

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 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

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- 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

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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.

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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.

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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.