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**THE UNION LEGISLATIVE FRAMEWORK
CONCERNING THE ENTRY AND STAY
CONDITIONS OF THIRD COUNTRY NATIONALS
FOR RESEARCH, STUDIES, PROFESSIONAL
TRAINING, VOLUNTEERING SERVICES, PUPILS'
EXCHANGE PROGRAMS OR EDUCATIONAL
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Elise-Nicoleta VÂLCU

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THE UNION LEGISLATIVE FRAMEWORK CONCERNING THE ENTRY AND STAY CONDITIONS OF THIRD COUNTRY NATIONALS FOR RESEARCH, STUDIES, PROFESSIONAL TRAINING, VOLUNTEERING SERVICES, PUPILS' EXCHANGE PROGRAMS OR EDUCATIONAL PROJECTS AND AU PAIR WORK

Elise-Nicoleta VÂLCU¹

Abstract

In order to establish an area of freedom, security and justice, the Treaty on the Functioning of the European Union (TFEU) provides measures to be taken with regard to asylum, immigration and protection of the rights of third-country nationals. Migration for research, training, volunteering and au pair work supports the acquisition of knowledge and skills. This is a form of mutual enrichment for the migrants concerned, their country of origin and the Member State concerned, while enhancing the inter-human ties and increasing cultural diversity.

Directive (EU) 2016/801 provides a coherent and common legal framework for different categories of third-country nationals arriving in the European Union with the role of, on the one hand, approximating national legislation on entry and exit conditions of these categories and, on the other hand, of remedying the shortcomings detected in the application of Directives 2004/114 / EC and 2005/71 / EC, simplifying and rationalizing them.

¹ Associate Professor PhD, Faculty of Economic Sciences and Law, University of Pitesti, Pitesti (Romania), elisevalcu@yahoo.com

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I. Introduction

Immigration outside the European Union is a source of highly qualified people, especially students and researchers being more and more sought after. They play an important role in creating the Union's key value, human capital, and ensuring smart, sustainable and inclusive growth, and thus contribute to the achievement of the Europe 2020 objectives.

II. The issue of admission of third-country nationals to research, education, training, volunteer services, student exchange programs or educational projects and au pair work in the perspective of Directive (EU) 2016/801

This Directive regulates:

a) the conditions of entry and residence for more than 90 days in the territory of the Member States and the rights of third-country nationals and, where appropriate, their family members as regards research, education, training vocational training or voluntary service within the European Voluntary Service and, where Member States so decide, in relation to student exchange programs or educational projects, volunteer services other than the European Voluntary Service or Au Pair Work;

b) the conditions of entry and residence for the categories of nationals mentioned above, in Member States other than the ones which first grant this authorization on the basis of this Directive.

For the purposes of this Directive, the following definitions shall apply:

- "third-country national" means a person who is not a citizen of the Union within the meaning of Article 20 (1) TFEU;
- "researcher" means a third-country national who holds a doctoral degree or a corresponding higher education diploma to enable him / her to have access to doctoral programs and who is selected by a research organization; and is admitted to

the territory of a Member State to carry out a research activity for which such qualification is normally required;

- "student" means a third-country national who has been admitted by a higher education institution and accepted on the territory of a Member State to pursue as a main activity a full-time course of study leading to a title qualification following graduation of a higher education establishment certified by that Member State, including diplomas, certificates or evidence of formal qualifications obtained in a higher education institution, which may include preparatory courses prior to this form of education in accordance with national law or compulsory training;
- "pupil" means a third-country national who is admitted to the territory of a Member State to pursue a recognized state or regional secondary education program equivalent to level 2 or 3 of the International Standard Classification of Education under a student exchange program or educational project managed by an educational establishment in accordance with national law or administrative practice;

"trainee" means a third-country national who is a holder of a higher education diploma or who is pursuing a course in a third country leading to a higher education diploma and admitted to the territory of a Member State for a training program to acquire knowledge, practice and experience in a professional environment;

- "volunteer" means a third-country national who is admitted to the territory of a Member State to participate in a volunteer service program;

