrying out a research activity through an admission procedure which does not depend on their legal relationship with the host research organisation and by no longer requiring a work permit in addition to an authorisation. This procedure should be based on collaboration between research organisations and the immigration authorities in Member States. It should give the former a key role in the admission procedure with a view to facilitating and speeding up the entry of third-country nationals applying for the purpose of carrying out a research activity in the Union while preserving Member States' prerogatives with respect to immigration policy. Research organisations, which Member States should have the possibility to approve in advance, should be able to sign either a

hosting agreement or a contract with a third-country national for the purpose of carrying out a research activity. Member States should issue an authorisation on the basis of the hosting agreement or the contract if the conditions for entry and residence are met.

(10) As the efforts to be made to achieve the target of investing 3 % of GDP in research largely concern the private sector, this sector should be encouraged, where appropriate, to recruit more researchers in the years to come.

(11) In order to make the Union more attractive for third-country nationals wishing to carry out a research activity in the Union, their family members, as defined in Council Directive 2003/86/EC (6), should be allowed to accompany them and benefit from intra-EU mobility provisions. Those family members should have access to the labour market in the first Member State and, in the case of long-term mobility, in the second Member States, except in exceptional circumstances such as particularly high levels of unemployment where Member States should retain the possibility to apply a test demonstrating that the post cannot be filled from within the domestic labour market for a period not exceeding 12 months. With the exception of derogations provided for in this Directive, all the provisions of Directive 2003/86/EC should apply, including grounds for rejection or withdrawal or refusal of renewal. Consequently, residence permits of family members could be withdrawn or their renewal refused if the authorisation of the researcher they are accompanying comes to an end and they do not enjoy any autonomous right of residence.

(12) Where appropriate, Member States should be encouraged to treat doctoral candidates as researchers for the purposes of this Directive.

(13) Implementation of this Directive should not encourage a brain drain from emerging or developing countries. Measures to support researchers' reintegration into their countries of origin should be taken in partnership with the countries of origin with a view to establishing a comprehensive migration policy.

(14) In order to promote Europe as a whole as a world centre of excellence for studies and training, the conditions for entry and residence of those who wish to come to the Union for these purposes should be improved and simplified. This is in line with the objectives of the agenda for the modernisation of Europe's higher education systems, in particular within the context of the internationalisation of European higher education. The approximation of the Member States' relevant national legislation is part of this endeavour. In this context and in line with the Council conclusions on the modernisation of higher education (7), the term 'higher education' encompasses all tertiary institutions which may include, inter alia, universities, universities of applied science, institutes of technology, grandes écoles, business schools, engineering schools, IUTs, colleges of higher education, professional schools, polytechnics and academies.

(15) The extension and deepening of the Bologna Process launched through the Bologna Joint Declaration of the European Ministers of Education of 19 June 1999 has led to more comparable, compatible and coherent systems of higher educa-

tion in participating countries but also beyond them. This is because Member States have supported the mobility of students and higher education institutions have integrated it in their curricula. This needs to be reflected through improved intra-EU mobility provisions for students. Making European higher education attractive and competitive is one of the objectives of the Bologna Declaration. The Bologna Process led to the establishment of the European Higher Education Area. Its three-cycle structure with easily readable programmes and degrees as well as the introduction of qualifications frameworks have made it more attractive for third-country nationals to study in Europe.

(16) The duration and other conditions of preparatory courses for students covered by this Directive should be determined by Member States in accordance with their national law.

(17) Evidence of acceptance of a third-country national by a higher education institution could include, among other possibilities, a letter or certificate confirming enrolment.

(18) Third-country nationals who apply to be admitted as trainees should provide evidence of having obtained a higher education degree within the two years preceding the date of their application or of pursuing a course of study in a third country that leads to a higher education degree. They should also present a training agreement which contains a description of the training programme, its educational objective or learning components, its duration and the conditions under which the trainee will be supervised, proving that they will benefit from genuine training and not be used as normal workers. In addition, host entities may be required to substantiate that the traineeship does not replace a job. Where specific conditions already exist in national law, collective agreements or practices for trainees, Member States should be able to require third-country nationals who apply to be admitted as trainees to meet those specific conditions.

(19) Trainee employees who come to work in the Union in the context of an intra-corporate transfer are not covered by this Directive, as they fall under the scope of Directive 2014/66/EU of the European Parliament and of the Council (8).

(20) This Directive should support the aims of the European Voluntary Service to develop solidarity, mutual understanding and tolerance among young people and the societies they live in, while contributing to strengthening social cohesion and promoting young people's active citenship. In order to ensure access to the European Voluntary Service in a consistent manner across the Union, Member States should apply the provisions of this Directive to third-country nationals applying for the purpose of European Voluntary Service.

(21) Member States should have the possibility to apply the provisions of this Directive to school pupils, volunteers other than those under the European Voluntary Service and au pairs, in order to facilitate their entry and residence and ensure their rights.

(22) If Member States decide to apply this Directive to school pupils, they are encouraged to ensure that the national admission procedure for teachers exclusively ac-

companying pupils within the framework of a pupil exchange scheme or an educational project is coherent with the procedure for school pupils provided for in this Directive.

(23) Au pairing contributes to fostering people-to-people contacts by giving third-country nationals an opportunity to improve their linguistic skills and develop their knowledge of and cultural links with the Member States. At the same time, third-country national au pairs could be exposed to risks of abuse. In order to ensure fair treatment of au pairs and address their specific needs, it should be possible for Member States to apply the provisions of this Directive regarding the entry and residence of au pairs.

(24) If third-country nationals can prove that they are in receipt of resources throughout the period of their stay in the Member State concerned that derive from a grant, a fellowship or a scholarship, a valid work contract, a binding job offer or a financial undertaking by a pupil exchange scheme organisation, an entity hosting trainees, a voluntary service scheme organisation, a host family or an organisation mediating au pairs, Member States should take such resources into account in assessing the availability of sufficient resources. Member States should be able to lay down an indicative reference amount which they regard as constituting 'sufficient resources' that might vary for each one of the respective categories of third-country nationals.

(25) Member States are encouraged to allow the applicant to present documents and information in an official language of the Union, other than their own official language or languages, determined by the Member State concerned.

(26) Member States should have the possibility to provide for an approval procedure for public or private research organisations or both wishing to host third-country national researchers or for higher education institutions wishing to host third-country national students. This approval should be in accordance with the procedures set out in the national law or administrative practice of the Member State concerned. Applications to approved research organisations or higher education institutions should be facilitated and should speed up the entry of third-country nationals coming to the Union for the purpose of research or studies.

(27) Member States should have the possibility to provide for an approval procedure for respective host entities wishing to host third-country national pupils, trainees or volunteers. Member States should have the possibility to apply this procedure to some or all of the categories of the host entities. This approval should be in accordance with the procedures set out in the national law or administrative practice of the Member State concerned. Applications to approved host entities should speed up the entry of third-country nationals coming to the Union for the purpose of training, voluntary service or pupil exchange schemes or educational projects.

(28) If Member States establish approval procedures for host entities, they should be able to decide to either allow admission only through approved host entities or to

establish an approval procedure while also allowing admission through non-approved host entities.

(29) This Directive should be without prejudice to the right of Member States to issue authorisations for the purpose of studies, research or training other than those regulated by this Directive to third-country nationals who fall outside its scope.

(30) Once all the general and specific conditions for admission are fulfilled, Member States should issue an authorisation, within specified time limits. If a Member State issues residence permits only on its territory and all the conditions of this Directive relating to admission are fulfilled, the Member State should grant the third-country national concerned the requisite visa and should ensure that the competent authorities effectively cooperate for that purpose. In the event that the Member State does not issue visas, it should grant the third-country national concerned an equivalent permit allowing entry.

(31) Authorisations should mention the status of the third-country national concerned. It should be possible for Member States to indicate additional information in paper format or store it in electronic format, provided this does not amount to additional conditions.

(32) The different periods of duration of the authorisations under this Directive should reflect the specific nature of the stay of each category of third-country nationals covered by this Directive.

(33) Member States should have the right to determine that the total duration of residence of students does not exceed the maximum duration of studies, as provided for in national law. In this respect, the maximum duration of studies could also include, if provided for by the national law of the Member State concerned, the possible extension of studies for the purpose of repeating one or more years of studies.

(34) It should be possible for Member States to charge applicants for handling applications for authorisations and notifications. The level of the fees should not be disproportionate or excessive in order not to constitute an obstacle to the objectives of this Directive.

(35) The rights granted to third-country nationals falling under the scope of this Directive should not depend on the form of the authorisation each Member State issues.

(36) It should be possible to refuse admission for the purposes of this Directive on duly justified grounds. In particular, it should be possible to refuse admission if a Member State considers, on the basis of an assessment of the facts in an individual case and taking into account the principle of proportionality, that the third-country national concerned is a potential threat to public policy, public security or public health.

(37) The objective of this Directive is not to regulate the admission and residence of third-country nationals for the purpose of employment and it does not aim to

harmonise national laws or practices with respect to workers' status. It is possible, nevertheless, that in some Member States specific categories of third-country nationals covered by this Directive are considered to be in an employment relationship on the basis of national law, collective agreements or practice. Where a Member State considers third-country national researchers, volunteers, trainees or au pairs to be in an employment relationship, that Member State should retain the right to determine volumes of admission of the category or categories concerned in accordance with Article 79(5) TFEU.

(38) Where a third-country national researcher, volunteer, trainee or au pair applies to be admitted to enter into an employment relationship in a Member State, it should be possible for that Member State to apply a test demonstrating that the post cannot be filled from within the domestic labour market.

(39) As regards students, volumes of admission should not apply since, even if they are allowed to work during their studies in accordance with the conditions provided for in this Directive, they seek admission to the territory of the Member States to pursue as their main activity a full-time course of study which could encompass a compulsory training.

(40) Where, after having been admitted to the territory of the Member State concerned, a researcher, volunteer, trainee or au pair applies to renew the authorisation to enter into or continue to be in an employment relationship in the Member State concerned, with the exception of a researcher who continues the employment relationship with the same host entity, it should be possible for that Member State to apply a test demonstrating that the post cannot be filled from within the domestic labour market.

(41) In case of doubts concerning the grounds of the application for admission, Member States should be able to carry out appropriate checks or require evidence in order to assess, on a case by case basis, the applicant's intended research, studies, training, voluntary service, pupil exchange scheme or educational project or au pairing and fight against abuse and misuse of the procedure set out in this Directive.

(42) Where the information provided is incomplete, Member States should inform the applicant within a reasonable period of the additional information that is required and set a reasonable deadline for providing it. Where additional information has not been provided within that deadline, the application could be rejected.

(43) National authorities should notify the applicant of the decision on the application. They should do so in writing as soon as possible and at the latest within the period specified in this Directive.

