

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)

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⁽¹⁾ or who are beneficiaries of temporary protection in accordance with the Council Directive 2001/55/EC⁽²⁾ 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⁽³⁾;

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- 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⁽⁴⁾.

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 programme 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;

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- (23) ‘long-stay visa’ means an authorisation issued by a Member State as provided for in Article 18 of the Schengen Convention⁽⁵⁾ 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.

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- (1) 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](#)).
- (2) 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](#)).
- (3) 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](#)).
- (4) 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](#)).
- (5) 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](#)).