"Voluntary service program" means a program of practical solidarity activities based on a program recognized as such by the Member State concerned or by the Union, pursuing general interest objectives in a non-profit-making case where the activities are not remunerated, excepting reimbursement of expenses and / or pocket money;

- "au pair worker" means a third-country national who is admitted to the territory of a Member State for temporary family reunification to improve his language skills and knowledge of the Member State concerned in return for easy domestic work and child care;
- "research" means a creative activity undertaken systematically in order to increase the volume of knowledge, including

knowledge of humanity, culture and society, and their use for the design of new applications;

As regards the *admission* of a third-country national under this Directive, the applicant must meet the following general conditions:

a) present a valid travel document in accordance with the domestic law of the requested State;

b) submit an application for a valid permit or valid long-stay visa;

c) if the third-country national is a minor in accordance with the national law of the Member State concerned, he or she shall provide the consent of the parents or an equivalent document for the planned stay;

d) provide proof that the third-country national holds or, if provided for by national law, has applied for health insurance covering all the risks against which the nationals of the Member State in question are normally insured;

provide the evidence requested by the Member State concerned to show that, during the planned stay, the third-country national will have sufficient resources to cover his / her maintenance costs without recourse to the Member State's social assistance system, and the cost of returning to the country of origin. Assessing the sufficiency of resources is based on the individual examination of the case and takes into account the resources deriving, inter alia, from the grant of a scholarship, from a valid employment contract, from a firm offer of employment or from a commitment financial support from a student exchange organization, a host institution, a volunteer service organization organization, a host family, or an au pair workers organization.

provide the address of the Member State concerned or, if he / she does not know his /her future address, the Member States accept a temporary address, being obliged to provide his /her permanent address at the latest when issuing the residence permit or long stay visa.

Request for admission. General conditions and special conditions.

The request for admission shall be considered by the competent authorities: (a) when the residence of the third-country national concerned is outside the territory of the Member State in which the third-country national wishes to be admitted: (b) either when the third-country national is already a resident of the State member, holding a valid residence permit or a long-stay visa; (c) by way of exception, a Member State may, in accordance with its national law, accept a request made when the third-country national

concerned does not hold a valid residence permit or long-stay visa but his presence on the territory of the Member State is legal².

In view of the above-mentioned general conditions, the Directive regulates separately, *special conditions* for each category. Specifically:

i) *For researchers*, with regard to admission for research purposes, the applicant shall submit

i.1.) a hosting agreement;

i.2) a contract;

i.3) a written agreement of the research organization in the sense that, if a researcher remains unlawfully on the territory of the Member State concerned, the research organization concerned shall be responsible for the reimbursement of public expenditure related to the stay and repatriation. The financial responsibility of the research organization shall cease no later than six months after the termination of the hosting agreement.

Member States may decide to provide an approval procedure for public and / or private research organizations wishing to receive a researcher in accordance with the admission procedure provided by this Directive. In particular, research organizations prepare their applications for approval on the basis of evidence that they carry out research. The approval of a research organization shall be for a period of at least five years.

As far as the *hosting agreement* is concerned, the norm of the framework stipulates that when a research organization wishes to host a third-country national for research purposes, this one signs a hosting agreement with him / her.

- 1) the purpose of research activity or of research field;
- 2) a commitment on the part of the third country national to make efforts to complete the research activity;
- 3) a commitment from the research organization to receive the third-country national for the purpose of completing the research activity;
- 4) the start date and the end date or the estimated duration of the research activity;

² According to art.7 par. (6) third-country nationals who are considered to pose a threat to public policy, public security or public health are not admitted.