(44) This Directive aims to facilitate intra-EU mobility for researchers and students, inter alia by reducing the administrative burden related to mobility in several Member States. For this purpose, this Directive sets up a specific intra-EU mobility scheme whereby a third-country national who holds an authorisation for the purpose of research or studies issued by the first Member State is entitled to enter, stay and carry out part of the research activity or studies in one or several

second Member States in accordance with the provisions governing mobility under this Directive.

(45) In order to enable researchers to move easily from one research organisation to another for the purpose of research, their short-term mobility should cover stays in second Member States for a period of up to 180 days in any 360-day period per Member State. Long-term mobility for researchers should cover stays in one or several second Member States for a period of more than 180 days per Member State. Family members of researchers should be entitled to accompany the researcher during mobility. The procedure for their mobility should be aligned to that of the researcher they accompany.

(46) As regards students who are covered by Union or multilateral programmes or an agreement between two or more higher education institutions, in order to ensure continuity of their studies, this Directive should provide for mobility in one or several second Member States for a period of up to 360 days per Member State.

(47) Where a researcher or a student moves to a second Member State on the basis of a notification procedure and a document is necessary to facilitate access to services and rights, it should be possible for the second Member State to issue a document to attest that the researcher or the student is entitled to stay on the territory of that Member State. Such a document should not constitute an additional condition to benefit from the rights provided for in this Directive and should only be of a declaratory nature.

(48) While the specific mobility scheme established by this Directive should set up autonomous rules regarding entry and stay for the purpose of research or studies in Member States other than the one that issued the initial authorisation, all the other rules governing the movement of persons across borders as laid down in the relevant provisions of the Schengen acquis should continue to apply.

(49) Where the authorisation is issued by a Member State not applying the Schengen acquis in full and the researcher, his or her family members or the student, in the framework of intra-EU mobility, crosses an external border within the meaning of Regulation (EU) 2016/399 of the European Parliament and of the Council (9), a Member State should be entitled to require evidence proving that the researcher or the student is moving to its territory for the purpose of research or studies or that the family members are moving to its territory for the purpose of accompanying the researcher in the framework of mobility. In addition, in case of crossing of an external border within the meaning of Regulation (EU) 2016/399, the Member States applying the Schengen acquis in full should consult the Schengen information system and should refuse entry or object to the mobility for persons for whom an alert for the purpose of refusing entry or stay, as referred to in Regulation (EC) No 1987/2006 of the European Parliament and of the Council (10), has been issued in that system.

(50) This Directive should allow second Member States to request that a researcher or a student, who moves on the basis of an authorisation issued by the first Member State and does not or no longer fulfils the conditions for mobility, leaves their

territory. Where the researcher or the student has a valid authorisation issued by the first Member State, the second Member State should be able to request that researcher or student to go back to the first Member State in accordance with Directive 2008/115/EC of the European Parliament and of the Council (11). Where the mobility is allowed by the second Member State on the basis of the authorisation issued by the first Member State and that authorisation is withdrawn or has expired during the period of mobility, it should be possible for the second Member State to either decide to return the researcher or the student to a third country, in accordance with Directive 2008/115/EC, or request without delay the first Member State to allow re-entry of the researcher or student to its territory. In this latter case, the first Member State should issue the researcher or student with a document allowing re-entry to its territory.

(51) Union immigration policies and rules, on the one hand, and Union policies and programmes favouring mobility of researchers and students at Union level, on the other hand, should complement each other more. When determining the period of validity of the authorisation issued to researchers and students, Member States should take into account the planned mobility to other Member States, in accordance with the provisions on mobility. Researchers and students covered by Union or multilateral programmes that comprise mobility measures or agreements between two or more higher education institutions should be entitled to receive authorisations covering at least two years, provided that they fulfil the relevant admission conditions for that period.

(52) In order to allow students to cover part of the cost of their studies and, if possible, to gain practical experience, they should be given, during their studies, access to the labour market of the Member State where the studies are undertaken, under the conditions set out in this Directive. Students should be allowed to work a certain minimum amount of hours as specified in this Directive for that purpose. The principle of access for students to the labour market should be the general rule. However, in exceptional circumstances, Member States should be able to take into account the situation of their national labour markets.

(53) As part of the drive to ensure a well-qualified workforce for the future, students who graduate in the Union should have the possibility to remain on the territory of the Member State concerned for the period specified in this Directive with the intention to identify work opportunities or to set up a business. Researchers should also have that possibility upon completion of their research activity as defined in the hosting agreement. In order to be issued a residence permit for that purpose, students and researchers may be asked to provide evidence in accordance with the requirements of this Directive. Once Member States issue them such a residence permit, they cease to be considered as researchers or students within the meaning of this Directive. Member States should be able to check, after a minimum time period established in this Directive, if they have a genuine chance of being employed or of launching a business. This possibility is without prejudice to other reporting obligations provided for in national law for other purposes. The authorisation issued for the purpose of identifying work opportunities or setting up a business should not grant any automatic right of access to

the labour market or to set up a business. Member States should retain their right to take into consideration the situation of their labour market when the third-country national, who was issued an authorisation to remain on the territory for the purpose of job searching or to set up a business, applies for a work permit to fill a post.

(54) The fair treatment of third-country nationals covered by this Directive should be ensured in accordance with Article 79 TFEU. Researchers should enjoy equal treatment with nationals of the Member State concerned as regards Article 12(1) and (4) of Directive 2011/98/EU of the European Parliament and of the Council (12) subject to the possibility for that Member State to limit equal treatment in the specific cases provided for in this Directive. Directive 2011/98/EU should continue to apply to students, including the restrictions provided for in that Directive. Directive 2011/98/EU should apply to trainees, volunteers and au pairs when they are considered to be in an employment relationship in the Member State concerned. Trainees, volunteers and au pairs, when they are not considered to be in an employment relationship in the Member State concerned, as well as school pupils, should enjoy equal treatment with nationals of the Member State concerned as regards a minimum set of rights as provided for in this Directive. This includes access to goods and services, which does not cover study or vocational grants or loans.

(55) Equal treatment as granted 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, includes equal treatment in respect of those branches of social security listed in Article 3 of Regulation (EC) No 883/2004 of the European Parliament and of the Council (13). This Directive does not harmonise the social security legislation of Member States. It is limited to applying the principle of equal treatment in the field of social security to the third-country nationals falling within its scope. In addition, this Directive does not grant rights in relation to situations which lie outside the scope of Union law, such as in relation to family members residing in a third country. That should not affect, however, the right of survivors who derive rights from third-country nationals falling under the scope of this Directive, where applicable, to receive survivors' pensions when residing in a third country.

(56) In many Member States, the right to family benefits is conditional upon a certain connection with that Member State since the benefits are designed to support a positive demographic development in order to secure the future work force in that Member State. Therefore, this Directive should not affect the right of a Member State to restrict, under certain conditions, equal treatment in respect of family benefits when the researcher and the accompanying family members are staying temporarily in that Member State.

(57) In the event of mobility between Member States, Regulation (EU) No 1231/2010 of the European Parliament and of the Council (14) applies. This Directive should not confer more rights than those already provided for in existing Union law in the field of social security for third-country nationals who have cross-border interests between Member States.

(58) This Directive should be applied without prejudice to more favourable provisions contained in Union law and applicable international instruments.

(59) The residence permits provided for in this Directive should be issued by the competent authorities of the Member State using the uniform format as laid down in Council Regulation (EC) No 1030/2002 (15).

(60) Each Member State should ensure that adequate and regularly updated information is made available to the general public, notably on the internet, concerning the host entities approved for the purposes of this Directive and the conditions and procedures for admission of third-country nationals to the territory of the Member States for the purposes of this Directive.

(61) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in accordance with Article 6 of the Treaty on European Union (TEU).

(62) Member States should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinions, membership of a national minority, property, birth, disability, age or sexual orientation.

(63) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents (16), Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(64) Since the objective of this Directive, namely to determine the conditions of entry and residence of third-country nationals for the purposes of research, studies, training and European Voluntary Service, as mandatory provisions, and pupil exchange, voluntary service other than the European Voluntary Service or au pairing, as optional provisions, cannot be sufficiently achieved by the Member States and can rather, by reason of its scale or effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.

(65) In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to TEU and TFEU, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application.

(66) In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark annexed to TEU and TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

(67) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to Directives 2004/114/EC and 2005/71/EC. The obligation to transpose the provisions which are unchanged arises under those Directives.

(68) This Directive should be without prejudice to the obligations of the Member States relating to the time limits for transposition into national law and the dates of application of the Directives set out in Annex I, Part B,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I
GENERAL PROVISIONS

Article 1
Subject matter

This Directive lays down:

(a) the conditions of entry to, and residence for a period exceeding 90 days in, the territory of the Member States, and the rights, of third-country nationals, and where applicable their family members, for the purpose of research, studies, training or voluntary service in the European Voluntary Service, and where Member States so decide, pupil exchange schemes or educational projects, voluntary service other than the European Voluntary Service or au pairing;

(b) the conditions of entry and residence, and the rights, of researchers, and where applicable their family members, and students, referred to in point (a), in Member States other than the Member State which first grants the third-country national an authorisation on the basis of this Directive.

Article 2
Scope

1. This Directive shall apply to third-country nationals who apply to be admitted or who have been admitted to the territory of a Member State for the purpose of research, studies, training or voluntary service in the European Voluntary Service. Member States may also decide to apply the provisions of this Directive to third-country nationals who apply to be admitted for the purpose of a pupil exchange scheme or educational project, voluntary service other than the European Voluntary Service or au pairing.

2. This Directive shall not apply to third-country nationals:

(a) who seek international protection or who are beneficiaries of international protection in accordance with the Directive 2011/95/EU of the European Parliament and of the Council ([17]) or who are beneficiaries of temporary protection in accordance with the Council Directive 2001/55/EC ([18]) in a Member State;

(b) whose expulsion has been suspended for reasons of fact or of law;

(c) who are family members of Union citizens who have exercised their right to free movement within the Union;

(d) who enjoy long-term resident status in a Member State in accordance with Council Directive 2003/109/EC (19);

(e) who enjoy, together with their family members, and irrespective of their nationality, rights of free movement equivalent to those of citizens of the Union under agreements either between the Union and its Member States and third countries or between the Union and third countries;

(f) who come to the Union as trainee employees in the context of an intra-corporate transfer under Directive 2014/66/EU;

(g) who are admitted as highly qualified workers in accordance with Council Directive 2009/50/EC(»).

