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Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the conditions of entry and residence of third-country nationals for the purposes of  
research, studies, pupil exchange, remunerated and unremunerated training,  
voluntary service and au pairing**

**[RECAST]**

{SWD(2013) 77 final}

{SWD(2013) 78 final}

## EXPLANATORY MEMORANDUM

### 1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

Article 79 of the Treaty on the Functioning of the European Union (TFEU) entrusts the Union with the task of developing a common immigration policy aimed at ensuring efficient management of migration flows and fair treatment of third-country nationals residing legally in the Member States. The present proposal responds to this mandate and aims to contribute to the implementation of the Europe 2020 Strategy.

The implementation reports<sup>1</sup> of Directives 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research<sup>2</sup> and Directive 2004/114 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<sup>3</sup> have shown a number of weaknesses of these instruments. These shortcomings concern key issues such as admission procedures including visas, rights (including mobility aspects) and procedural safeguards. The current rules are insufficiently clear or binding, not always fully coherent with existing EU funding programmes, and sometimes fail to address the practical difficulties that applicants face. When combined, these problems put into question whether third-country nationals consistently receive fair treatment under the existing instruments.

Directive 2004/114/EC on students lays down mandatory rules for the admission of third-country national students, with an option for Member States to apply the Directive for school pupils, volunteers and unremunerated trainees. Directive 2005/71/EC on researchers provides for a fast track procedure for the admission of third-country researchers who have completed a hosting agreement with a research organisation approved by the Member State.

The need to improve the current rules is reinforced by the fact that circumstances and policy context are very different today than when the Directives were adopted. In the context of the Europe 2020 Strategy and the need to ensure smart, sustainable and inclusive growth, human capital represents one of Europe's key assets. Immigration from outside the EU is one source of highly skilled people, and third-country national students and researchers in particular are groups which are increasingly sought after. Fostering people-to-people contacts and mobility are also important elements of the EU's external policy, notably vis-à-vis the countries of the European Neighbourhood Policy or the EU's strategic partners.

The present proposal aims at improving the provisions of third-country national researchers, students, school pupils, unremunerated trainees and volunteers, and applying common provisions to two new groups of third-country nationals: remunerated trainees and au-pairs. The proposal takes the form of a Directive amending and recasting Directives 2004/114/EC and 2005/71/EC. Its overall objective is to support social, cultural and economic relationships between the EU and third countries, foster the transfer of skills and know-how and promote competitiveness while, at the same time, provide for safeguards ensuring fair treatment of these groups of third-country nationals.

- **General context**

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<sup>1</sup> COM(2011) 901 final; COM(2011) 587 final

<sup>2</sup> OJ L 289, 3.11.2005, p. 15.

<sup>3</sup> OJ L 375, 23.12.2004, p. 12.

The EU is facing important structural challenges of both demographic and economic nature. The working age population has practically stopped growing and over the next couple of years it will start shrinking. For both economic and demographic reasons the observed patterns of employment growth with emphasis on skilled labour will persist during the decade ahead. The EU is also facing a situation of 'innovation emergency'. Europe is spending 0.8% of GDP less than the US and 1.5% less than Japan every year on Research & Development (R&D). Thousands of the best researchers and innovators have moved to countries where conditions are more favorable. Although the EU market is the largest in the world, it remains fragmented and not enough innovation-friendly. The Europe 2020 Strategy and its Innovation Union flagship initiative set the goal of increased investment in research and innovation, requiring an estimated extra one million more research jobs in Europe. Immigration from outside the EU is one source of highly skilled people, and third-country national students and researchers in particular are groups which are increasingly sought after and which the EU needs to actively attract. Third-country national students and researchers can contribute to a pool of well-qualified potential workers and human capital that the EU needs to cope with the above-mentioned challenges.

The EU Global Approach to Migration and Mobility (GAMM) sets the overarching framework of the EU's external migration policy. It defines how the EU organises its dialogue and cooperation with non-EU countries in the area of migration and mobility. The GAMM aims to contribute – inter alia – to the achievement of the Europe 2020 Strategy, in particular through its objective of better organising legal migration and fostering well-managed mobility (alongside its other pillars dealing with irregular migration, migration and development and international protection). Particularly relevant in this context are the Mobility Partnerships, which offer a tailor-made bilateral frameworks for cooperation between the EU and selected non-EU countries (notably in the EU neighbourhood), potentially also containing measures and programmes for promoting the mobility of the groups addressed in this proposal for Directive.

Allowing third-country nationals to acquire skills and knowledge through a period of training in Europe encourages “brain circulation” and supports cooperation with third countries, which benefits both the sending and the receiving countries. Globalization calls for enhanced relationships between EU enterprises and foreign markets, while movements of trainees and au-pairs foster the development of human capital, result in mutual enrichment for the migrants, their country of origin and the host country and an improved mutual familiarity between cultures. However, in absence of a clear legal framework, there is also a risk of exploitation to which trainees and au-pairs are particularly exposed, with the subsequent risk of unfair competition.

With a view to better optimise those benefits and to properly tackle those risks, and taking account of the similarities of the challenges faced by these categories of migrants, the present proposal amends Council Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, extending its scope to remunerated trainees and au-pairs and making mandatory provisions on unremunerated trainees that are currently discretionary, as well as Council Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research.

- **Existing provisions in the area of the proposal**

Council Directive 2004/114/EC provides common rules regarding the conditions of entry and stay of third-country national students. However, according to Article 3 of Directive 2004/114/EC, Member States are free to decide, on an optional basis, whether they apply the

Directive to third-country nationals who apply to be admitted for the purposes of pupil exchange, unremunerated training or voluntary service.

The conditions for the admission of remunerated trainees are also addressed by the 1994 Council Resolution on limitations on admission of third-country nationals on the territory of the Member States for employment<sup>4</sup>. It provides a general definition of trainees and a maximum period of stay.

Council Directive 2005/71/EC provides a specific procedure for admitting third-country nationals for the purposes of scientific research.

The recommendation of the European Parliament and of the Council of 28 September 2005<sup>5</sup> proposes measures to facilitate the issue by the Member States of uniform short-stay visas for researchers from third countries travelling within the Community for the purpose of carrying out scientific research.

The format of a residence permit for third-country national is laid down in EC Regulation (EC) No 1030/2002. It is applicable to this proposal.

As regards au-pairs, the European Agreement on "au pair" Placement of 24 November 1969<sup>6</sup>, drawn up by the Council of Europe, provides a set of European rules. However, the majority of Member States have not ratified this Agreement.

- **Consistency with other policies and objectives of the Union**

The provisions in this proposal are consistent with and supportive of the objectives of the Europe 2020 Strategy and the EU Global Approach to Migration and Mobility. In addition, setting up common admission procedures and securing a legal status for trainees and au-pairs can serve as a safeguard from exploitation.

This proposal is also in line with one of the objectives of the EU action on education, which is to promote the Union as a world centre of excellence for education and international relations and to share knowledge better around the world as a means of helping to disseminate the values of human rights, democracy and the rule of law.

The proposal also complies with the EU's development policy's focus on eradication of poverty and the achievement of the Millennium Development Goals. In particular, its provisions on mobility of trainees between the EU and home countries would allow reliable inflows of remittances and transfer of skills and investments.

This proposal has positive effects on fundamental rights, as it strengthens third-country nationals' procedural rights and recognises and safeguards the rights of remunerated trainees and au-pairs. In this respect, it is consistent with the rights and principles recognized by the Charter of Fundamental Rights, notably with Article 7 on the right to respect of private and family life, Article 12 on freedom of assembly and association, Article 15(1) on freedom to choose occupation and the right to engage in work, Article 15(3) on equal working conditions, Article 21(2) on non-discrimination, Article 31 on fair and just working conditions, Article 34 on social security and social assistance and Article 47 on the right to an effective remedy and to a fair trial.

## **2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT**

- **Consultation of interested parties**

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<sup>4</sup> OJ C 274, 19.9.1996, p. 3-6.

<sup>5</sup> OJ L 289, 3.11.2005, p. 23.

<sup>6</sup> <http://conventions.coe.int/Treaty/en/Treaties/Html/068.htm>

Discussions with the Member States took place within the framework of meetings of the Committee on Immigration and Asylum (CIA). First, on the findings of the implementation reports and, secondly, in the context of the preparation of this initiative, where, in addition, Member States submitted their written contributions in response to questions circulated before the CIA meeting.

Consultation of relevant stakeholders included workshops organized by European Audiovisual Culture Education Agency (EACEA) with the Erasmus Mundus community on visa and on Erasmus Mundus Joint Doctorates, workshops and discussions with National Platforms of youth exchange organisations (including school pupil and volunteering organisations), and a workshop on the views of the research Community in a meeting of the EURAXESS bridgehead organizations<sup>7</sup>.