The hosting agreement shall automatically³ terminate if the third-country national is not admitted or if the legal relationship between the researcher and the research organization ceases.

ii) With regard to special conditions for students, in addition to the general conditions laid down in Article 7, as regards the admission of a third-country national for studies, the applicant shall provide evidence:

ii.1) that the third-country national has been accepted by a higher education institution to pursue a course of study;

ii.2) that the fees charged by the higher education institution have been paid;

ii.3) that the third-country national has sufficient resources to cover his / her study expenses.

iii) Special conditions for pupils. As regards the admission of a third-country national as part of a pupil exchange program or educational project, the applicant must prove the following:

iii.1) that it is neither below the minimum nor above the maximum laid down by the Member State concerned in terms of age and class;

iii.2) that he or she has been accepted by an educational establishment;

iii.3) that he or she will be accommodated for the entire duration of the stay with a family, a special unit of accommodation within the educational establishment or, to the extent provided for by national law, in any other establishment meeting the conditions established by the Member State concerned;

iii.4) he or she is selected in accordance with the rules of the pupil exchange program or the educational project involving the third-country national;

iii.5) that the educational establishment assumes responsibility for the third-country national during his / her stay on the territory of the Member State concerned in respect of study expenses⁴;

*IV. Special conditions for au pairs*⁵. As regards the admission of a third-country national to carry out au pairs, the third-country national must:

³ see Article 9 (5) of the Directives

⁴ insofar as this is provided for by national law

IV.1) provide an agreement between the third-country national and the host family defining the rights and obligations of the third-country national as an au pair worker, including the details of the pocket money he is to receive, the appropriate measures allowing the au pair worker the course attending and the maximum number of hours for household chores;

IV.2) aged between 18 and 30 years⁶;

IV.3) provide evidence that the host family or an au pairing organization, to the extent that this is provided for by national law, assumes responsibility for the third-country national throughout their stay in the territory of the Member State in particular with regard to maintenance, accommodation and accident risks.

IV.4) to provide evidence of basic knowledge of the language of the Member State concerned;

IV.5) that he has completed a form of secondary education, that he / she has professional qualifications or, as the case may be, that he / she fulfills the conditions for the exercise of a regulated profession, as provided for by national law;

IV.6) the maximum number of hours per week for au pairs should not exceed 25 hours. To the same extent, an au pair worker must have at least one day a week to be exempt from au pair tasks.

V. Special conditions for trainees. As regards the admission of a third-country national for the purposes of vocational training, he must:

V.1) Provide a training agreement that foresees a theoretical and practical training with a host entity. The Vocational Training Agreement shall contain the following: a description of the training program, including the educational objective or its learning components; length of internship; the conditions of placement and supervision of the traineeship; internship timetable; and the legal relationship between the trainee and the host entity;

V.2) to provide evidence of a higher education diploma in the last two years preceding the date of the application or of some studies leading to a higher education diploma;

⁵ see Article 16 of the directive

⁶ see art. In exceptional cases, Member States may allow the admission of a third-country national as an au pair worker whose age exceeds the maximum limit; see Article 16 (1)

V.3) at the request of the Member State, provide evidence that during the stay he or she has sufficient resources to cover his /her training expenses;

V.4) provide evidence that the host entity assumes responsibility for the third-country national throughout his or her stay on the territory of the Member State concerned, in particular with regard to maintenance and accommodation expenses.

VI. Special conditions for volunteers. As regards the admission of a third-country national for the purposes of volunteering, the applicant must:

VI.1) provide an agreement with the host entity for the volunteer program in which he / she participates. The agreement includes: description of the volunteer service program; the duration of the voluntary service; the conditions of placement and supervision of the volunteer service; volunteer timetable;

VI.2) identify the resources available to the third-country national to cover their maintenance and accommodation costs, as well as a minimum amount of money as a pocket money for the duration of their stay;

VI.3) to prove that the host entity has concluded a civilian insurance policy;

VI.4) Provide evidence at the request of the Member State that, if accommodated for the entire duration of his / her stay by the host entity, the accommodation shall fulfill the conditions laid down by the Member State concerned.

Authorizations and length of stay. As regards the authorization required for the third-country national to reside, we make the following clarifications. When granted in the form of a residence permit, Member States use the model laid down in Regulation (EC) No. 1030/2002 and enclose the words "researcher", "student", "pupil", "trainee", "volunteer" or "au pair worker" on the respective residence permit. When the authorization is granted in the form of a long-stay visa, Member States shall enter in the "remarks" heading on the visa sticker a statement stating that it is issued to the "researcher", "student", "pupil", "trainee", "volunteer" or "au pair worker" concerned.