Article 3
Definitions

For the purposes of this Directive, the following definitions apply:

(1) 'third-country national' means a person who is not a citizen of the Union within the meaning of Article 20(1) TFEU;

(2) 'researcher' means a third-country national who holds a doctoral degree or an appropriate higher education qualification which gives that third-country national access to doctoral programmes, who is selected by a research organisation and admitted to the territory of a Member State for carrying out a research activity for which such qualification is normally required;

(3) 'student' means a third-country national who has been accepted by a higher education institution and is admitted to the territory of a Member State to pursue as a main activity a full-time course of study leading to a higher education qualification recognised by that Member State, including diplomas, certificates or doctoral degrees in a higher education institution, which may cover a preparatory course prior to such education, in accordance with national law, or compulsory training;

(4) 'school pupil' means a third-country national who is admitted to the territory of a Member State to follow a recognised, state or regional programme of secondary education equivalent to level 2 or 3 of the International Standard Classification of Education, in the context of a pupil exchange scheme or educational project operated by an education establishment in accordance with national law or administrative practice;

(5) 'trainee' means a third-country national who holds a degree of higher education or is pursuing a course of study in a third country that leads to a higher education degree and who is admitted to the territory of a Member State for a training pro-

gramme for the purpose of gaining knowledge, practice and experience in a professional environment;

(6) 'volunteer' means a third-country national who is admitted to the territory of a Member State to participate in a voluntary service scheme;

(7) 'voluntary service scheme' means a programme of practical solidarity activities, based on a scheme recognised as such by the Member State concerned or the Union, pursuing objectives of general interest for a non-profit cause, in which the activities are not remunerated, except for reimbursement of expenses and/or pocket money;

(8) 'au pair' means a third-country national who is admitted to the territory of a Member State to be temporarily received by a family in order to improve his or her linguistic skills and knowledge of the Member State concerned in exchange for light housework and taking care of children;

(9) 'research' means creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of man, culture and society, and the use of this stock of knowledge to devise new applications;

(10) 'research organisation' means any public or private organisation which conducts research;

(11) 'education establishment' means a public or private secondary education establishment recognised by the Member State concerned or whose courses of study are recognised in accordance with national law or administrative practice on the basis of transparent criteria and which participates in a pupil exchange scheme or educational project for the purposes set out in this Directive;

(12) 'educational project' means a set of educational actions developed by a Member State's education establishment in cooperation with similar establishments in a third country, with the purpose of sharing cultures and knowledge;

(13) 'higher education institution' means any type of higher education institution recognised or considered as such in accordance with national law which, in accordance with national law or practice, offers recognised higher education degrees or other recognised tertiary level qualifications, whatever such establishments may be called, or any institution which, in accordance with national law or practice, offers vocational education or training at tertiary level;

(14) 'host entity' means a research organisation, a higher education institution, an education establishment, an organisation responsible for a voluntary service scheme or an entity hosting trainees to which the third-country national is assigned for the purposes of this Directive and which is located in the territory of the Member State concerned, irrespective of its legal form, in accordance with national law;

(15) 'host family' means a family temporarily receiving an au pair and sharing its daily family life in the territory of a Member State on the basis of an agreement concluded between that family and the au pair;

(16) 'employment' means the exercise of activities covering any form of labour or work regulated under national law or applicable collective agreements or in accordance with established practice for or under the direction or supervision of an employer;

(17) 'employer' means any natural person or any legal entity, for or under the direction or supervision of whom or which the employment is undertaken;

(18) 'first Member State' means the Member State which first issues a third-country national an authorisation on the basis of this Directive;

(19) 'second Member State' means any Member State other than the first Member State;

(20) 'Union or multilateral programmes that comprise mobility measures' means programmes funded by the Union or by Member States promoting mobility of third-country nationals in the Union or in the Member States participating in the respective programmes;

(21) 'authorisation' means a residence permit or, if provided for in national law, a long-stay visa issued for the purposes of this Directive;

(22) 'residence permit' means an authorisation issued using the format laid down in Regulation (EC) No 1030/2002 entitling its holder to stay legally on the territory of a Member State;

(23) 'long-stay visa' means an authorisation issued by a Member State as provided for in Article 18 of the Schengen Convention (21) or issued in accordance with the national law of Member States not applying the Schengen *acquis* in full;

(24) 'family members' means third-country nationals as defined in Article 4(1) of Directive 2003/86/EC.

Article 4

More favourable provisions

1. This Directive shall be without prejudice to more favourable provisions of:

(a) bilateral or multilateral agreements concluded between the Union or the Union and its Member States and one or more third countries; or

(b) bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.

2. This Directive shall be without prejudice to the right of Member States to adopt or maintain provisions that are more favourable to the third-country nationals to

whom this Directive applies with respect to point (a) of Article 10(2) and Articles 18, 22, 23, 24, 25, 26, 34 and 35.

CHAPTER II
ADMISSION

Article 5
Principles

1. The admission of a third-country national under this Directive shall be subject to the verification of documentary evidence attesting that the third-country national meets:

(a) the general conditions laid down in Article 7; and

(b) the relevant specific conditions in Article 8, 11, 12, 13, 14 or 16.

2. Member States may require the applicant to provide the documentary evidence referred to in paragraph 1 in an official language of the Member State concerned or in any official language of the Union determined by that Member State.

3. Where all the general conditions and relevant specific conditions are fulfilled, the third-country national shall be entitled to an authorisation.

Where a Member State issues residence permits only on its territory and all the admission conditions laid down in this Directive are fulfilled, the Member State concerned shall issue the third-country national with the requisite visa.

Article 6
Volumes of admission

This Directive shall not affect the right of a Member State to determine, in accordance with Article 79(5) TFEU, the volumes of admission of third-country nationals referred to in Article 2(1) of this Directive, with the exception of students, if the Member State concerned considers that they are or will be in an employment relationship. On that basis, an application for authorisation may either be considered inadmissible or be rejected.

Article 7
General conditions

1. As regards the admission of a third-country national under this Directive, the applicant shall:

(a) present a valid travel document, as determined by national law, and, if required, an application for a visa or a valid visa or, where applicable, a valid residence permit or a valid long-stay visa; Member States may require the period of validity of the travel document to cover at least the duration of the planned stay;

(b) if the third-country national is a minor under the national law of the Member State concerned, present a parental authorisation or an equivalent document for the planned stay;

(c) present evidence that the third-country national has or, if provided for in national law, has applied for sickness insurance for all risks normally covered for nationals of the Member State concerned; the insurance shall be valid for the duration of the planned stay;

(d) provide evidence, if the Member State so requires, that the fee for handling the application provided for in Article 36 has been paid;

(e) provide the evidence requested by the Member State concerned that during the planned stay the third-country national will have sufficient resources to cover subsistence costs without having recourse to the Member State's social assistance system, and return travel costs. The assessment of the sufficient resources shall be based on an individual examination of the case and shall take into account resources that derive, inter alia, from a grant, a scholarship or a fellowship, a valid work contract or a binding job offer or a financial undertaking by a pupil exchange scheme organisation, an entity hosting trainees, a voluntary service scheme organisation, a host family or an organisation mediating au pairs.

2. Member States may require the applicant to provide the address of the third-country national concerned in their territory.

   Where the national law of a Member State requires an address to be provided at the time of application and the third-country national concerned does not yet know the future address, Member States shall accept a temporary address. In such a case, the third-country national shall provide his or her permanent address at the latest at the time of the issuance of an authorisation pursuant to Article 17.

3. Member States may indicate a reference amount which they regard as constituting 'sufficient resources' as referred to under point (e) of paragraph (1). The assessment of the sufficient resources shall be based on an individual examination of the case.

4. The application shall be submitted and examined either when the third-country national concerned is residing outside the territory of the Member State to which the third-country national wishes to be admitted or when the third-country national is already residing in that Member State as holder of a valid residence permit or long-stay visa.
   By way of derogation, a Member State may accept, in accordance with its national law, an application submitted when the third-country national concerned is not in possession of a valid residence permit or long-stay visa but is legally present in its territory.

5. Member States shall determine whether applications are to be submitted by the third-country national, by the host entity, or by either of the two.

6. Third-country nationals who are considered to pose a threat to public policy, public security or public health shall not be admitted.

Article 8
Specific conditions for researchers

1. In addition to the general conditions laid down in Article 7, as regards the admission of a third-country national for the purpose of research, the applicant shall present a hosting agreement or, if provided for in national law, a contract, in accordance with Article 10.

2. Member States may require, in accordance with national law, a written undertaking from the research organisation that, in the event that a researcher remains illegally in the territory of the Member State concerned, that research organisation is responsible for reimbursing the costs related to the stay and return incurred by public funds. The financial responsibility of the research organisation shall end at the latest six months after the termination of the hosting agreement.
Where the right of residence of the researcher is extended in accordance with Article 25, the responsibility of the research organisation referred to in the first subparagraph of this paragraph shall be limited until the starting date of the residence permit for the purpose of job-searching or entrepreneurship.

3. A Member State which has established an approval procedure for research organisations in accordance with Article 9 shall exempt applicants from presenting one or more of the documents or evidence referred to in paragraph 2 of this Article or in points (c), (d) or (e) of Article 7(1) or in Article 7(2), where the third-country nationals are to be hosted by approved research organisations.

Article 9
Approval of research organisations

1. Member States may decide to provide for an approval procedure for public and/or private research organisations wishing to host a researcher under the admission procedure laid down in this Directive.

2. The approval of the research organisations shall be in accordance with procedures set out in the national law or administrative practice of the Member State concerned. Applications for approval by research organisations shall be made in accordance with those procedures and be based on their statutory tasks or corporate purposes as appropriate and on evidence that they conduct research.
The approval granted to a research organisation shall be for a minimum period of five years. In exceptional cases, Member States may grant approval for a shorter period.

3. A Member State may, among other measures, refuse to renew or decide to withdraw the approval where:

(a) a research organisation no longer complies with paragraph 2 of this Article, Article 8(2) or Article 10(7);

(b) the approval has been fraudulently acquired; or

(c) a research organisation has signed a hosting agreement with a third-country national fraudulently or negligently.

Where an application for renewal has been refused or where the approval has been withdrawn, the organisation concerned may be banned from reapplying for approval for a period of up to five years from the date of publication of the decision on non-renewal or withdrawal.

Article 10
Hosting agreement

1. A research organisation wishing to host a third-country national for the purpose of research shall sign a hosting agreement with the latter. Member States may provide that contracts containing the elements referred to in paragraph 2 and, where applicable, paragraph 3 shall be considered equivalent to hosting agreements for the purposes of this Directive.

2. The hosting agreement shall contain:

(a) the title or purpose of the research activity or the research area;

(b) an undertaking by the third-country national to endeavour to complete the research activity;

(c) an undertaking by the research organisation to host the third-country national for the purpose of completing the research activity;

(d) the start and end date or the estimated duration of the research activity;

(e) information on the intended mobility in one or several second Member States if the mobility is known at the time of application in the first Member State.

3. Member States may also require the hosting agreement to contain:

(a) information on the legal relationship between the research organisation and the researcher;

(b) information on the working conditions of the researcher.