Several workshops were organized by the European Migration Network (EMN) on international students' mobility, EMN Ad-hoc queries<sup>8</sup> as well as a large-scale study on: "Immigration of International Students to the EU".<sup>9</sup>

An online public consultation was launched on 1 June 2012 through IPM<sup>10</sup> and 1461 replies were received. A very large majority of respondents (91%) thought that the attractiveness of the EU as a destination for researchers should be improved, with 87% saying the same for students. For both groups the biggest issues were seen to be visas and residence permits. Over 70% of respondents thought that the attractiveness of the EU should also be improved for school pupils, volunteers and unremunerated trainees. There was no geographical bias between responses from within or outside the EU.

Finally, the relevant results of the public consultation of the European Research Area framework Communication<sup>11</sup> as well as the results of Erasmus Mundus Visa Survey of Erasmus Mundus Alumni and students carried out by the Erasmus Mundus Students and Alumni Association (EMA)<sup>12</sup> at the request of European Audiovisual, Education and Culture Agency (EACEA) were also taken into account.

- **Collection and use of expertise**

There was no need for external expertise in addition to the data collected as indicated above.

- **Impact assessment**

The following options were considered:

**Option 1 (baseline): No change to the existing situation**

Different and diverging solutions with respect to admission conditions, in particular visa, would continue to be implemented by the Member States acting independently. The lack of

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<sup>7</sup> Stakeholders were consulted on current legislative framework relevant to students and researchers, in particular on problems affecting the admission and mobility of third-country nationals concerned, on potential scope for improvements as well as on the possible amendments of the Directive.

<sup>8</sup> <http://emn.intrasoft-intl.com/> See under: EMN Outputs / EMN Ad-Hoc Queries / Students.

<sup>9</sup> The EMN Steering Board chose the topic Immigration of International Students to the EU as the Main Study for the Work Programme 2012. The aim of the study is to provide an overview of the immigration policies implemented by the EU Member States and Norway regarding international students, with a view to assisting policy-makers and practitioners to achieve a balance between actively attracting international students into the EU for the purposes of study, and preventing the misuse of international student routes to migration.

<sup>10</sup> <http://ec.europa.eu/yourvoice/ipm/forms/dispatch?form=Immigration2012>. The consultation closed on 23 August 2012.

<sup>11</sup> [http://ec.europa.eu/research/consultations/era/consultation\\_en.htm](http://ec.europa.eu/research/consultations/era/consultation_en.htm)

<sup>12</sup> [http://eacea.ec.europa.eu/erasmus\\_mundus/events/visas-students/ema\\_visa\\_survey\\_16112011.pdf](http://eacea.ec.europa.eu/erasmus_mundus/events/visas-students/ema_visa_survey_16112011.pdf)

clarity and transparency on these aspects would remain. Problems with procedural safeguards would continue, and conditions to exercise intra-EU mobility (in particular in the case of students) would remain restrictive, whereas remunerated trainees would not be covered at all by EU legislation. Similarly, regarding access to the labour market for students and researchers following graduation/finalisation of their studies/research, different approaches would continue to apply across the EU.

### **Option 2: Increased communication efforts (in particular in case of researchers), and strengthened enforcement of the current rules**

This option includes better provision of and access to information to increase the transparency of existing rules and making them better used. There could also be increased efforts in raising awareness about best practices among Member States in admitting and protecting groups which are currently not covered by existing Directives, i.e. au pairs and remunerated trainees. A more systematic exercise of ensuring that Member States understand and respect their obligations under these Directives would be carried out.

### **Option 3: Improvement of admission conditions, rights and procedural guarantees**

This option mainly includes improvements for students, school pupils, volunteers and unremunerated trainees as it makes admission conditions comparable to those that apply for researchers and brings some of the rights to the standard enjoyed by researchers. This option would make rules for the currently optional groups of school pupils, volunteers and unremunerated trainees mandatory. Member States would be obliged to grant every facility to obtain the requisite visas to the third-country national (students and other categories) who has submitted an application and meets the admission conditions. There would also be changes regarding procedural guarantees, mainly through the introduction of time-limits that oblige Member States' authorities to decide on an application within 60 days. In exceptional circumstances, this time-limit could be extended by an additional 30 days. Students' right to work during their period of study would be extended to cover a minimum of 15 hours per week as of the first year of residence.

### **Option 4: Further improvement of admission conditions, rights also on intra-EU mobility and procedural guarantees; access to job-seeking following completion of studies or research project; extended scope to au-pairs and remunerated trainees**

This option aims at a higher degree of ambition in improving the conditions and rights of the groups covered by existing Directives, extending the scope of the Directive to au-pairs and remunerated trainees and introducing specific admission conditions to ensure better protection for them. Member States would have the possibility to issue long-stay visas or residence permits, and they should, in case both types of authorizations would be used, require only the fulfillment of admission conditions mentioned in the Directive (so that the conditions remain the same irrespective of the type of authorization).

In case the third-country nationals' stay exceeds a period of one year, Member States issuing long-stay visas would have to issue residence permits after the first year. Intra-EU mobility provisions would be strengthened for researchers and students, and introduced for the first time for remunerated trainees. In addition, regarding intra-EU mobility, specific, more favorable rules would apply to beneficiaries of EU programmes including mobility measures such as Erasmus Mundus or Marie Curie.

Students would obtain the right to work for a minimum of 20 hours per week as of the first year of residence. After finalization of their studies/research, students and researchers would be allowed to stay on the territory to identify work opportunities for a period of 12 months. As

for procedural guarantees, Member States would be obliged to decide on applications within 60 days (all groups), and within 30 days for Erasmus Mundus and Marie Curie fellows.

The analysis and comparison of the options suggest that there are problems that cannot be solved by improved communication efforts, and therefore require an update of the Directives.

Option 4 appears to be the most cost-effective option to meet the key objectives and brings about positive economic and social impacts. The main disadvantage of legislative changes would be the costs involved. Member States will have to make modifications to their legislative frameworks, mainly concerning authorisations to enter and stay, intra-EU mobility and time-limits to handle applications. At the same time the costs implied by option 4 would be relatively limited, and some Member States are already implementing some of the provisions foreseen.

Since the issues identified are similar for both Directives, and in order to provide more coherence and clarity of the EU rules, the most effective way to implement the preferred option is to combine the two Directives in a single legislative instrument. This will be carried out through a recast of both Directives, bringing them together in a single legislative act and proposing new substantial changes.

### **3. LEGAL ASPECTS OF THE PROPOSAL**

- **Summary of the proposed action**

The proposal establishes the conditions of entry and residence of third-country national researchers, students, pupils, remunerated and unremunerated trainees, volunteers and au pairs to the territory of the Member States for a period exceeding three months. The proposal introduces admission conditions for two groups of third-country nationals currently not covered by a legally binding EU legal framework, au pairs and remunerated trainees, to ensure their legal rights and protection. In the case of third-country national researchers, family admission is made more favourable, as well as access to the labour market by family members, and their intra-EU mobility.

The proposal provides that an applicant who satisfies all the conditions set out for admission to one of the Member States shall be granted a long-stay visa or residence permit. The proposal facilitates and simplifies intra-EU mobility for students and researchers, in particular for those under the Erasmus Mundus/Marie Curie programmes which will be expanded and see an increase in participation under the next Multiannual Financial Framework. The proposal increases the rights of students to work part-time and allows students and researchers, after finalization of studies/research, to stay on the territory to identify work opportunities for a period of 12 months.

Increased information and transparency are introduced, as well as time limits for decisions and improved procedural guarantees, such as written reasons for a decision and rights of appeal. Fees charged would have to be proportionate.

- **Legal basis**

Article 79(2) TFEU empowers the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, to adopt measures in the following areas:

(a) The conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits;

(b) The definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States.

- **Subsidiarity principle**

Immigration policy is a competence shared by the Union and the Member States. The principle of subsidiarity therefore applies, which involves ensuring that the objectives of the proposed action could not be achieved sufficiently by the Member States (necessity test), and considering whether and how these objectives could be better achieved by action on the part of the Union (European added value test).

The challenge to keep and improve the capacity to attract talent from outside of the EU has increased and is common to all Member States. Although each Member State could continue to have its own national system of admitting the third-country nationals groups concerned by this proposal, this would not achieve the general objective of increasing the attractiveness of the EU as a destination for talented migrants. Having one set of common admission and residence requirements rather than a fragmented situation with diverging national rules is clearly more efficient and simpler for potential applicants as well as for organizations involved than having to look into and deal with 27 different systems. In addition, the promotion of intra-EU mobility, one of the key objectives of this proposal, requires an EU-wide instrument.