For researchers and students moving within the Union under a specific Union or multilateral program which includes mobility measures or an agreement between two or more higher education institutions, the authorization shall refer to the program or agreement concerned.

If a long-term mobility permit is issued to a researcher in the form of a residence permit, Member States shall use the model laid down in Regulation (EC) No. 1030/2002 and enclose the mention "researcher-

mobility" on the respective residence permit. Where a long-term mobility permit is issued to a researcher in the form of a long-stay visa, Member States shall include the phrase "researcher-mobility" in the "remarks" section of the visa sticker⁷.

*Duration of authorization*⁸. This differs according to the categories of nationals covered by this Directive. Therefore,

a) *for researchers*. The period of validity of a permit for researchers is at least one year or coincides with the duration of the hosting agreement if the latter is shorter. The duration of the authorization for researchers benefiting from Union or multilateral programs involving mobility measures is at least two years or is equal to the duration of the hosting agreement if the latter is shorter.

b) *for students*. The period of validity of a permit for students is at least one year or coincides with the duration of the studies if this one is shorter. The duration of the authorization for students benefiting from Union or multilateral programs comprising mobility measures or an agreement between two or more higher education institutions shall be at least two years or equal to the duration of the studies carried out by those students, if this one is shorter.

c) *for pupils*. The period of validity of a permit for pupils is equal to the duration of the exchange program or the educational project, if it is less than one year or not longer than one year. Member States may decide to allow the renewal of the authorization once to cover the period necessary to complete the pupils exchange program or the educational project.

d) *for au pair workers*. The period of validity of an au pair worker's permit shall be equal to the duration of the agreement between the au pairs worker and the host family if it is less than one year or not longer than one year. Member States may decide to allow the renewal of the authorization once for a maximum period of six months at the request of the host family.

e) *for trainees*. The period of validity of an authorization for trainees shall be equal to the duration of the training agreement, if less than six months, or not longer than six months. If the duration of the agreement exceeds six months, the period of validity of the authorization may correspond to that period in accordance with national law.

⁷ See Article 17 of the directive

⁸ See Article 18 of the directive

f) for volunteers. The period of validity of a permit for volunteers is the duration of the agreement signed with the host entity if it is shorter than one year or a maximum of one year. If the duration of the agreement exceeds one year, the period of validity of the authorization may correspond to that period in accordance with national law.

Facilities for family members. In order for the European Union to become more attractive to third-country nationals intending to carry out activities listed above, this Directive grants EU family (Council Directive 2003/86 / EC of 22 September 2003 on the right to family reunification)⁹ members access to intra-EU mobility as well as to mobility benefits within the EU, access to the labor market in the first Member State and, in the case of long-term mobility, in the second Member State, excepting situations such as particularly high levels of unemployment where Member States should apply a test, for a maximum period of 12 months, to prove that the position can not be filled with resources on the internal labor market.

Conclusions

We believe that the implementation of this directive should not encourage an exodus of extra-union nationals. For example, in the field of research, with a view to establishing a comprehensive migration policy, the European Union, in partnership with the countries of origin, should take steps to support the reintegration of researchers into their countries of origin.

Also, promoting the European Union as a whole as a world center of excellence for education and training involves modernizing higher education systems, especially in the context of the internationalization of European higher education.

This Directive should, through its provisions on volunteering, support the objectives of the European Voluntary Service on the development of solidarity, mutual understanding and tolerance among young people and the societies in which they live, while contributing to strengthening social cohesion and promoting the active citizenship of young people.

Au Pair work contributes to encouraging interpersonal contacts by

⁹ Council Directive 2003/86 / EC of 22 September 2003 on the right to family reunification

giving third-country nationals the opportunity to improve their language skills and to develop their knowledge about the Member States and the cultural links with them. At the same time, au pair workers of third-countries nationals may be exposed to risks of abuse.

References

- Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on a single legislative framework concerning the conditions of entry and residence of third-country nationals for research, education, training, volunteering, exchange programs for students or educational projects and au pair work
- 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
- Council Directive 2003/86 / EC of 22 September 2003 on the right to family reunification
- 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.