4. Research organisations may sign hosting agreements only if the research activity has been accepted by the relevant instances in the organisation, after examination of:

(a) the purpose and estimated duration of the research activity, and the availability of the necessary financial resources for it to be carried out;

(b) the third-country national's qualifications in the light of the research objectives, as evidenced by a certified copy of the qualifications.

5. The hosting agreement shall automatically lapse if the third-country national is not admitted or when the legal relationship between the researcher and the research organisation is terminated.

6. Research organisations shall promptly inform the competent authority of the Member State concerned of any occurrence likely to prevent implementation of the hosting agreement.

7. Member States may provide that, within two months of the date of expiry of the hosting agreement concerned, the research organisation shall provide the competent authorities designated for that purpose with confirmation that the research activity has been carried out.

8. Member States may determine in their national law the consequences of the withdrawal of the approval or the refusal to renew the approval for the existing hosting agreements, concluded in accordance with this Article, as well as the consequences for the authorisations of the researchers concerned.

Article 11
Specific conditions for students

1. In addition to the general conditions laid down in Article 7, as regards the admission of a third-country national for the purpose of studies, the applicant shall provide evidence:

(a) that the third-country national has been accepted by a higher education institution to follow a course of study;

(b) if the Member State so requires, that the fees charged by the higher education institution have been paid;

(c) if the Member State so requires, of sufficient knowledge of the language of the course to be followed;

(d) if the Member State so requires, that the third-country national will have sufficient resources to cover the study costs.

2. Third-country nationals who automatically qualify for sickness insurance for all risks normally covered for the nationals of the Member State concerned as a result of enrolment at a higher education institution shall be presumed to meet the condition laid down in point (c) of Article 7(1).

3. A Member State which has established an approval procedure for higher education institutions in accordance with Article 15 shall exempt applicants from presenting one or more of the documents or evidence referred to in points (b), (c) or (d) of paragraph 1 of this Article or in point (d) of Article 7(1) or in Article 7(2), where the third-country nationals are to be hosted by approved higher education institutions.

Article 12
Specific conditions for school pupils

1. In addition to the general conditions laid down in Article 7, as regards the admission of a third-country national for the purpose of a pupil exchange scheme or an educational project, the applicant shall provide evidence:

(a) that the third-country national is neither below the minimum nor above the maximum age or grade set by the Member State concerned;

(b) of acceptance by an education establishment;

(c) of participation in a recognised, state or regional programme of education in the context of a pupil exchange scheme or educational project operated by an education establishment in accordance with national law or administrative practice;

(d) that the education establishment, or, insofar as provided for by national law, a third party accepts responsibility for the third-country national throughout the stay in the territory of the Member State concerned, in particular as regards study costs;

(e) that the third-country national will be accommodated throughout the stay by a family, in a special accommodation facility within the education establishment or, insofar as provided for by national law, in any other facility meeting the conditions set by the Member State concerned and selected in accordance with the rules of the pupil exchange scheme or educational project in which the third-country national is participating.

2. Member States may limit the admission of school pupils participating in a pupil exchange scheme or educational project to nationals of third countries which offer the same possibility for their own nationals.

Article 13
Specific conditions for trainees

1. In addition to the general conditions laid down in Article 7, as regards the admission of a third-country national for the purpose of training, the applicant shall:

(a) present a training agreement, which provides for a theoretical and practical training, with a host entity. Member States may require that such training agreement is approved by the competent authority and that the terms upon which the agreement has been based meet the requirements established in national law, collective agreements or practices of the Member State concerned. The training agreement shall contain:

   (i) a description of the training programme, including the educational objective or learning components;

   (ii) the duration of the traineeship;

   (iii) the placement and supervision conditions of the traineeship;

(iv) the traineeship hours; and

(v) the legal relationship between the trainee and the host entity;

(b) provide evidence of having obtained a higher education degree within the two years preceding the date of application or of pursuing a course of study that leads to a higher education degree;

(c) provide evidence, if the Member State so requires, that during the stay the third-country national will have sufficient resources to cover the training costs;

(d) provide evidence, if the Member State so requires, that the third-country national has received or will receive language training so as to acquire the knowledge needed for the purpose of the traineeship;

(e) provide evidence, if the Member State so requires, that the host entity accepts responsibility for the third-country national throughout the stay in the territory of the Member State concerned, in particular as regards subsistence and accommodation costs;

(f) provide evidence, if the Member State so requires, that, if the third-country national is accommodated throughout the stay by the host entity, the accommodation meets the conditions set by the Member State concerned.

2. Member States may require the traineeship to be in the same field and at the same qualification level as the higher education degree or the course of study referred to in point (b) of paragraph 1.

3. Member States may require the host entity to substantiate that the traineeship does not replace a job.

4. Member States may require, in accordance with national law, a written undertaking from the host entity that, in the event that a trainee remains illegally in the territory of the Member State concerned, that host entity is responsible for reimbursing the costs related to the stay and return incurred by public funds. The financial responsibility of the host entity shall end at the latest six months after the termination of the training agreement.

Article 14
Specific conditions for volunteers

1. In addition to the general conditions laid down in Article 7, as regards the admission of a third-country national for the purpose of voluntary service, the applicant shall:

(a) provide an agreement with the host entity or, insofar as provided for by national law, another body responsible in the Member State concerned for the voluntary service scheme in which the third-country national is participating. The agreement shall contain:

(i) a description of the voluntary service scheme;

(ii) the duration of the voluntary service;

(iii) the placement and supervision conditions of the voluntary service;

(iv) the volunteering hours;

(v) the resources available to cover the third-country national's subsistence and accommodation costs and a minimum sum of money as pocket money throughout the stay; and

(vi) where applicable, the training the third-country national will receive to help perform the voluntary service;

(b) provide evidence, if the Member State so requires, that, if the third-country national is accommodated throughout the stay by the host entity, the accommodation meets the conditions set by the Member State concerned;

(c) provide evidence that the host entity or, insofar as provided for by national law, another body responsible for the voluntary service scheme has subscribed to a third-party insurance policy;

(d) provide evidence, if the Member State so requires, that the third-country national has received or will receive a basic introduction to the language, history, political and social structures of that Member State.

2. Member States may determine a minimum and maximum age limit for third-country nationals who apply to be admitted to a voluntary service scheme without prejudice to the rules under the European Voluntary Service.

3. Volunteers participating in the European Voluntary Service shall not be required to present evidence under point (c) and, where applicable, point (d) of paragraph 1.

Article 15

Approval of higher education institutions, education establishments, organisations responsible for a voluntary service scheme or entities hosting trainees

1. For the purposes of this Directive, Member States may decide to provide for an approval procedure for higher education institutions, education establishments, organisations responsible for a voluntary service scheme or entities hosting trainees.

2. The approval shall be in accordance with procedures set out in the national law or administrative practice of the Member State concerned.

3. Where a Member State decides to establish an approval procedure in accordance with paragraphs 1 and 2, it shall provide clear and transparent information to the host entities concerned about, inter alia, the conditions and criteria for approval, its period of validity, the consequences of non-compliance, including possible withdrawal and non-renewal, as well as any sanction applicable.

Article 16
Specific conditions for au pairs

1. In addition to the general conditions laid down in Article 7, as regards the admission of a third-country national for the purpose of au pairing, the third-country national shall:

(a) provide an agreement between the third-country national and the host family defining the third-country national's rights and obligations as an au pair, including specifications about the pocket money to be received, adequate arrangements allowing the au pair to attend courses and the maximum hours of family duties;

(b) be between the age of 18 and 30. In exceptional cases, Member States may allow the admission of a third-country national, as an au pair, who is above the maximum age limit;

(c) provide evidence that the host family or an organisation mediating au pairs, insofar as provided for by national law, accepts responsibility for the third-country national throughout the stay in the territory of the Member State concerned, in particular with regard to living expenses, accommodation and accident risks.

2. Member States may require the third-country national who applies to be admitted as an au pair to provide evidence:

(a) of basic knowledge of the language of the Member State concerned; or

(b) of having secondary education, professional qualifications or, where applicable, of fulfilling the conditions to exercise a regulated profession, as required by national law.

3. Member States may determine that the placement of au pairs shall only be carried out by an organisation mediating au pairs under the conditions defined in national law.

4. Member States may require the members of the host family to be of different nationality than the third-country national who applies to be admitted for the purpose of au pairing and not to have any family links with the third-country national concerned.

5. The maximum number of hours of au pair duties per week shall not exceed 25 hours. The au pair shall have at least one day per week free from au pair duties.

6. Member States may set a minimum sum of money as pocket money to be paid to the au pair.

CHAPTER III
AUTHORISATIONS AND DURATION OF RESIDENCE

Article 17
Authorisations

1. When the authorisation is in the form of a residence permit, Member States shall use the format laid down in Regulation (EC) No 1030/2002 and shall enter the term 'researcher', 'student', 'school pupil', 'trainee', 'volunteer' or 'au pair' on the residence permit.

2. When the authorisation is in the form of a long-stay visa, Member States shall enter a reference stating that it is issued to the 'researcher', 'student', 'school pupil', 'trainee', 'volunteer' or 'au pair' under the heading 'remarks' on the visa sticker.

3. For researchers and students coming to the Union in the framework of a specific Union or multilateral programme that comprises mobility measures, or an agreement between two or more recognised higher education institutions, the authorisation shall make a reference to that specific programme or agreement.

4. When the authorisation for long-term mobility is issued to a researcher in the form of a residence permit, Member States shall use the format laid down in Regulation (EC) No 1030/2002 and enter 'researcher-mobility' on the residence permit. When the authorisation for long-term mobility is issued to a researcher in the form of a long-stay visa, Member States shall enter 'researcher-mobility' under the heading 'remarks' on the visa sticker.

Article 18
Duration of authorisation

1. 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. The authorisation shall be renewed if Article 21 does not apply.
   The duration of the authorisation for researchers who are covered by Union or multilateral programmes that comprise mobility measures shall be at least two years, or for the duration of the hosting agreement where this is shorter. If the general conditions laid down in Article 7 are not met for the two years or for the whole duration of the hosting agreement, the first subparagraph of this paragraph shall apply. Member States shall retain the right to verify that the grounds for withdrawal set out in Article 21 do not apply.

2. The period of validity of an authorisation for students shall be at least one year, or for the duration of studies where this is shorter. The authorisation shall be renewed if Article 21 does not apply.
   The duration of the authorisation for students who are covered by Union or multilateral programmes that comprise mobility measures or by an agreement between two or more higher education institutions shall be at least two years, or for the duration of their studies where this is shorter. If the general conditions laid

down in Article 7 are not met for the two years or for the whole duration of the studies, the first subparagraph of this paragraph shall apply. Member States shall retain the right to verify that the grounds for withdrawal set out in Article 21 do not apply.