With the increased number of initiatives targeting youth and stimulating cultural, social, educational people-to-people contacts with nationals of third countries and forms of informal training, the need for matching them with adequate immigration rules is even greater.

Finally, a minimum uniform level of protection and rights of third-country students, researchers and other groups should offer solid safeguards against the exploitation of certain vulnerable categories, such as remunerated trainees and au-pairs.

The EU added value of the existing Students and Researchers Directives has been proven over the years, and this proposal will lead to further improvements.

A transparent legal framework including appropriate safeguards to ensure a genuine transfer of skills would facilitate economic, social and cultural international relationships between the Member States and sending countries. As regards external aspects of migration policy, an EU instrument covering remunerated trainees will help further deepening of the Global Approach to Migration and Mobility, as it both provides transfers of skills and strengthens third countries' commitment to fight irregular immigration thanks to additional legal migration routes. Concerning au-pairs, an EU framework would help to increase their protection.

One of the key elements of this proposal would be to better tap into the potential of students and researchers upon finalizing their studies/research. They constitute a future pool of highly-skilled workers as they speak the language and are integrated in the host society.

By addressing remunerated trainees who fall outside the scope of intra-corporate transferees, the proposal would complement the Directive on intra-corporate transferees which is currently being negotiated with the Council and the European Parliament.

Provisions aiming at clarifying and promoting rights and residing conditions would also contribute to the overall objective of enhancing the protection of fundamental rights.

Given all these considerations, it is considered that the proposal complies with the subsidiarity principle.

- **Proportionality principle**



The principle of proportionality applies, meaning that 'the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties' - Article 5(4) of the Treaty on European Union. The proposal complies with the proportionality principle for the following reasons:

The instrument chosen is a Directive, which gives Member States a high degree of flexibility in terms of implementation.

The content of the action is limited to what is necessary to achieve its aim. The proposed rules concern admission conditions, procedures and authorisations (residence permits and long-stay visas), as well as rights of students, researchers, pupils, volunteers, trainees and au pairs, which are the areas that constitute elements of a common immigration policy under Article 79 TFEU. EU-wide rules already exist for some of these groups but need to be up-dated and improved, and the content of this proposal is limited to what is necessary to achieve the above aim.

- **Choice of instrument**

The proposed instrument is a Directive. It is the appropriate instrument for this action as it sets binding minimum standards but, at the same time, gives Member States the necessary flexibility. Furthermore it is the most appropriate instrument for bringing together in a single legislative act the two existing Directives through the recast of both existing Directives, in order to ensure a coherent legal framework for different groups of third country nationals coming to the EU.

#### **4. BUDGETARY IMPLICATIONS**

The proposal has no implications for the EU budget.

#### **5. ADDITIONAL INFORMATION**

- **Transposition clause**

The proposal includes a transposition clause.

- **Explanatory documents accompanying the notification of transposition measures**

The proposed Directive has a wide personal scope as regards the different third-country national groups that it covers (researchers, students, school pupils, trainees, volunteers and au-pairs). The proposal also contains a large number of legal obligations, extending the latter compared to the existing Directives 2005/71/EC and 2004/114/EC. Given this, and the fact that the proposal includes provisions on a number of groups not yet covered in a mandatory way by the current legal framework, explanatory documents accompanying the notification of transposition measures will be needed so that the transposition measures that the Member States have added to existing legislation are clearly identifiable.

- **Detailed explanation of the proposal**

#### **CHAPTER I – GENERAL PROVISIONS**

##### **Article 1**

The proposal is part of the EU's efforts to put in place a comprehensive immigration policy. It has two specific purposes. The first one is to set out the conditions of entry and residence of third-country nationals to the territory of the Member States for a period exceeding three months for the purposes of research, studies, pupil exchange, remunerated and unremunerated

training, voluntary service and au pairing. The second is to set out the conditions of entry and residence of third-country national students and remunerated trainees in Member States other than the Member State which first grants the third-country national an authorisation on the basis of this Directive. The third one covers the conditions of entry and residence of third-country national researchers 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

This Article sets out the scope of the proposal, which applies to third-country nationals who apply to be admitted to the territory of a Member State for the purpose of research, studies, pupil exchange, remunerated or unremunerated training, voluntary service or au pairing. The optional provisions of the Students' Directive on pupils, unremunerated trainees and volunteers have been made mandatory and the general scope has been extended to cover remunerated trainees and au pairs.

Regarding the groups that are not covered by the proposal, the proposal very much follows the approach developed in Directive 2004/114/EC and 2005/71/EC. The proposal does not cover, as an example, EU citizens and their family members. As was the case with previous Directives 2004/114/EC and 2005/71/EC, it also does not cover third-country nationals who are EC long-term residents given their more privileged status and their specific type of residence permit, or refugees, those residing in a Member State on a strictly temporary basis in accordance with EC legislation or under commitments contained in international agreements, and other limited categories.

#### Article 3

This Article sets out the definitions used in the proposal, which are to a large extent common to other existing migration Directives (most notably 2004/114/EC and 2005/71/EC). The definition of au-pairs is inspired by the 1969 European Agreement on "au pair" Placement. The definition of remunerated trainee is based on that for unremunerated trainee, while highlighting the element of remuneration. The term "authorisation" is used to cover both residence permits and long term visas.

#### Article 4

This Article states that Member States may grant more favourable conditions for the persons to whom the proposal for Directive applies, however only in relation to certain specific provisions that concern family members of researchers, rights to equal treatment, economic activities and procedural safeguards, so as not to undermine the scope of the Directive.

### CHAPTER II - ADMISSION

#### Article 5

This Article lays down the general principle that an applicant who satisfies all the general and specific conditions for admission shall be granted a residence permit or a long-stay visa by the Member State where the application has been made. The reason for this is to avoid situations in which the applicant might be refused admission although he or she fulfils all the conditions but is not granted the necessary visa.

#### Article 6

This Article lays down the general conditions which all applicants must fulfil in order to be admitted to a Member State, besides the specific conditions that apply to the different categories of third-country nationals laid down in the subsequent Articles. The general conditions are very much in line with those developed in the existing *acquis* on legal

migration, and include valid documents, sickness insurance and minimum resources. Once the general conditions as well as the specific conditions of admission are fulfilled, applicants shall be entitled to an authorisation, meaning a long-stay visa and/or residence permit.

#### Articles 7, 8 and 9

These Articles set out specific conditions of admission for third-country national researchers, which already exist in the Researchers' Directive, in particular the requirement that the research organisation be approved by the Member State, and that a hosting agreement be signed by both the approved research organisation and the researcher. This proposal explicitly lists the elements that should be contained in the hosting agreement. They are the title and purpose of the research project, the confirmation of the researcher that he or she undertakes to complete the research project, the confirmation of the organisation that it hosts the researcher so that he or she can complete the research project, the start and end date of the research project, information on the legal relationship between the research organization and the researcher and information on the working conditions of the researcher. For third-country national researchers to be aware of research organisations that can enter into hosting agreements, emphasis is placed on the need for the list of approved organisation to be publicly available and up-dated whenever a change occurs in the list.

#### Articles 10

This provision of Article 10 sets out the specific conditions of admission for third-country national students, similar to those already found in the Students Directive.

#### Articles 11, 12, 13 and 14

These provisions set out the specific conditions of admission for third-country national school pupils, remunerated and unremunerated trainees, volunteers and au-pairs, who need to show evidence of the organisation that is responsible for their exchange, training or, volunteering. Whereas school pupils, unremunerated trainees and volunteers were already included in Directive 2004/114/EC on an optional basis, remunerated trainees is an entirely new group of third-country nationals to be covered. The same applies to au-pairs. These two latter groups share similar characteristics with those already addressed by EU law. Both groups benefit from increased levels of protection. For au-pairs to be admitted there needs to be evidence that the host family accepts responsibility for example as far as subsistence and accommodation are concerned. The au-pair stay also needs to be based on an agreement between the au-pair and the host family defining his/her rights and obligations. For remunerated trainees the training programme, its duration, conditions of supervision and working conditions need to be specified. In order to avoid situations in which trainees are used as 'cheap labour', the host entity may be obliged to declare that the third-country national is not filling a job.

### CHAPTER III - AUTHORISATIONS AND DURATION OF RESIDENCE

#### Articles 15, 16 and 17

These provisions set out the information that should be included on the third-country national's residence permit or long-term visa. Article 16 specifies that for researchers and students an authorisation should be granted for at least one year. For all other groups the authorisation is limited to one year as a rule, with the possibility for exceptions. This is in line with the durations applied under Directives 2005/71 and 2004/114. Furthermore, Article 17 enables Member States to provide additional information on the full lists of Member States where the third country national students or researchers intend go.

