

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 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<sup>(1)</sup>.

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 territory 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

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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.

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- (1) 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](#)).