3. Member States may determine that the total time of residence for studies shall not exceed the maximum duration of studies as defined in national law.

4. The period of validity of an authorisation for school pupils shall be for the duration of the pupil exchange scheme or the educational project where this is shorter than one year, or for a maximum of one year. Member States may decide to allow the renewal of the authorisation once for the period necessary to complete the pupil exchange scheme or the educational project if Article 21 does not apply.

5. The period of validity of an authorisation for au pairs shall be for the duration of the agreement between the au pair and the host family where this is shorter than one year, or for a maximum period of one year. Member States may decide to allow the renewal of the authorisation once for a maximum period of six months, after a justified request by the host family, if Article 21 does not apply.

6. The period of validity of an authorisation for trainees shall be for the duration of the training agreement where this is shorter than six months, or for a maximum of six months. If the duration of the agreement is longer than six months, the duration of the validity of the authorisation may correspond to the period concerned in accordance with national law.
   Member States may decide to allow the renewal of the authorisation once for the period necessary to complete the traineeship if Article 21 does not apply.

7. The period of validity of an authorisation for volunteers shall be for the duration of the agreement referred to in point (a) of Article 14(1) where this is shorter than one year, or for a maximum period of one year. If the duration of the agreement is longer than one year, the duration of the validity of the authorisation may correspond to the period concerned in accordance with national law.

8. Member States may determine that, in case the validity of the travel document of the third-country national concerned is shorter than one year or shorter than two years in the cases referred to in paragraphs 1 and 2, the period of validity of the authorisation shall not exceed the period of validity of the travel document.

9. Where Member States allow entry and residence during the first year on the basis of a long-stay visa, an application for a residence permit shall be submitted before the expiry of the long-stay visa. The residence permit shall be issued if Article 21 does not apply.

Article 19
Additional information

1. Member States may indicate additional information in paper format or store such information in electronic format, as referred to in Article 4 of Regulation (EC)

No 1030/2002 and point (a) 16 of the Annex thereto. This information may relate to the residence and, in cases covered by Article 24 of this Directive, the economic activities of the student and include in particular the full list of Member States that the researcher or student intends to go to in the framework of mobility or relevant information on a specific Union or multilateral programme that comprises mobility measures or an agreement between two or more higher education institutions.

2. Member States may also provide that the information referred to in paragraph 1 of this Article shall be indicated on the long-stay visa, as referred to in point 12 of the Annex to Council Regulation (EC) No 1683/95 ([22]).

CHAPTER IV
GROUNDS FOR REJECTION, WITHDRAWAL OR NON-RENEWAL OF AUTHORISATIONS

Article 20
Grounds for rejection

1. Member States shall reject an application where:

(a) the general conditions laid down in Article 7 or the relevant specific conditions laid down in Articles 8, 11, 12, 13, 14 or 16 are not met;

(b) the documents presented have been fraudulently acquired, or falsified, or tampered with;

(c) the Member State concerned only allows admission through an approved host entity and the host entity is not approved.

2. Member States may reject an application where:

(a) the host entity, another body as referred to in point (a) of Article 14(1), a third party as referred to in point (d) of Article 12(1), the host family or the organisation mediating au pairs has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions;

(b) where applicable, the terms of employment as provided for in national law or collective agreements or practices in the Member State concerned are not met by the host entity or host family that will employ the third-country national;

(c) the host entity, another body as referred to in point (a) of Article 14(1), a third party as referred to in point (d) of Article 12(1), the host family or the organisation mediating au pairs has been sanctioned in accordance with national law for undeclared work or illegal employment;

(d) the host entity was established or operates for the main purpose of facilitating the entry of third-country nationals falling under the scope of this Directive;

(e) where applicable, the host entity's business is being or has been wound up under national insolvency laws or no economic activity is taking place;

(f) 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.

3. Where a third-country national applies to be admitted to enter into an employment relationship in a Member State, that Member State may verify whether the post in question could be filled by nationals of that Member State or by other Union citizens, or by third-country nationals lawfully residing in that Member State, in which case it may reject the application. This paragraph shall apply without prejudice to the principle of preference for Union citizens as expressed in the relevant provisions of the relevant Acts of Accession.

4. Without prejudice to paragraph 1, any decision to reject an application shall take account of the specific circumstances of the case and respect the principle of proportionality.

Article 21

Grounds for withdrawal or non-renewal of an authorisation

1. Member States shall withdraw or, where applicable, refuse to renew an authorisation where:

(a) the third-country national no longer meets the general conditions laid down in Article 7, except for Article 7(6), or the relevant specific conditions laid down in Articles 8, 11, 12, 13, 14, 16 or the conditions laid down in Article 18;

(b) the authorisation or the documents presented have been fraudulently acquired, or falsified, or tampered with;

(c) the Member State concerned only allows admission through an approved host entity and the host entity is not approved;

(d) the third-country national is residing for purposes other than those for which the third-country national was authorised to reside.

2. Member States may withdraw or refuse to renew an authorisation where:

(a) the host entity, another body as referred to in point (a) of Article 14(1), a third party as referred to in point (d) of Article 12(1), the host family or the organisation mediating au pairs has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions;

(b) where applicable, the terms of employment as provided for in national law or collective agreements or practices in the Member State concerned are not met by the host entity or host family employing the third-country national;

(c) the host entity, another body as referred to in point (a) of Article 14(1), a third party as referred to in point (d) of Article 12(1), the host family or the organisation mediating au pairs has been sanctioned in accordance with national law for undeclared work or illegal employment;

(d) the host entity was established or operates for the main purpose of facilitating the entry of third-country nationals falling under the scope of this Directive;

(e) where applicable, the host entity's business is being or has been wound up under national insolvency laws or no economic activity is taking place;

(f) with regard to students, the time limits imposed on access to economic activities under Article 24 are not respected or a student does not make sufficient progress in the relevant studies in accordance with national law or administrative practice.

3. In the event of withdrawal, when assessing the lack of progress in the relevant studies, as referred to in point (f) of paragraph 2, a Member State may consult with the host entity.

4. Member States may withdraw or refuse to renew an authorisation for reasons of public policy, public security or public health.

5. Where a third-country national applies for renewal of the authorisation to enter into or continue to be in an employment relationship in a Member State, with the exception of a researcher who continues the employment relationship with the same host entity, that Member State may verify whether the post in question could be filled by nationals of that Member State or by other Union citizens, or by third-country nationals who are long-term residents in that Member State, in which case they may refuse to renew the authorisation. This paragraph shall apply without prejudice to the principle of preference for Union citizens as expressed in the relevant provisions of the relevant Acts of Accession.

6. Where a Member State intends to withdraw or not renew the authorisation of a student in accordance with points (a), (c), (d) or (e) of paragraph 2, the student shall be allowed to submit an application to be hosted by a different higher education institution for an equivalent course of study in order to enable the completion of the studies. The student shall be allowed to stay on the territory of the Member State concerned until the competent authorities have taken a decision on the application.

7. Without prejudice to paragraph 1, any decision to withdraw or refuse to renew an authorisation shall take account of the specific circumstances of the case and respect the principle of proportionality.

CHAPTER V
RIGHTS

Article 22
Equal treatment

1. Researchers shall be entitled to equal treatment with nationals of the Member State concerned as provided for in Article 12(1) and (4) of Directive 2011/98/EU.

2. Member States may restrict equal treatment as regards researchers:

(a) under point (c) of Article 12(1) of Directive 2011/98/EU, by excluding study and maintenance grants and loans or other grants and loans;

(b) under point (e) of Article 12(1) of Directive 2011/98/EU, by not granting family benefits to researchers who have been authorised to reside in the territory of the Member State concerned for a period not exceeding six months;

(c) under point (f) of Article 12(1) of Directive 2011/98/EU, by limiting its application to cases where the registered or usual place of residence of the family members of the researcher for whom he or she claims benefits lies in the territory of the Member State concerned;

(d) under point (g) of Article 12(1) of Directive 2011/98/EU by restricting access to housing.

3. Trainees, volunteers and au pairs, when they are considered to be in an employment relationship in the Member State concerned, and students shall be entitled to equal treatment with nationals of the Member State concerned as provided for in Article 12(1) and (4) of Directive 2011/98/EU subject to the restrictions provided for in paragraph 2 of that Article.

4. Trainees, volunteers, and au pairs, when they are not considered to be in an employment relationship in the Member State concerned, and school pupils shall be entitled to equal treatment in relation to access to goods and services and the supply of goods and services made available to the public, as provided for by national law, as well as, where applicable, in relation to recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures.
   Member States may decide not to grant them equal treatment in relation to procedures for obtaining housing and/or services provided by public employment offices in accordance with national law.

Article 23
Teaching by researchers

Researchers may, in addition to research activities, teach in accordance with national law. Member States may set a maximum number of hours or of days for the activity of teaching.

Article 24
Economic activities by students

1. Outside their study time and subject to the rules and conditions applicable to the relevant activity in the Member State concerned, students shall be entitled to be employed and may be entitled to exercise self-employed economic activity, subject to the limitations provided for in paragraph 3.

2. Where necessary, Member States shall grant students and/or employers prior authorisation in accordance with national law.

3. 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 15 hours per week, or the equivalent in days or months per year. The situation of the labour market in the Member State concerned may be taken into account.

Article 25

Stay for the purpose of job-searching or entrepreneurship for researchers and students

1. After the completion of research or studies, researchers and students shall have the possibility to stay on the territory of the Member State that issued an authorisation under Article 17, on the basis of the residence permit referred to in paragraph 3 of this Article, for a period of at least nine months in order to seek employment or set up a business.

2. Member States may decide to set a minimum level of degree that students shall have obtained in order to benefit from the application of this Article. That level shall not be higher than level 7 of the European Qualifications Framework ([23]).

3. For the purpose of stay referred to in paragraph 1, Member States shall, upon an application by the researcher or the student, issue a residence permit to that third-country national in accordance with Regulation (EC) No 1030/2002 where the conditions laid down in points (a), (c), (d) and (e) of Article 7(1), Article 7(6) and, where applicable, in Article 7(2) of this Directive are still fulfilled. Member States shall require, for researchers, a confirmation by the research organisation of the completion of the research activity or, for students, evidence of having obtained a higher education diploma, certificate or other evidence of formal qualifications. Where applicable, and if the provisions of Article 26 are still met, the residence permit provided for in that Article shall be renewed accordingly.

4. Member States may reject an application under this Article where:

(a) the conditions laid down in paragraph 3 and, where applicable, paragraphs 2 and 5 are not met,

(b) the documents presented have been fraudulently acquired, or falsified, or tampered with.

5. Member States may require that the application under this Article of the researcher or the student and, where applicable, the members of the researcher's family shall be submitted at least 30 days before the expiry of the authorisation issued under Article 17 or 26.