## CHAPTER IV - GROUNDS FOR REFUSAL, WITHDRAWAL OR NON-RENEWAL OF AUTHORISATIONS

Articles 18, 19 and 20

These provisions lay down the mandatory and possible grounds for refusing, withdrawing or not renewing an authorisation, such as the general and specific conditions for admission no longer being met, false documents etc., which are standard conditions under the existing migration Directives.

## CHAPTER V-RIGHTS

This proposal introduces a specific chapter on rights for all groups covered by the proposal.

Article 21

In order to ensure the fair treatment of third-country nationals falling under the scope of the Directive, this provision entitles them to equal treatment under the Single Permit Directive<sup>13</sup>. More favourable rights to equal treatment with nationals of the host Member State as regards branches of social security as defined in Regulation No 883/2004 on the coordination of social security schemes are maintained for third-country national researchers, without the possibility for the limitations laid down by the Single Permit Directive. Furthermore, third-country national school pupils, volunteers, unremunerated trainees and au-pairs will benefit of equal treatment rights with nationals of the host Member State as regards access to goods and services and the supply of goods and services made available to the public independently on whether Union or national law gives them access to the labour market .

Articles 22 and 23

Under these provisions third country national researchers and students are given the right to work, with Member States being able to set certain limits. Researchers, as was the case under Directive 2005/71, are allowed to teach in accordance with national legislation. Regarding students, whereas under Directive 2004/114/EC students were allowed to work for a minimum of 10 hours per week, this period has been increased to 20 hours. With respect to students' access to economic activities, Member States may continue take into consideration their labour market situation but this should be done in a proportionate way in order not to systematically endanger the right to work<sup>14</sup>.

Article 24

Article 24 introduces the possibility for students and researchers, if they fulfil the general admission conditions of the proposal (except for the condition on being a minor), to stay in the Member State for 12 months upon finalization of their studies/research in order to look for work or set up a business. A number of Member States already provide for this possibility but the amount of time may differ. The possibility to remain in the relevant Member State appears to be an important factor when third-country national students/researchers choose their country of destination. This provision thus has the potential to make the Member States more competitive in the search for talents on a global stage. This is an issue of common interest in the context of a declining working-age population and future skills needs and would be in line with the Entrepreneurship 2020 Action Plan<sup>15</sup>. It would however not be an automatic work

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<sup>13</sup> Directive 2011/98/EU of the European Parliament and of the council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, OJ L 343 of 23.12.2011

<sup>14</sup> Case C-508/10, judgment 26.4.2012

<sup>15</sup> COM(2012)795

permit, but Member States, could still apply the relevant authorization procedures. In a period of more than 3 and less than 6 months, Member States could ask the third-country nationals to provide documentation that they are genuinely seeking for a job (for example, copies of the letters and CVs sent to employers) or are in the process of setting up a business. After 6 months, they could also ask third- country nationals to provide evidence that they have a genuine chance of being engaged or of launching a business.

#### Article 25

This Article includes specific provisions on the admission and access to the labour market of researchers' family members in derogation to Directive 2003/86/EC with a view to increase the EU attractiveness to third-country national researchers. Whether or not family members of researchers can have immediate access to the Member State concerned as well as to the labour market can play a role in the researcher's decision to be mobile or not.

### CHAPTER VI-MOBILITY BETWEEN MEMBER STATES

#### Articles 26 and 27

These Articles set out the conditions under which researchers, students and trainees can move between the Member States, in order to facilitate such mobility. For researchers, under Directive 2005/71/EC, the period for which they are allowed to move to a second Member State on the basis of the hosting agreement concluded in the first Member State has been extended from 3 to 6 months. For students, provisions were introduced in the new proposal that also allow them to move to a second Member State for a period of up to 6 months on the basis of the authorisation granted by the first Member State. Specific rules apply to third-country nationals who come under EU mobility programmes, for example the current Erasmus Mundus or Marie Curie programmes, in order to simplify the exercise of mobility. This will limit situations in which third-country nationals who qualify for scholarships of fellowships under EU mobility programmes cannot take them up as they cannot enter the territory of the Member State concerned.

#### Article 28

In line with the provisions of the Blue Card Directive, researchers' family members can move between Member States together with the researcher.

### CHAPTER VII- PROCEDURE AND TRANSPARENCY

#### Article 29

This provision introduces a time-limit that obliges Member States to decide on the complete application for an authorisation and notify the applicant in writing within 60 days (applying for all groups), and within 30 days for Union programmes including mobility measures such as Erasmus Mundus and Marie Curie fellows. The current legal framework does not specify any time limit. Procedural guarantees include the possibility of a legal challenge against a decision rejecting an application as well as the requirement for the authorities to give reasons for such decisions in writing, and ensuring respect for the right to a legal remedy.

#### Articles 30 and 31

Recognising that availability of information is crucial for achieving the objectives of this proposal. Article 30 requires the Member States to make information available on the entry and residence conditions as set by this proposal, including on approved research organisations and on fees. In line with existing migration Directives, Article 31 explicitly states that Member States may charge fees for the processing of applications. In addition, in line with

recent case-law by the European Court of Justice<sup>16</sup>, Article 31 introduces a provision indicating that the amount of such fees should not endanger the fulfilment of the Directive's objectives.

## CHAPTER VIII - FINAL PROVISIONS

### Articles 32 to 38

Article 32 requires the Member States to establish national contact points to exchange information on third-country nationals covered by the proposal who move between Member States. Such national contact points already exist in relation to certain existing migration Directives such as the Blue Card Directive and have proved to be an efficient mechanism allowing technical communication between the Member States.

### Article 33

This provision requires the Member States to communicate to the Commission statistics on the numbers of third-country nationals granted authorisations under this proposal, in accordance with Regulation No 862/2007, with the possibility for additional statistics to be requested by the Commission.

### Article 36

This provision provides that the proposal formally repeals the existing Directives 2005/71/EC and 2004/114/EC on third-country national researchers and students.

The remaining provisions (Articles 34, 35, 37 and 38) are standard final provisions dealing with reporting, transposition, entry into force and addresses of the Directive.

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<sup>16</sup> Case C-508/10, judgement 26.4.2012

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↓ 2004/114/EC, 2005/71/EC (adapted) ⇒ new
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2013/0081 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

on the conditions of ~~admission~~ ⇒ entry and residence ⇐ of third-country nationals for the purposes of  research,  studies, pupil exchange, ⇒ remunerated and ⇐ unremunerated training ~~or~~, voluntary service ⇒ and au pairing ⇐

~~on a specific procedure for admitting third-country nationals for the purposes of scientific research~~

[RECAST]

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty  on the Functioning of the European Union  ~~establishing the European Community~~, and in particular points ~~(3)~~ (a)  and (b)  ~~(4)(b) of the first subparagraph of Article ~~63~~  79(2)  thereof,~~

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

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

Having regard to the Opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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↓ new
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- (1) A number of amendments are to be made to 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<sup>17</sup> and Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research<sup>18</sup>. In the interests of clarity, those Directives should be recast.

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<sup>17</sup> OJ L 375, 23.12.2004, p. 12.

<sup>18</sup> OJ L 289, 3.11.2005, p. 15.

- (2) This Directive should respond to the need identified in the implementation reports of the two Directives<sup>19</sup> to remedy the identified weaknesses, and to offer a coherent legal framework for different groups coming to the Union from third countries. It should therefore simplify and streamline the existing provisions for the different groups in a single instrument. Despite differences between the groups covered by this Directive, they also share a number of characteristics which makes it possible to address them through a common legal framework at Union level.
- (3) This Directive should contribute to the Stockholm Programme's aim to approximate national legislation on the conditions for entry and residence of third-country nationals. Immigration from outside the Union is one source of highly skilled people, and in particular students and researchers are increasingly sought after. They play an important role to form the Union's key asset – human capital - in ensuring smart, sustainable and inclusive growth, and therefore contribute to the achievement of the objectives of the Europe 2020 Strategy.
- (4) The shortcomings highlighted in the implementation reports of the two Directives concern mainly admission conditions, rights, procedural safeguards, students' access to the labour market during studies, intra-Union mobility provisions as well as a lack of harmonization, as coverage of some groups, such as volunteers, school pupils and unremunerated trainees was left optional to Member States. Subsequent wider consultations have also pointed to the need for better job-seeking possibilities for researchers and students and better protection of au-pairs and remunerated trainees which are not covered by the current instruments.

