

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

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular points (3) (a) and (4) of the first subparagraph of Article 63 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament⁽¹⁾,

Having regard to the Opinion of the European Economic and Social Committee⁽²⁾,

Having regard to the Opinion of the Committee of the Regions⁽³⁾,

Whereas:

- (1) For the gradual establishment of an area of freedom, security and justice, the Treaty provides for measures to be adopted in the fields of asylum, immigration and the protection of the rights of third-country nationals.
- (2) The Treaty provides that the Council is to adopt measures on immigration policy relating to conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits.
- (3) At its special meeting at Tampere on 15 and 16 October 1999, the European Council acknowledged the need for approximation of national legislation on the conditions for admission and residence of third-country nationals and asked the Council to rapidly adopt decisions on the basis of proposals by the Commission.
- (4) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union.
- (5) The 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.
- (6) One of the objectives of Community action in the field of education is to promote Europe as a whole as a world centre of excellence for studies and vocational training. Promoting the mobility of third-country nationals to the Community for the purpose of

studies is a key factor in that strategy. The approximation of the Member States' national legislation on conditions of entry and residence is part of this.

- (7) Migration for the purposes set out in this Directive, which is by definition temporary and does not depend on the labour-market situation in the host country, constitutes a form of mutual enrichment for the migrants concerned, their country of origin and the host Member State and helps to promote better familiarity among cultures.
- (8) The term admission covers the entry and residence of third-country nationals for the purposes set out in this Directive.
- (9) The new Community rules are based on definitions of student, trainee, educational establishment and volunteer already in use in Community law, in particular in the various Community programmes to promote the mobility of the relevant persons (Socrates, European Voluntary Service etc.).
- (10) The duration and other conditions of preparatory courses for students covered by the present Directive should be determined by Member States in accordance with their national legislation.
- (11) Third-country nationals who fall into the categories of unremunerated trainees and volunteers and who are considered, by virtue of their activities or the kind of compensation or remuneration received, as workers under national legislation are not covered by this Directive. The admission of third-country nationals who intend to carry out specialisation studies in the field of medicine should be determined by the Member States.
- (12) Evidence of acceptance of a student by an establishment of higher education could include, among other possibilities, a letter or certificate confirming his/her enrolment.
- (13) Fellowships may be taken into account in assessing the availability of sufficient resources.
- (14) Admission for the purposes set out in this Directive may be refused on duly justified grounds. In particular, admission could be refused if a Member State considers, based on an assessment of the facts, that the third-country national concerned is a potential threat to public policy or public security. The notion of public policy may cover a conviction for committing a serious crime. In this context it has to be noted that the notions of public policy and public security also cover cases in which a third-country national belongs or has belonged to an association which supports terrorism, supports or has supported such an association, or has or has had extremist aspirations.
- (15) In case of doubts concerning the grounds of the application of admission, Member States should be able to require all the evidence necessary to assess its coherence, in particular on the basis of the applicant's proposed studies, in order to fight against abuse and misuse of the procedure set out in this Directive.
- (16) The mobility of students who are third-country nationals studying in several Member States must be facilitated, as must the admission of third-country nationals participating in Community programmes to promote mobility within and towards the Community for the purposes set out in this Directive.

- (17) In order to allow initial entry into their territory, Member States should be able to issue in a timely manner a residence permit or, if they issue residence permits exclusively on their territory, a visa.
- (18) In order to allow students who are third-country nationals to cover part of the cost of their studies, they should be given access to the labour market under the conditions set out in this Directive. The principle of access for students to the labour market under the conditions set out in this Directive should be a general rule; however, in exceptional circumstances Member States should be able to take into account the situation of their national labour markets.
- (19) The notion of prior authorisation includes the granting of work permits to students who wish to exercise an economic activity.
- (20) This Directive does not affect national legislation in the area of part-time work.
- (21) Provision should be made for fast-track admission procedures for study purposes or for pupil exchange schemes operated by recognised organisations in the Member States.
- (22) Each Member State should ensure that the fullest possible set of regularly updated information is made available to the general public, notably on the Internet, as regards the establishments defined in this Directive, courses of study to which third-country nationals may be admitted and the conditions and procedures for entry and residence in its territory for those purposes.
- (23) This Directive should not in any circumstances affect the application of Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals⁽⁴⁾.
- (24) Since the objective of this Directive, namely to determine the conditions of admission of third-country nationals for the purposes of study, pupil exchange, unremunerated training or voluntary service, cannot be sufficiently achieved by the Member States and can, by reason of its scale or effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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.
- (25) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, and without prejudice to Article 4 of the said Protocol, these Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application.
- (26) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application,

HAS ADOPTED THIS DIRECTIVE:

Status: *This is the original version (as it was originally adopted).*

- (1) OJ C 68 E, 18.3.2004, p. 107.
- (2) OJ C 133, 6.6.2003, p. 29.
- (3) OJ C 244, 10.10.2003, p. 5.
- (4) OJ L 157, 15.6.2002, p. 1.