6. If the evidence of having obtained a higher education diploma, certificate or other evidence of formal qualifications or the confirmation by the research organisation of the completion of the research activity are not available before the expiry of the authorisation issued under Article 17, and all other conditions are fulfilled, Member States shall allow the third-country national to stay on their ter-

ritory in order to submit such evidence within a reasonable time in accordance with national law.

7. After a minimum of three months from the issuance of the residence permit under this Article by the Member State concerned, the latter may require third-country nationals to prove that they have a genuine chance of being engaged or of launching a business.
   Member States may require that the employment the third-country national is seeking or the business he or she is in the process of setting up corresponds to the level of research or of studies completed.

8. If the conditions provided for in paragraph 3 or 7 are no longer fulfilled, Member States may withdraw the residence permit of the third-country national and, where applicable, his or her family members in accordance with national law.

9. Second Member States may apply this Article to researchers and, where applicable, the members of the researcher's family or students who reside or have resided in the second Member State concerned in accordance with Article 28, 29, 30 or 31.

Article 26
Researchers' family members

1. For the purpose of allowing researchers' family members to join the researcher in the first Member State or, in the case of long-term mobility, in the second Member States, Member States shall apply the provisions of Directive 2003/86/EC with the derogations laid down in this Article.

2. By way of derogation from Article 3(1) and Article 8 of Directive 2003/86/EC, the granting of a residence permit to family members shall not be made dependent on the requirement of the researcher having reasonable prospects of obtaining the right of permanent residence and having a minimum period of residence.

3. By way of derogation from the last subparagraph of Article 4(1) and Article 7(2) of Directive 2003/86/EC, the integration conditions and measures referred to therein may only be applied after the persons concerned have been granted a residence permit.

4. By way of derogation from the first subparagraph of Article 5(4) of Directive 2003/86/EC, residence permits for family members shall be granted by a Member State, if the conditions for family reunification are fulfilled, within 90 days from the date on which the complete application was submitted. The competent authority of the Member State concerned shall process the application for the family members at the same time as the application for admission or for long-term mobility of the researcher, in case where the application for the family members is submitted at the same time. The residence permit for family members shall be granted only if the researcher is issued an authorisation under Article 17.

5. By way of derogation from Article 13(2) and (3) of Directive 2003/86/EC, the duration of validity of the residence permit of family members shall end, as a general rule, on the date of expiry of the authorisation of the researcher. This shall include, where applicable, authorisations issued to the researcher for the purpose of job-searching or entrepreneurship in accordance with Article 25. Member States may require the period of validity of the travel documents of family members to cover at least the duration of the planned stay.

6. By way of derogation from the second sentence of Article 14(2) of Directive 2003/86/EC, the first Member State or, in the case of long-term mobility, the second Member States shall not apply any time limit in respect of access for family members to the labour market, except in exceptional circumstances such as particularly high levels of unemployment.

CHAPTER VI
MOBILITY BETWEEN MEMBER STATES

Article 27
Intra-EU mobility

1. A third-country national who holds a valid authorisation issued by the first Member State for the purpose of studies in the framework of a Union or multilateral programme that comprises mobility measures or of an agreement between two or more higher education institutions, or for the purpose of research may enter and stay in order to carry out part of the studies or research in one or several second Member States on the basis of that authorisation and a valid travel document under the conditions laid down in Articles 28, 29 and 31 and subject to Article 32.

2. During the mobility referred to in paragraph 1, researchers may, in addition to research activities, teach and students may, in addition to their studies, work, in one or several second Member States in accordance with the conditions laid down in Articles 23 and 24 respectively.

3. When a researcher moves to a second Member State in accordance with Article 28 or 29, family members holding a residence permit issued in accordance with Article 26 shall be authorised to accompany the researcher in the framework of the researcher's mobility under the conditions laid down in Article 30.

Article 28
Short-term mobility of researchers

1. Researchers who hold a valid authorisation issued by the first Member State shall be entitled to stay in order to carry out part of their research in any research organisation in one or several second Member States for a period of up to 180 days in any 360-day period per Member State, subject to the conditions laid down in this Article.

2. The second Member State may require the researcher, the research organisation in the first Member State or the research organisation in the second Member State to notify the competent authorities of the first Member State and of the second Member State of the intention of the researcher to carry out part of the research in the research organisation in the second Member State.
In such cases, the second Member State shall allow the notification to take place either:

(a) at the time of the application in the first Member State, where the mobility to the second Member State is already envisaged at that stage; or

(b) after the researcher was admitted to the first Member State, as soon as the intended mobility to the second Member State is known.

3. Where the notification has taken place in accordance with point (a) of paragraph 2, and where the second Member State has not raised any objection with the first Member State in accordance with paragraph 7, the mobility of the researcher to the second Member State may take place at any moment within the period of validity of the authorisation.

4. Where the notification has taken place in accordance with point (b) of paragraph 2, the mobility may be initiated after the notification to the second Member State immediately or at any moment thereafter within the period of validity of the authorisation.

5. The notification shall include the valid travel document, as provided for in point (a) of Article 7(1), and the valid authorisation issued by the first Member State covering the period of the mobility.

6. The second Member State may require the notification to include the transmission of the following documents and information:

(a) the hosting agreement in the first Member State as referred to in Article 10 or, if the second Member State so requires, a hosting agreement concluded with the research organisation in the second Member State;

(b) where not specified in the hosting agreement, the planned duration and dates of the mobility;

(c) evidence that the researcher has sickness insurance for all the risks normally covered for nationals of the Member State concerned as provided for in point (c) of Article 7(1);

(d) evidence that during the stay the researcher will have sufficient resources to cover subsistence costs without having recourse to the Member State's social assistance system, as provided for in point (e) of Article 7(1), as well as the travel costs to the first Member State in the cases referred to in point (b) of Article 32(4);
The second Member State may require the notifier to provide, before the start of mobility, the address of the researcher concerned in the territory of the second Member State.

The second Member State may require the notifier to present the documents in an official language of that Member State or in any official language of the Union determined by that Member State.

7. Based on the notification referred to in paragraph 2 the second Member State may object to the mobility of the researcher to its territory within 30 days from having received the complete notification, where:

(a) the conditions set out in paragraph 5 or, where applicable, paragraph 6 are not complied with;

(b) one of the grounds for rejection set out in points (b) or (c) of Article 20(1) or in paragraph 2 of that Article applies;

(c) the maximum duration of stay as referred to in paragraph 1 has been reached.

8. Researchers who are considered to pose a threat to public policy, public security or public health shall not be allowed to enter or to stay on the territory of the second Member State.

9. The competent authorities of the second Member State shall, without delay, inform the competent authorities of the first Member State and the notifier in writing about their objection to the mobility. Where the second Member State objects to the mobility in accordance with paragraph 7 and the mobility has not yet taken place, the researcher shall not be allowed to carry out part of the research in the research organisation in the second Member State. Where the mobility has already taken place, Article 32(4) shall apply.

10. After the period of objection has expired, the second Member State may issue a document to the researcher attesting that he or she is entitled to stay on its territory and enjoy the rights provided for in this Directive.

Article 29
Long-term mobility of researchers

1. In relation to researchers who hold a valid authorisation issued by the first Member State and who intend to stay in order to carry out part of their research in any research organisation in one or several second Member States for more than 180 days per Member State, the second Member State shall either:

(a) apply Article 28 and allow the researcher to stay on the territory on the basis of and during the period of validity of the authorisation issued by the first Member State; or

(b) apply the procedure provided for in paragraphs 2 to 7.

The second Member State may define a maximum period of the long-term mobility of a researcher which shall not be less than 360 days.

2. When an application for long-term mobility is submitted:

(a) the second Member State may require the researcher, the research organisation in the first Member State or the research organisation in the second Member State to transmit the following documents:

(i) a valid travel document, as provided for in point (a) of Article 7(1), and a valid authorisation issued by the first Member State;

(ii) evidence that the researcher has sickness insurance for all the risks normally covered for nationals of the Member State concerned as provided for in point (c) of Article 7(1);

(iii) evidence that during the stay the researcher will have sufficient resources to cover subsistence costs without having recourse to the Member State's social assistance system, as provided for in point (e) of Article 7(1), as well as the travel costs to the first Member State in the cases referred to in point (b) of Article 32(4);

(iv) the hosting agreement in the first Member State as referred to in Article 10 or, if the second Member State so requires, a hosting agreement concluded with the research organisation in the second Member State;

(v) where not specified in any of the documents presented by the applicant, the planned duration and dates of the mobility.

The second Member State may require the applicant to provide the address of the researcher concerned in its territory. Where the national law of the second Member State requires an address to be provided at the time of application and the researcher concerned does not yet know his or her future address, that Member State shall accept a temporary address. In such a case, the researcher shall provide his or her permanent address at the latest at the time of the issuance of the authorisation for long-term mobility.
The second Member State may require the applicant to present the documents in an official language of that Member State or in any official language of the Union determined by that Member State;

(b) the second Member State shall take a decision on the application for long-term mobility and notify the decision to the applicant in writing as soon as possible, but not later than 90 days from the date on which the complete application was submitted to the competent authorities of the second Member State;

(c) the researcher shall not be required to leave the territories of the Member States in order to submit an application and shall not be subject to a visa requirement;

(d) the researcher shall be allowed to carry out part of the research in the research organisation in the second Member State until a decision on the application for long-term mobility has been taken by the competent authorities, provided that:

(i) neither the period referred to in Article 28(1) nor the period of validity of the authorisation issued by the first Member State have expired; and

(ii) if the second Member State so requires, the complete application has been submitted to the second Member State at least 30 days before the long-term mobility of the researcher starts;

(e) an application for long-term mobility may not be submitted at the same time as a notification for short-term mobility. Where the need for long-term mobility arises after the short-term mobility of the researcher has started, the second Member State may request that the application for long-term mobility be submitted at least 30 days before the short-term mobility ends.

3. The second Member State may reject an application for long-term mobility where:

(a) the conditions set out in point (a) of paragraph 2 are not complied with;

(b) one of the grounds for rejection set out in Article 20, with the exception of point (a) of paragraph 1 of that Article, applies;

(c) the researcher's authorisation in the first Member State expires during the procedure; or

(d) where applicable, the maximum duration of stay referred to in the second subparagraph of paragraph 1 has been reached.

4. Researchers who are considered to pose a threat to public policy, public security or public health shall not be allowed to enter or to stay on the territory of the second Member State.

5. Where the second Member State takes a positive decision on the application for long-term mobility as referred to in paragraph 2 of this Article, the researcher shall be issued an authorisation in accordance with Article 17(4). The second Member State shall inform the competent authorities of the first Member State when an authorisation for long-term mobility is issued.