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↓ 2004/114/EC recital 1

- (5) 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.

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↓ 2004/114/EC recital 2 (adapted)

~~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.~~

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↓ 2004/114/EC recital 3 (adapted)

~~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.~~

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<sup>19</sup> COM(2011) 587 final and COM(2011) 901 final



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↓ new

- (6) This Directive should also aim at fostering people-to-people contacts and mobility, as important elements of the Union's external policy, notably vis-à-vis the countries of the European Neighbourhood Policy or the Union's strategic partners. It should allow for a better contribution to the Global Approach to Migration and Mobility and its Mobility Partnerships which offer a concrete framework for dialogue and cooperation between the Member States and third countries, including in facilitating and organizing legal migration.

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↓ 2004/114/EC recital 6 (adapted)

~~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.~~

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↓ 2004/114/EC recital 7 (adapted)  
⇒ new

- (7) Migration for the purposes set out in this Directive ~~is by definition temporary and does not depend on the labour market situation in the host country.~~ ⇒ should promote the generation and acquisition of knowledge and skills. ⇐ ☒ It ☒ 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.

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↓ new

- (8) This Directive should promote the Union as an attractive location for research and innovation and advance the Union in the global competition for talent. Opening the Union up to third-country nationals who may be admitted for the purposes of research is also part of the Innovation Union flagship initiative. Creating an open labour market for Union researchers and for researchers from third countries was also affirmed as a key aim of the European Research Area (ERA), a unified area, in which researchers, scientific knowledge and technology circulate freely.

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↓ 2005/71/EC recital 5 (adapted)

~~This Directive is intended to contribute to achieving these goals by fostering the admission and mobility for research purposes of third-country nationals for stays of more than three months, in order to make the Community more attractive to researchers from around the world and to boost its position as an international centre for research.~~

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↓ 2004/114/EC recital 9 (adapted)

~~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.).~~

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↓ 2004/114/EC recital 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.~~

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↓ 2005/71/EC recitals 11, 13 and 14 (adapted)  
⇒ new

- (9) It is appropriate to facilitate the admission of researchers ~~by establishing~~ ⇒ through ⇐ an admission procedure which does not depend on their legal relationship with the host research organisation and by no longer requiring a work permit in addition to a residence permit ⇐ or a long-stay visa ⇐. ~~Member States could apply similar rules for third-country nationals requesting admission for the purposes of teaching in a higher education establishment in accordance with national legislation or administrative practice, in the context of a research project. The~~ ⊗ This ⊗ specific admission procedure for researchers should be based on collaboration between the research organisations and the immigration authorities in the Member States. It should give the former a key role in the admission procedure with a view to facilitating and speeding up the entry and residence of third-country researchers in the ~~Community~~ ⊗ Union ⊗ while preserving Member States' prerogatives with respect to immigration ~~policy~~ ⊗ policy ⊗. Research organisations approved in advance by the Member States should be able to sign a hosting agreement with a third-country national for the purposes of carrying out a research project. Member States should issue ~~a residence permit~~ ⇐ an authorisation ⇐ on the basis of the hosting agreement if the conditions for entry and residence are met.
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↓ 2005/71/EC recital 9 (adapted)

- (10) As the effort to be made to achieve the ~~said 3%~~ target ⊗ of investing 3 % of GDP in research ⊗ largely concerns the private sector, which must therefore recruit more researchers in the years to come, the research organisations ~~potentially eligible~~ ⊗ that can be approved ⊗ under this Directive ⊗ should ⊗ belong to either the public or private sectors.

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↓ 2005/71/EC recital 15 (adapted)  
⇒ new

- (11) In order to make the ~~Community~~  Union  more attractive ~~to~~  for  third-country  national  researchers,  family members of researchers, as defined in Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification<sup>20</sup>,  they should be granted, during their stay, equal social and economic rights with nationals of the host Member State in a number of areas and the possibility to teach in higher education establishments  should be admitted with them. They should benefit from intra- Union mobility provisions and they should also have access to the labour market .

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↓ new

- (12) Where appropriate, Member States should be encouraged to treat PhD candidates as researchers.

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↓ 2005/71/EC recital 6 (adapted)

- (13) Implementation of this Directive should not encourage a brain drain from emerging or developing countries. ~~Back-up~~ Measures to support researchers' reintegration into their countries of origin ~~as well as the movement of researchers~~ should be taken in partnership with the countries of origin with a view to establishing a comprehensive migration policy.

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↓ new

- (14) In order to promote Europe as a whole as a world centre of excellence for studies and training, the conditions for entry and residence of those who wish to come to the Union for these purposes should be improved. This is in line with the objectives of the Agenda for the modernisation of Europe's higher education systems<sup>21</sup>, in particular within the context of the internationalisation of European higher education. The approximation of the Member States' relevant national legislation is part of this endeavour.

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↓ new

- (15) The extension and deepening of the Bologna process launched through the Bologna Declaration<sup>22</sup> has led to the progressive convergence of higher education systems in participating countries but also beyond them. This is because national authorities have supported the mobility of students and academic staff, and higher education establishments have integrated it in their curricula. This needs to be reflected through

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<sup>20</sup> OJ L 251, 3.10.2003, p. 12.

<sup>21</sup> COM(2011) 567 final

<sup>22</sup> Joint declaration of the European Ministers of Education of 19 June 1999

improved intra-Union mobility provisions for students. Making European higher education attractive and competitive is one of the objectives of the Bologna declaration. The Bologna process led to the establishment of the European Higher Education Area. Streamlining the European higher education sector has made it more attractive for students who are third-country nationals to study in Europe.

↓ 2004/114/EC recital 10

- (16) The duration and other conditions of preparatory courses for students covered by this Directive should be determined by Member States in accordance with their national legislation.

↓ 2004/114/EC recital 12

- (17) 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.

↓ 2004/114/EC recital 13

⇒ new

- (18) Fellowships ~~may~~ ⇒ should ⇐ be taken into account in assessing the availability of sufficient resources.

↓ new

- (19) Whilst Member States had discretion on whether or not to apply Directive 2004/114/EC to school pupils, volunteers and unremunerated trainees, these groups should fall now within the scope of this Directive in order to facilitate their entry and residence and ensure their rights. This Directive should also apply to au-pairs and remunerated trainees, in order to ensure their legal rights and protection.

- (20) Remunerated trainees who come to work in the Union in the context of an intra-corporate transfer should not be covered by this Directive, as they fall under the scope of [Directive 2013/xx/EU on intra-corporate transfers].

- (21) As currently at Union level there is no legal framework regarding third-country national au-pairs to ensure their fair treatment, provisions should be introduced to address their specific needs as a particularly vulnerable group. This Directive should foresee conditions to be fulfilled by both the au-pair and the host family, in particular as regards the agreement between them which should include elements such as the pocket money to be received<sup>23</sup>.

- (22) Once all the general and specific conditions for admission are fulfilled, Member States should issue an authorisation, i.e. a long stay visa and/or residence permit, within specified time limits. If a Member State issues a residence permit on its territory only

<sup>23</sup> Council of Europe European Agreement on "au pair" Placement, Article 8

and all the conditions of this Directive relating to admission are fulfilled, the Member State should grant the third-country national concerned the requisite visas.

- (23) Authorisations should mention the status of the third-country national concerned, and the respective Union programmes including mobility measures. Member States may indicate additional information in paper format or electronically, provided this does not amount to additional conditions.
- (24) The different periods of duration regarding authorisations under this Directive should reflect the specific nature of the stay of each group.
- (25) Member States may charge applicants for processing applications for authorisations. The fees should be proportionate to the purpose of the stay.
- (26) The rights granted to third-country nationals under this Directive should not depend on whether the authorisation is in the form of a long stay visa or a residence permit.

↓ 2004/114/EC recital 8  
⇒ new

- (27) The term admission covers the entry and residence of third-country nationals ⇒ to and in a Member State, ⇐ for the purposes set out in this Directive.

↓ 2004/114/EC recital 14  
(adapted)  
⇒ new

- (28) Admission 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, ⇒ in an individual case, ⇐ that the third-country national concerned is a potential threat to public policy ~~or~~ public security ⇒ or public health ⇐. ~~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.~~

↓ 2004/114/EC recital 15  
(adapted)

- (29) In case of doubts concerning the grounds of the application ~~of~~ ⊗ for ⊗ 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~~ ⊗ intended ⊗ studies ⊗ or training ⊗, in order to fight against abuse and misuse of the procedure set out in this Directive.