6. The second Member State may withdraw the authorisation for long-term mobility where:

(a) the conditions set out in point (a) of paragraph 2 or in paragraph 4 of this Article are not or are no longer complied with; or

(b) one of the grounds of withdrawal of an authorisation, as set out in Article 21, with the exception of point (a) of paragraph (1), point (f) of paragraph (2) and paragraphs (3), (5) and (6) of that Article, applies.

7. When a Member State takes a decision on long-term mobility, paragraphs 2 to 5 of Article 34 apply accordingly.

Article 30
Mobility of researchers' family members

1. Family members of a researcher who hold a valid residence permit issued by the first Member State shall be entitled to enter, and stay in, one or several second Member States in order to accompany the researcher.

2. When the second Member State applies the notification procedure referred to in Article 28(2), it shall require the transmission of the following documents and information:

(a) the documents and information required under paragraph 5 and points (b), (c) and (d) of paragraph 6 of Article 28 related to the family members accompanying the researcher;

(b) evidence that the family member has resided as a member of the family of the researcher in the first Member State in accordance with Article 26.

The second Member State may require the notifier to present the documents in an official language of that Member State or in any official language of the Union determined by that Member State.
The second Member State may object to the mobility of the family member to its territory where the conditions set out in the first subparagraph are not complied with. Points (b) and (c) of paragraph 7 and paragraph 9 of Article 28 shall apply to those family members accordingly.

3. When the second Member State applies the procedure referred to in point (b) of Article 29(1), an application shall be submitted by the researcher or by the family members of the researcher to the competent authorities of the second Member State. The second Member State shall require the applicant to transmit the following documents and information in relation to the family members:

(a) the documents and information required under points (i), (ii), (iii) and (v) of point (a) of Article 29(2) related to the family members accompanying the researcher;

(b) evidence that the family member has resided as a member of the family of the researcher in the first Member State in accordance with Article 26.

The second Member State may require the applicant to present the documents in an official language of that Member State or in any official language of the Union determined by that Member State.
The second Member State may reject the application for long-term mobility of the family member to its territory where the conditions set out in the first subparagraph are not complied with. Points (b) and (c) of paragraph 2, points (b), (c) and (d) of paragraph 3, paragraph 5, point (b) of paragraph 6 and paragraph 7 of Article 29 shall apply to those family members accordingly.
The validity of the authorisation for long-term mobility of the family members shall, as a general rule, end on the date of expiry of the researcher's authorisation issued by the second Member State.

The authorisation for long-term mobility of family members may be withdrawn or its renewal refused if the authorisation for long-term mobility of the researcher they are accompanying is withdrawn or its renewal refused and they do not enjoy any autonomous right of residence.

4. Family members who are considered to pose a threat to public policy, public security or public health shall not be allowed to enter or to stay on the territory of the second Member State.

Article 31
Mobility of students

1. Students who hold a valid authorisation issued by the first Member State and who are covered by a Union or multilateral programme that comprises mobility measures or by an agreement between two or more higher education institutions shall be entitled to enter and stay in order to carry out part of their studies in a higher education institution in one or several second Member States for a period up to 360 days per Member State subject to the conditions laid down in paragraphs 2 to 10.
   A student who is not covered by a Union or multilateral programme that comprises mobility measures or by an agreement between two or more higher education institutions shall submit an application for an authorisation to enter and stay in a second Member State in order to carry out part of the studies in a higher education institution in accordance with Articles 7 and 11.

2. The second Member State may require the higher education institution in the first Member State, the higher education institution in the second Member State or the student to notify the competent authorities of the first Member State and of the second Member State of the intention of the student to carry out part of the studies in the higher education institution in the second Member State.
   In such cases, the second Member State shall allow the notification to take place either:

(a) at the time of the application in the first Member State, where the mobility to the second Member State is already envisaged at that stage; or

(b) after the student was admitted to the first Member State, as soon as the intended mobility to the second Member State is known.

3. Where the notification has taken place in accordance with point (a) of paragraph 2, and where the second Member State has not raised any objection with the first Member State in accordance with paragraph 7, the mobility of the student to the second Member State may take place at any moment within the period of validity of the authorisation.

4. Where the notification has taken place in accordance with point (b) of paragraph 2 and where the second Member State has not raised any objection in writing to the mobility of the student, in accordance with paragraphs 7 and 9, the mobility is considered to be approved and may take place in the second Member State.

5. The notification shall include the valid travel document, as provided for in point (a) of Article 7(1), and the valid authorisation issued by the first Member State covering the total period of the mobility.

6. The second Member State may require the notification to include the transmission of the following documents and information:

(a) evidence that the student carries out part of the studies in the second Member State in the framework of a Union or multilateral programme that comprises mobility measures or of an agreement between two or more higher education institutions and evidence that the student has been accepted by a higher education institution in the second Member State;

(b) where not specified under point (a), the planned duration and dates of the mobility;

(c) evidence that the student has sickness insurance for all the risks normally covered for nationals of the Member State concerned as provided for in point (c) of Article 7(1);

(d) evidence that during the stay the student will have sufficient resources to cover subsistence costs without having recourse to the Member State's social assistance system as provided for in point (e) of Article 7(1), study costs, as well as the travel costs to the first Member State in the cases referred to in point (b) of Article 32(4);

(e) evidence that the fees charged by the higher education institution have been paid, where applicable.

The second Member State may require the notifier to provide, before the start of mobility, the address of the student concerned in the territory of the second Member State.
The second Member State may require the notifier to present the documents in an official language of that Member State or in any official language of the Union determined by that Member State.

7. Based on the notification referred to in paragraph 2, the second Member State may object to the mobility of the student to its territory within 30 days from having received the complete notification where:

(a) the conditions set out in paragraphs 5 or 6 are not complied with;

(b) one of the grounds for rejection set out in point (b) or (c) of Article 20(1) or in paragraph 2 of that Article applies;

(c) the maximum duration of stay referred to in paragraph 1 has been reached.

8. Students who are considered to pose a threat to public policy, public security or public health shall not be allowed to enter or to stay on the territory of the second Member State.

9. The competent authorities of the second Member State shall, without delay, inform the competent authorities of the first Member State and the notifier in writing about their objection to the mobility. Where the second Member State objects to the mobility in accordance with paragraph 7 the student shall not be allowed to carry out part of the studies in the higher education institution in the second Member State.

10. After the period of objection has expired, the second Member State may issue a document to the student attesting that he or she is entitled to stay on its territory and enjoy the rights provided for in this Directive.

Article 32
Safeguards and sanctions in cases of mobility

1. Where the authorisation for the purpose of research or studies is issued by the competent authorities of a Member State not applying the Schengen *acquis* in full and the researcher or student crosses an external border to enter a second Member State in the framework of mobility, the competent authorities of the second Member State shall be entitled to require as evidence of the mobility the valid authorisation issued by the first Member State and:

(a) a copy of the notification in accordance with Article 28(2) or Article 31(2), or

(b) where the second Member State allows mobility without notification, evidence that the student carries out part of the studies in the second Member State in the framework of a Union or multilateral programme that comprises mobility measures or an agreement between two or more higher education institutions, or for researchers, either a copy of the hosting agreement specifying the details of the mobility of the researcher or, where the details of the mobility are not specified in the hosting agreement, a letter from the research organisation in the second Member State that specifies at least the duration of the intra-EU mobility and the location of the research organisation in the second Member State.
In the case of the family members of the researcher, the competent authorities of the second Member State shall be entitled to require as evidence of the mobility the valid authorisation issued by the first Member State and a copy of the notification in accordance with Article 30(2) or evidence that they are accompanying the researcher.

2. Where the competent authorities of the first Member State withdraw the authorisation, they shall inform the authorities of the second Member State immediately, where applicable.

3. The second Member State may require to be informed by the host entity of the second Member State or the researcher or the student of any modification which affects the conditions on which basis the mobility was allowed to take place.

4. Where the researcher or, where applicable, his or her family members, or the student do not or no longer fulfil the conditions for mobility:

(a) the second Member State may request that the researcher and, where applicable, his or her family members, or the student immediately ceases all activities and leaves its territory;

(b) the first Member State shall, upon request of the second Member State, allow re-entry of the researcher and, where applicable, of his or her family members or of the student without formalities and without delay. This shall also apply if the authorisation issued by the first Member State has expired or has been withdrawn during the period of mobility within the second Member State.

5. Where the researcher or his or her family members or the student crosses the external border of a Member State applying the Schengen *acquis* in full, that Member State shall consult the Schengen information system. That Member State shall refuse entry or object to the mobility of persons for whom an alert for the purposes of refusing entry and stay has been issued in the Schengen information system.

CHAPTER VII
PROCEDURE AND TRANSPARENCY

Article 33
Sanctions against host entities

Member States may provide for sanctions against host entities or, in cases covered by Article 24, employers who have not fulfilled their obligations under this Directive. Those sanctions shall be effective, proportionate and dissuasive.

Article 34
Procedural guarantees and transparency

1. The competent authorities of the Member State concerned shall adopt a decision on the application for an authorisation or a renewal of it and notify the decision to the applicant in writing, in accordance with the notification procedures under national law, as soon as possible but not later than 90 days from the date on which the complete application was submitted.

2. By way of derogation from paragraph 1 of this Article, in the event that the admission procedure is related to an approved host entity as referred to in Articles 9 and 15, the decision on the complete application shall be taken as soon as possible but at the latest within 60 days.

3. Where the information or documentation supplied in support of the application is incomplete, the competent authorities shall notify the applicant within a reasonable period of the additional information that is required and set a reasonable deadline for providing it. The period referred to in paragraphs 1 or 2 shall be suspended until the competent authorities have received the additional information required. If additional information or documents have not been provided within the deadline, the application may be rejected.

4. Reasons for a decision declaring inadmissible or rejecting an application or refusing renewal shall be given in writing to the applicant. Reasons for a decision withdrawing an authorisation shall be given in writing to the third-country national. Reasons for a decision withdrawing an authorisation may be given in writing also to the host entity.

5. Any decision declaring inadmissible or rejecting an application, refusing renewal, or withdrawing an authorisation shall be open to legal challenge in the Member State concerned, in accordance with national law. The written notification shall specify the court or administrative authority with which an appeal may be lodged and the time limit for lodging the appeal.

Article 35
Transparency and access to information

Member States shall make easily accessible to applicants the information on all the documentary evidence needed for an application and information on entry and residence conditions, including the rights, obligations and procedural safeguards, of the third-country nationals falling under the scope of this Directive and, where applicable, of their family members. This shall include, where applicable, the level of the monthly sufficient resources, including the sufficient resources needed to cover the study costs or the training costs, without prejudice to an individual examination of each case, and the applicable fees.

The competent authorities in each Member State shall publish lists of the host entities approved for the purposes of this Directive. Updated versions of such lists shall be published as soon as possible following any changes to them.

Article 36
Fees

Member States may require third-country nationals including, where applicable, family members, or host entities to pay fees for the handling of notifications and applications in accordance with this Directive. The level of such fees shall not be disproportionate or excessive.