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↓ new

- (30) National authorities should inform third-country nationals who apply for admission to the Member States under this Directive of a decision on the application. They should do so in writing as soon as possible and, at the latest within 60 days, or, as soon as possible and at the latest within 30 days in the case of researchers and students covered by Union programmes including mobility measures, starting from the date of the application.
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↓ 2004/114/EC recital 16  
(adapted)  
⇒ new

- (31) The ☒ intra-Union ☒ mobility of ~~students who are~~ third-country ☒ national researchers, students and remunerated trainees ☒ ~~studying in several Member States~~ should 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.~~ ⇒ For researchers, this Directive should improve the rules relating to the period for which the authorisation granted by the first Member State should cover stays in a second Member State without requiring a new hosting agreement. Improvements should be made regarding the situation of students, and the new group of remunerated trainees, by allowing them to stay in a second Member State for periods lasting between three and six months, provided that they fulfil the general conditions laid down in this Directive. For third-country national trainees coming to the Union as intra-corporate transferees, specific intra-Union mobility provisions designed according to the nature of their transfer should apply in accordance with [Directive 2013/xx/EU on intra-corporate transfers]. ⇐
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↓ new

- (32) Union immigration rules and Union programmes including mobility measures should complement each other more. Third-country national researchers and students covered by such Union programmes should be entitled to move to the Member States foreseen on the basis of the authorisation granted by the first Member State, as long as the full list of those Member States is known before entry into the Union. Such an authorisation should allow them to exercise mobility without the need to provide any additional information or to complete any other application procedures. Member States are encouraged to facilitate the intra-Union mobility of third-country national volunteers where volunteering programmes cover more than one Member State.
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↓ 2004/114/EC recital 18  
(adapted)  
⇒ new

- (33) In order to allow ☒ third-country national ☒ students ~~who are third-country nationals~~ to ⇒ better ⇐ cover part of the cost of their studies, they should be given

⇒ increased ⇐ access to the labour market under the conditions set out in this Directive⇒ , meaning a minimum of 20 hours per week ⇐. 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 ⇒ , although this must not risk entirely negating the right to work ⇐ .

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↓ new

- (34) As part of the drive to ensure a well-qualified workforce for the future, Member States should allow students who graduate in the Union to remain on their territory with the intention to identify work opportunities or to set up a business for 12 months after expiry of the initial authorisation. . They should also allow researchers to do so upon completion of their research project as defined in the hosting agreement. This should not amount to an automatic right of access to the labour market or to set up a business.They may be requested to provide evidence in accordance with Article 24.
- (35) The provisions of this Directive are without prejudice to the competence of the Member States to regulate the volumes of admission of third-country nationals for the purpose of work.
- (36) To make the Union more attractive for third-country national researchers, students, pupils, trainees, volunteers and au pairs, it is important to ensure their fair treatment in accordance with Article 79 of the Treaty. These groups are entitled to equal treatment with nationals of the host Member State under Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State<sup>24</sup>. More favourable rights to equal treatment with nationals of the host Member State as regards branches of social security as defined in Regulation No 883/2004 on the coordination of social security schemes should be maintained for third-country national researchers, in addition to the rights granted under Directive 2011/98/EU. Currently the latter foresees a possibility for Member States to limit equal treatment with regard to branches of social security, including family benefits, and this possibility of limitation could affect researchers. In addition, independently on whether Union or national law of the host Member State gives third-country national school pupils, volunteers, unremunerated trainees and au-pairs access to the labour market, they should enjoy equal treatment rights with nationals of the host Member State as regards access to goods and services and the supply of goods and services made available to the public.
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↓ 2004/114/EC recital 23

- (37) 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<sup>25</sup>.

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<sup>24</sup> OJ L 343, 23.12.2011, p. 1.

<sup>25</sup> OJ L 157, 15.6.2002, p. 1.

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↓ 2005/71/EC recital 22 (adapted)

~~This Directive should not affect in any circumstances 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<sup>26</sup>.~~

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↓ 2004/114/EC recital 4 (adapted)  
⇒ new

(38) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union<sup>⇒</sup>, as referred to in Article 6 of the Treaty on European Union<sup>⇐</sup>.

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↓ 2005/71/EC recital 25 (adapted)

~~This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.~~

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↓ 2004/114/EC recital 5

(39) 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.

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↓ 2005/71/EC recital 24 (adapted)

~~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 characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.~~

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↓ new

(40) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

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<sup>26</sup> OJL 157, 15.6.2002, p. 1.



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↓ 2004/114/EC	recital	24
(adapted)		
⇒ new		

- (41) Since the objective of this Directive, namely to determine the conditions of admission ~~⊗~~ entry and residence ~~⊗~~ of third-country nationals for the purposes of ~~⊗~~ research ~~⊗~~ study, pupil exchange, unremunerated ~~⇒~~ or remunerated ~~⇐~~ training, voluntary service ~~⇒~~ or au pairing ~~⇐~~, cannot be sufficiently achieved by the Member States and can, by reason of its scale or effects, be better achieved at ~~Community~~ ~~⊗~~ Union ~~⊗~~ level, the ~~Community~~ ~~⊗~~ Union ~~⊗~~ 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.
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↓ 2005/71/EC	recital	23 (adapted)
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~~The objectives of this Directive, namely the introduction of a special admission procedure and the adoption of conditions of entry and residence applicable to third-country nationals for stays of more than three months in the Member States for the purposes of conducting a research project under a hosting agreement with a research organisation, cannot be sufficiently achieved by the Member States, especially as regards ensuring mobility between Member States, and can therefore be better achieved by the Community. The Community is therefore entitled to take measures in accordance with the subsidiarity principle laid down in Article 5 of the Treaty. In accordance with the principle of proportionality set out in that article, this Directive does not go beyond what is necessary to achieve those objectives.~~

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↓ 2004/114/EC	recital	22
(adapted)		

- (42) 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, ~~⊗~~ about the research organisations, approved under this Directive, with which researchers could conclude a hosting agreement, and on the conditions and procedures for entry into and residence on its territory for the purposes of carrying out research, as adopted under this Directive as well ~~⊗~~ as regards ~~⊗~~ information about ~~⊗~~ the establishments defined in this Directive, courses of study to which third-country nationals may be admitted and the conditions and procedures for entry ~~⊗~~ into ~~⊗~~ and residence ~~in~~ ~~⊗~~ on ~~⊗~~ its territory for those purposes.
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↓ 2005/71/EC	recital	10 (adapted)
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~~Each Member State should ensure that the most comprehensive information possible, regularly kept up to date, is made publicly available, via the Internet in particular, on the research organisations, approved under this Directive, with which researchers could conclude a hosting agreement, and on the conditions and procedures for entry and residence on its territory for the purposes of carrying out research, as adopted under this Directive.~~

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↓ 2005/71/EC recital 28 (adapted)

- (43) [In accordance with Articles 1 and 2 of the Protocol ~~⊗~~ No 21 ~~⊗~~ on the position of the United Kingdom and Ireland ~~⊗~~ in respect of the Area of Freedom, Security and Justice ~~⊗~~ , annexed to the Treaty on European Union and the Treaty ~~⊗~~ on the Functioning of the European Union ~~⊗~~ ~~establishing the European Community~~, and without prejudice to Article 4 of the said Protocol, ~~the United Kingdom is not participating~~ ~~⊗~~ those Member States are not taking part ~~⊗~~ in the adoption of this Directive and ~~is~~ ~~⊗~~ are ~~⊗~~ not bound by it or subject to its application.]
- 

↓ 2005/71/EC recital 29 (adapted)

- (44) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty ~~establishing~~ ~~⊗~~ on the Functioning of ~~⊗~~ the European ~~⊗~~ Union ~~⊗~~ ~~Community~~, Denmark does not take part in the adoption of this Directive, and is not bound by it or subject to its application.
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↓ 2004/114/EC recital 17 (adapted)

~~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.~~

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↓ 2004/114/EC recital 19 (adapted)

~~The notion of prior authorisation includes the granting of work permits to students who wish to exercise an economic activity.~~

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↓ 2004/114/EC recital 20 (adapted)

~~This Directive does not affect national legislation in the area of part-time work.~~

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↓ 2004/114/EC recital 21 (adapted)

~~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.~~

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↓ 2004/114/EC recital 25  
(adapted)

~~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.~~

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↓ 2004/114/EC recital 26  
(adapted)

~~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,~~

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↓ 2005/71/EC recital 1 (adapted)

~~With a view to consolidating and giving structure to European research policy, the Commission considered it necessary in January 2000 to establish the European Research Area as the lynchpin of the Community's future action in this field.~~

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↓ 2005/71/EC recital 2 (adapted)

~~Endorsing the European Research Area, the Lisbon European Council in March 2000 set the Community the objective of becoming the most competitive and dynamic knowledge-based economy in the world by 2010.~~