CHAPTER VIII
FINAL PROVISIONS

Article 37
Cooperation between contact points

1. Member States shall appoint contact points which shall cooperate effectively and be responsible for receiving and transmitting the information needed to implement Articles 28 to 32. Member States shall give preference to exchange of information via electronic means.

2. Each Member State shall inform the other Member States, via the national contact points referred to in paragraph 1:

(a) about the procedures applied to mobility referred to in Articles 28 to 31;

(b) whether that Member State only allows admission of students and researchers through approved research organisations or higher education institutions;

(c) about multilateral programmes for students and researchers that comprise mobility measures and agreements between two or more higher education institutions.

Article 38
Statistics

1. Member States shall communicate to the Commission statistics on the number of authorisations issued for the purposes of this Directive and notifications received pursuant to Article 28(2) or Article 31(2) and, insofar as possible, the number of third-country nationals whose authorisations have been renewed or withdrawn. Statistics on admitted family members of researchers shall be communicated in the same manner. Those statistics shall be disaggregated by citizenship and, insofar as possible, by the period of validity of the authorisations.

2. The statistics referred to in paragraph 1 shall relate to reference periods of one calendar year and shall be communicated to the Commission within six months of the end of the reference year. The first reference year shall be 2019.

3. The statistics referred to in paragraph 1 shall be communicated in accordance with Regulation (EC) No 862/2007 of the European Parliament and of the Council ([24]).

Article 39
Reporting

Periodically, and for the first time by 23 May 2023, the Commission shall submit a report to the European Parliament and the Council on the application of this Directive in the Member States and propose amendments if appropriate.

Article 40
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 23 May 2018 at the latest. They shall immediately communicate the text of those measures to the Commission.
   When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directives repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 41
Repeal

Directives 2004/114/EC and 2005/71/EC are repealed for the Member States bound by this Directive with effect from 24 May 2018, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law of those Directives set out in Part B of Annex I to this Directive.

For the Member States bound by this Directive, references to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation tables in Annex II.

Article 42
Entry into force

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 43
Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 11 May 2016.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

J.A. HENNIS-PLASSCHAERT

(1) OJ C 341, 21.11.2013, p. 50.
(2) OJ C 114, 15.4. 2014, p. 42.
(3) Position of the European Parliament of 25 February 2014 (not yet published in the Official Journal) and position of the Council at first reading of 10 March 2016 (not yet published in the Official Journal).
(4) Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service (OJ L 375, 23.12.2004, p. 12).
(5) Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research (OJ L 289, 3.11.2005, p. 15).
(6) Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ L 251, 3.10.2003, p. 12).
(7) OJ C 372, 20.12.2011, p. 36.
(8) Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (OJ L 157, 27.5.2014, p. 1).

(9) Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).
(10) Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 381, 28.12.2006, p. 4).
(11) Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).
(12) Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (OJ L 343, 23.12.2011, p. 1).
(13) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).
(14) Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality (OJ L 344, 29.12.2010, p. 1).
(15) Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157, 15.6.2002, p. 1).
(16) OJ C 369, 17.12.2011, p. 14.
(17) Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ L 337, 20.12.2011, p. 9).
(18) Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001, p. 12).
(19) Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ L 16, 23.1.2004, p. 44).
(20) Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (OJ L 155, 18.6.2009, p. 17).
(21) Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ L 239, 22.9.2000, p. 19).
(22) Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas (OJ L 164, 14.7.1995, p. 1).
(23) Recommendation of the European Parliament and of the Council of 23 April 2008 on the establishment of the European Qualifications Framework for lifelong learning (OJ C 111, 6.5.2008, p. 1).
(24) Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers (OJ L 199, 31.7.2007, p. 23).

ANNEX I

Part A
Repealed Directives
(referred to in Article 41)

Council Directive 2004/114/EC	(OJ L 375, 23.12.2004, p. 12)
Council Directive 2005/71/EC	(OJ L 289, 3.11.2005, p. 15)

Part B

Time limits for transposition into national law and dates of application

(referred to in Article 41)

Directive	Time limit for transposition	Date of application
2004/114/EC	12.1.2007	
2005/71/EC	12.10.2007	

ANNEX II

Correlation Tables

Directive 2004/114/EC	This Directive
Article 1(a)	Article 1(a)
Article 1(b)	—
—	Article 1(b)
Article 2, introductory wording	Article 3, introductory wording
Article 2(a)	Article 3(1)
Article 2(b)	Article 3(3)
Article 2(c)	Article 3(4)
Article 2(d)	Article 3(5)
—	Article 3(6)
Article 2(e)	Article 3(11) and (13)
Article 2(f)	Article 3(7)
Article 2(g)	Article 3(22)
—	Article 3(8)
—	Article 3(12)
—	Article 3(14) to (21)
—	Article 3(23) and (24)
Article 3(1)	Article 2(1)
Article 3(2)(a) to (d)	Article 2(2)(a) to (d)
Article 3(2)(e)	—
—	Article 2(2)(e) to (g)
Article 4	Article 4
Article 5	Article 5(1)
—	Article 5(2) and (3)
—	Article 6
Article 6(1)(a) to (c) and (e)	Article 7(1)(a) to (d)
Article 6(1)(d)	Article 7(6)
Article 6(2)	—

—	Article 7(2) and (3)
Article 7(1), introductory wording	Article 11(1), introductory wording
Article 7(1)(a)	Article 11(1)(a)
Article 7(1)(b)	Articles 7(1)(e) and 11(1)(d)
Article 7(1)(c)	Article 11(1)(c)
Article 7(1)(d)	Article 11(1)(b)
Article 7(2)	Article 11(2)
—	Article 11(3)
Article 8	Article 31
Article 9(1) and (2)	Article 12(1) and (2)
Article 10, introductory wording	Article 13(1), introductory wording
Article 10(a)	Article 13(1)(a)
—	Article 13(1)(b)
Article 10(b)	Articles 7(1)(e) and 13(1)(c)
Article 10(c)	Article 13(1)(d)
—	Article 13(1)(e) and (f)
—	Article 13(2) to (4)
Article 11, introductory wording	Article 14(1), introductory wording
Article 11(a)	Article 14(2)
Article 11(b)	Article 14(1)(a)
—	Article 14(1)(b)
Article 11(c)	Article 14(1)(c)
Article 11(d)	Article 14(1)(d)
Article 12(1)	Article 18(2)
Article 12(2)	Article 21(2)(f)
Article 13	Article 18(4)
Article 14	Article 18(6)
Article 15	Article 18(7)
—	Article 18(3), (5), (8) and (9)
—	Articles 16, 17 and 19
Article 16(1)	Article 21(1)(a) and (b)
—	Article 21(1)(c) and (d)
Article 16(2)	Article 21(4)
—	Article 21(2)(a) to (e)
—	Article 21(3)
—	Article 21(5) to (7)
—	Article 22(3) and (4)
Article 17(1), first subparagraph, first sentence	Article 24(1)
Article 17(1), first subparagraph, second sentence	Article 24(3)
Article 17(1), second subparagraph	Article 24(2)
Article 17(2)	Article 24(3)
Article 17(3) and (4)	—
—	Article 24
—	Article 27
—	Article 30

—	Articles 32 and 33
Article 18(1)	Article 34(1)
—	Article 34(2)
Article 18(2), (3) and (4)	Article 34(3), (4) and (5)
Article 19	—
—	Article 35, first paragraph
Article 20	Article 36
—	Articles 37 and 38
Article 21	Article 39
Articles 22 to 25	—
—	Articles 40 to 42
Article 26	Article 43
—	Annexes I and II

Directive 2005/71/EC	**This Directive**
Article 1	Article 1(a)
Article 2, introductory wording	Article 3, introductory wording
Article 2(a)	Article 3(1)
Article 2(b)	Article 3(9)
Article 2(c)	Article 3(10)
Article 2(d)	Article 3(2)
Article 2(e)	Article 3(22)
Article 3(1)	Article 2(1)
Article 3(2)(a)	Article 2(2)(a)
Article 3(2)(b)	—
Article 3(2)(c)	Article 2(2)(b)
Article 3(2)(d)	—
Article 4	Article 4
Article 5(1)	Article 9(1)
Article 5(2)	Article 9(2)
Article 5(3)	Article 8(2)
Article 5(4)	Article 10(7)
Article 5(5)	Article 35, second paragraph
Article 5(6)	Article 9(3)
Article 5(7)	Article 10(8)
Article 6(1)	Article 10(1)
—	Article 10(2)
Article 6(2)(a)	Article 10(4)
Article 6(2)(b)	Article 7(1)(e)
Article 6(2)(c)	Article 7(1)(c)
Article 6(2)(d)	Article 10(3)
Article 6(3)	—
Article 6(4) and (5)	Article 10(5) and (6)
Article 7(1)(a)	Article 7(1)(a)
Article 7(1)(b)	Article 8(1)
Article 7(1)(c)	Article 8(2)
Article 7(1)(d)	Article 7(6)
Article 7(1), last subparagraph	—
Article 7(2)	—
Article 7(3)	Article 5(3)

Article 8	Article 18(1)
Article 9	Article 26
Article 10(1)	Article 21(1)(a), (b) and (d)
Article 10(2)	Article 21(4)
Article 11(1) and (2)	Article 23
Article 12	Article 22(1) and (2)
Article 13	Articles 28 and 29
Article 14(1)	Article 7(5)
Article 14(2) and (3)	Article 7(4)
Article 14(4)	Article 5(3)
Article 15(1)	Article 34(1)
—	Article 34(2)
Article 15(2)	Article 34(3)
Article 15(3)	Article 34(4)
Article 15(4)	Article 34(5)
Article 16	Article 39
Article 17 to 20	—
Article 21	Article 43

On 23 May 2018 the deadline for the transposition of Directive 2016/801 on the conditions of entry and residence of third-country nationals (TCN) for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing expired. This new Directive repealed and replaced the Students Directive 2004/114 and the Researchers Directive 2005/71, which were unclear in certain aspects and had a number of shortcomings. The Directive applies to TCNs who apply or have been admitted to an EU Member State for purpose of research, studies, training or voluntary service in the European Voluntary Service.

This book highlights the central themes, problem issues and implementation in selected Member States of this Students & Researchers Directive.

The contributions to this book are based on lectures presented at a seminar on this Directive, organized in November 2019 at the Radboud University Nijmegen, the Netherlands as part of the Jean Monnet Centre of Excellence program of their Centre for Migration Law. These contributions deal with the negotiations in the Council, an analysis and the implementation challenges from the perspective of the Commission and a comparative overview of Member States' policies on attracting and retaining foreign talent across the EU. Subsequently it discusses several implementation issues in Cyprus, the Netherlands, Germany, Poland and Romania, followed by a concluding chapter.

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