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↓ 2005/71/EC recital 3 (adapted)

~~The globalisation of the economy calls for greater mobility of researchers, something which was recognised by the sixth framework programme of the European Community<sup>27</sup>, when it opened up its programmes further to researchers from outside the European Union.~~

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↓ 2005/71/EC recital 4 (adapted)

~~The number of researchers which the Community will need by 2010 to meet the target set by the Barcelona European Council in March 2002 of 3 % of GDP invested in research is~~

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<sup>27</sup> ~~Decision No 1513/2002/EC of the European Parliament and of the Council of 27 June 2002 concerning the sixth framework programme of the European Community for research, technological development and demonstration activities, contributing to the creation of the European Research Area and to innovation (2002 to 2006) (OJ L 232, 29.8.2002, p. 1). Decision amended by Decision No 786/2004/EC (OJ L 138, 30.4.2004, p. 7).~~

~~estimated at 700000. This target is to be met through a series of interlocking measures, such as making scientific careers more attractive to young people, promoting women's involvement in scientific research, extending the opportunities for training and mobility in research, improving career prospects for researchers in the Community and opening up the Community to third-country nationals who might be admitted for the purposes of research.~~

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↓ 2005/71/EC recital 6 (adapted)

~~Implementation of this Directive should not encourage a brain drain from emerging or developing countries. Back-up measures to support researchers' reintegration into their countries of origin as well as the movement of researchers should be taken in partnership with the countries of origin with a view to establishing a comprehensive migration policy.~~

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↓ 2005/71/EC recital 7 (adapted)

~~For the achievement of the objectives of the Lisbon process it is also important to foster the mobility within the Union of researchers who are EU citizens, and in particular researchers from the Member States which acceded in 2004, for the purpose of carrying out scientific research.~~

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↓ 2005/71/EC recital 8 (adapted)

~~Given the openness imposed by changes in the world economy and the likely requirements to meet the 3% of GDP target for investment in research, third-country researchers potentially eligible under this Directive should be defined broadly in accordance with their qualifications and the research project which they intend to carry out.~~

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↓ 2005/71/EC recital 12 (adapted)

~~At the same time, the traditional avenues of admission (such as employment and traineeship) should be maintained, especially for doctoral students carrying out research as students, who should be excluded from the scope of this Directive and are covered by 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<sup>28</sup>.~~

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↓ 2005/71/EC recital 16 (adapted)

~~This Directive adds a very important improvement in the field of social security as the non-discrimination principle also applies directly to persons coming to a Member State directly from a third country. Nevertheless, this Directive should not confer more rights than those already provided in existing Community legislation in the field of social security for third-country nationals who have cross-border elements between Member States. This Directive~~

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<sup>28</sup>

OJL 375, 23.12.2004, p. 12.

~~furthermore should not grant rights in relation to situations which lie outside the scope of Community legislation like for example family members residing in a third country.~~

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↓ 2005/71/EC recital 17 (adapted)

~~It is important to foster the mobility of third country nationals admitted for the purposes of carrying out scientific research as a means of developing and consolidating contacts and networks between partners and establishing the role of the European Research Area at world level. Researchers should be able to exercise mobility under the conditions established by this Directive. The conditions for exercising mobility under this Directive should not affect the rules currently governing recognition of the validity of the travel documents.~~

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↓ 2005/71/EC recital 18 (adapted)

~~Special attention should be paid to the facilitation and support of the preservation of the unity of family members of the researchers, according to the Council Recommendation of 12 October 2005 to facilitate the admission of third country nationals to carry out scientific research in the European Community<sup>29</sup>.~~

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↓ 2005/71/EC recital 19 (adapted)

~~In order to preserve family unity and to enable mobility, family members should be able to join the researcher in another Member State under the conditions determined by the national law of such Member State, including its obligations arising from bilateral or multilateral agreements.~~

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↓ 2005/71/EC recital 20 (adapted)

~~Holders of residence permits should be in principle allowed to submit an application for admission while remaining on the territory of the Member State concerned.~~

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↓ 2005/71/EC recital 21 (adapted)

~~Member States should have the right to charge applicants for the processing of applications for residence permits.~~

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↓ 2005/71/EC recital 26 (adapted)

~~In accordance with paragraph 34 of the Interinstitutional agreement on better law making, Member States will be encouraged to draw up, for themselves and in the interest of the Community, their own tables, which will, as far as possible, illustrate the correlation between this Directive and the transposition measures, and to make them public.~~

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<sup>29</sup> See page 26 of this Official Journal.

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↓ 2005/71/EC recital 27 (adapted)

~~In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and the Treaty establishing the European Community, Ireland has given notice by letter of 1 July 2004 of its wish to participate in the adoption and application of this Directive.~~

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↓ new

(45) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment compared to the earlier Directives. The obligation to transpose the provisions which are unchanged arises under the earlier Directives.

(46) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and the dates of application of the Directives set out in Annex I, Part B,

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↓ 2004/114/EC (adapted)  
⇒ new

HAS ADOPTED THIS DIRECTIVE:

## CHAPTER I

### GENERAL PROVISIONS

#### *Article 1*

#### **Subject matter**

This Directive determines:

(a) the conditions ~~for admission~~ ⇒ of entry and residence ⇐ of third-country nationals to the territory of the Member States for a period exceeding ~~three months~~ ⇒ 90 days ⇐ for the purposes of ☒ research ☒ , studies, pupil exchange, ⇒ remunerated and ⇐ unremunerated training ~~or~~ , voluntary service ⇒ au pairing ⇐ ;

~~(b) the rules concerning the procedures for admitting third-country nationals to the territory of the Member States for those purposes.~~

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↓ new

(b) the conditions of entry and residence of third-country national students and remunerated trainees for a period exceeding 90 days in Member States other than the Member State which first grants the third-country national an authorisation on the basis of this Directive;

(c) the conditions of entry and residence of third-country national researchers in Member States other than the Member State which first grants the third-country national an authorisation on the basis of this Directive.

↓ 2005/71/EC (adapted)

## ~~CHAPTER I~~

### ~~GENERAL PROVISIONS~~

#### ~~Article 1~~

##### ~~Purpose~~

~~This Directive lays down the conditions for the admission of third-country researchers to the Member States for more than three months for the purposes of carrying out a research project under hosting agreements with research organisations.~~

↓ 2004/114/EC (adapted)

⇒ new

#### *Article 2*

##### **Scope**

1. This Directive applies to third-country nationals who apply to be admitted to the territory of a Member State for the purpose of ☒ research ☒ , studies, ☒ pupil exchange, ☒ ☐ remunerated or ☐ ☒ unremunerated training, voluntary service ☒ ☐ or au pairing ☐ .

2. This Directive shall not apply to ☒ third-country nationals ☐ :

- (a) ~~third-country nationals~~ residing in a Member State as asylum-seekers, or under subsidiary forms of protection, or under temporary protection schemes;
- (b) ~~third-country nationals~~ whose expulsion has been suspended for reasons of fact or of law;
- (c) ~~third-country nationals~~ who are family members of Union citizens who have exercised their right to free movement within the Union;
- (d) ~~third-country nationals~~ who enjoy long-term resident status in a Member State in accordance with Council Directive 2003/109/EC<sup>30</sup> and exercise their right to reside in another Member State in order to study or receive vocational training;
- (e) ~~third-country nationals~~ considered under the national legislation of the Member State concerned as ~~workers or~~ self-employed persons.

<sup>30</sup> OJ L 16, 23.1.2004, p. 44

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↓ new

(f) who, together with their family members, and irrespective of their nationality, enjoy rights of free movement equivalent to those of citizens of the Union under agreements either between the Union and the Member States or between the Union and third countries.

(g) trainees who come to the Union in the context of an intra-corporate transfer under [Directive 2013/xx/EU on intra-corporate transfers].

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↓ 2004/114/EC (adapted)

### Article 3

#### Definitions

For the purposes of this Directive:

(a) 'third-country national' means ~~any~~  a  person who is not a citizen of the Union within the meaning of Article ~~17~~1720(1) of the Treaty;

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↓ 2005/71/EC (adapted)

### ~~Article 2~~

#### ~~Definitions~~

~~For the purposes of this Directive:~~

~~(a) 'third-country national' means any person who is not a Union citizen within the meaning of Article 17(1) of the Treaty;~~

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↓ 2005/71/EC

(b) ~~(d)~~ 'researcher' means a third-country national holding an appropriate higher education qualification, which gives access to doctoral programmes, who is selected by a research organisation for carrying out a research project for which the above qualification is normally required;

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↓ 2004/114/EC

(c) ~~(b)~~ 'student' means a third-country national accepted by an establishment of higher education and admitted to the territory of a Member State to pursue as his/her main activity a full-time course of study leading to a higher education qualification recognised by the Member State, including diplomas, certificates or doctoral degrees in an establishment of higher education, which may cover a preparatory course prior to such education according to its national legislation;



(d) ~~(e)~~ 'school pupil' means a third-country national admitted to the territory of a Member State to follow a recognised programme of secondary education in the context of an exchange scheme operated by an organisation recognised for that purpose by the Member State in accordance with its national legislation or administrative practice;

↓ 2004/114/EC (adapted)

(e) ~~(d)~~ 'unremunerated trainee' means a third-country national who has been admitted to the territory of a Member State for a training period without remuneration in accordance with ~~its~~ the national legislation  of the Member State concerned .

↓ new

(f) 'remunerated trainee' means a third-country national who has been admitted to the territory of a Member State for a training period in return for which he/she receives remuneration in accordance with the national legislation of the Member State concerned;

(g) 'volunteer' means a third-country national admitted to the territory of a Member State to participate in a recognised voluntary service scheme;

↓ 2004/114/EC (adapted)

(h) ~~(f)~~ 'voluntary service scheme' means a programme of activities of practical solidarity, based on a  scheme recognised by the Member  State or  the Union  ~~Community scheme~~, pursuing objectives of general interest;

↓ new

(i) 'au pair' means a third-country national who is temporarily received by a family in the territory of a Member State in exchange for light housework and taking care of children in order to improve his/her linguistic skills and his/her knowledge of the host country;

↓ 2005/71/EC

(j) ~~(b)~~ '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;

(k) ~~(e)~~ 'research organisation' means any public or private organisation which conducts research and which has been approved for the purposes of this Directive by a Member State in accordance with the latter's legislation or administrative practice;

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↓ 2004/114/EC (adapted)

(l) ~~(e)~~ '  educational  establishment' means a public or private establishment recognised by the host Member State and/or whose courses of study are recognised in accordance with its national legislation or administrative practice  on the basis of transparent criteria  for the purposes set out in this Directive;

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↓ new

(m) 'remuneration' means the payment, whatever form it takes, received in consideration for the services performed and being considered under national legislation or established practice as a constituent element of an employment relationship;

(n) 'employment' means the exercise of activities covering whatever form of labour or work regulated under national law or established practice for and under the direction and supervision of an employer;

(o) 'first Member State' means the Member State which first grants a third-country national an authorisation on the basis of this Directive;

(p) 'second Member State' means any Member State other than the first Member State;

(q) 'Union programmes including mobility measures' means Union funded programmes promoting inward mobility of third country nationals to the Union;

(r) 'authorisation' means a residence permit issued by the authorities of a Member State allowing a third-country national to stay legally on its territory, in accordance with Article 1(2)(a) of Regulation (EC) No 1030/2002 or a long-stay visa;

(s) 'long-stay visa' means an authorisation issued by a Member State as provided for in Article 18 of the Schengen Convention or issued in accordance with the national law of Member States that do not fully implement the Schengen acquis.

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↓ 2004/114/EC

~~(g) 'residence permit' means any authorisation issued by the authorities of a Member State allowing a third-country national to stay legally in its territory, in accordance with Article 1(2)(a) of Regulation (EC) No 1030/2002.~~

---

↓ 2005/71/EC (adapted)

~~(e) 'residence permit' means any authorisation bearing the term 'researcher' issued by the authorities of a Member State allowing a third-country national to stay legally on its territory, in accordance with Article 1(2)(a) of Regulation (EC) No 1030/2002.~~

### ~~Article 3~~

#### ~~Scope~~

~~1. This Directive shall apply to third country nationals who apply to be admitted to the territory of a Member State for the purpose of carrying out a research project.~~

~~2. This Directive shall not apply to:~~

- ~~(a) third country nationals staying in a Member State as applicants for international protection or under temporary protection schemes;~~
- ~~(b) third country nationals applying to reside in a Member State as students within the meaning of Directive 2004/114/EC in order to carry out research leading to a doctoral degree;~~
- ~~(c) third country nationals whose expulsion has been suspended for reasons of fact or law;~~
- ~~(d) researchers seconded by a research organisation to another research organisation in another Member State.~~

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↓ 2005/71/EC (adapted)

#### ~~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 Community or between the Community and its Member States on the one hand and one or more third countries on the other;~~
- ~~(b) bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.~~

~~2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for persons to whom it applies.~~

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↓ 2004/114/EC (adapted)  
⇒ new

#### ~~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 ~~Community~~  Union  or the ~~Community~~  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 persons to whom it applies  with respect to Articles 21, 22, 23, 24, 25 and 29, especially in the context of Mobility Partnerships .

## CHAPTER II

### CONDITIONS OF ADMISSION

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↓ 2004/114/EC

#### Article 5

##### Principle

1. The admission of a third-country national under this Directive shall be subject to the verification of documentary evidence showing that he/she meets the general conditions laid down in Article 6 and the specific conditions in whichever of Articles 7 to ~~11~~ 14 applies to the relevant category.

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↓ new

2. Once all the general and specific conditions for admission are fulfilled, applicants shall be entitled to a long-stay visa and/or residence permit. If a Member State issues residence permits only on its territory and not elsewhere and all the admission conditions laid down in this Directive are fulfilled, the Member State concerned shall issue the third country national the requisite visa.

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↓ 2004/114/EC

#### Article 6

##### General conditions

1. A third-country national who applies to be admitted for the purposes set out in this Directive shall:

(a) present a valid travel document as determined by national legislation; Member States may require the period of validity of the travel document to cover at least the duration of the planned stay;

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↓ 2004/114/EC (adapted)

(b) if he/she is a minor under the national legislation of the host Member State, present a parental authorisation  or equivalent  for the planned stay;

(c) have sickness insurance ~~in respect of~~  for  all risks normally covered for ~~its own~~ nationals ~~in~~  of  the Member State concerned;

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↓ 2004/114/EC

- (d) not be regarded as a threat to public policy, public security or public health;
- (e) provide proof, if the Member State so requests, that he/she has paid the fee for processing the application on the basis of Article ~~2031~~.
- 

↓ new

- (f) provide the evidence requested by the Member State that during his/her stay he/she will have sufficient resources to cover his/her subsistence, training and return travel costs, without prejudice to an individual examination of each case.
- 

↓ 2004/114/EC (adapted)

~~2. Member States shall facilitate the admission procedure for the third country nationals covered by Articles 7 to 11 who participate in Community programmes enhancing mobility towards or within the Community.~~

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↓ 2005/71/EC (adapted)

### ~~CHAPTER III~~

#### ~~ADMISSION OF RESEARCHERS~~

##### ~~Article 7~~

##### ~~Conditions for admission~~

~~1. A third country national who applies to be admitted for the purposes set out in this Directive shall:~~

- ~~(a) present a valid travel document, as determined by national law. Member States may require the period of the validity of the travel document to cover at least the duration of the residence permit;~~
- ~~(b) present a hosting agreement signed with a research organisation in accordance with Article 6(2);~~
- ~~(c) where appropriate, present a statement of financial responsibility issued by the research organisation in accordance with Article 6(3); and~~
- ~~(d) not be considered to pose a threat to public policy, public security or public health.~~

~~Member States shall check that all the conditions referred to in points (a), (b), (c) and (d) are met.~~

~~2. Member States may also check the terms upon which the hosting agreement has been based and concluded.~~

~~3. Once the checks referred to in paragraphs 1 and 2 have been positively concluded, researchers shall be admitted on the territory of the Member States to carry out the hosting agreement.~~

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↓ new

#### Article 7

##### Specific conditions for researchers

1. In addition to the general conditions laid down in Article 6, a third-country national who applies to be admitted for the purpose of carrying out research shall:

(a) present a hosting agreement signed with a research organisation in accordance with Article 9(1) and Article 9(2);

(b) where appropriate, present a statement of financial responsibility issued by the research organisation in accordance with Article 9(3).

2. Member States may check the terms upon which the hosting agreement has been based and concluded.

3. Once the checks referred to in paragraphs 1 and 2 have been positively concluded, researchers shall be admitted to the territory of the Member State to carry out the hosting agreement.

4. Applications from third-country nationals wishing to pursue research in the Union shall be considered and examined when the third-country national concerned is residing outside the territory of the Member State to which he/she wishes to be admitted.

5. Member States may accept, in accordance with their national legislation, an application submitted when the third-country national concerned is already in their territory.

6. Member States shall determine whether applications for authorisations are to be made by the researcher or by the research organisation concerned.

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↓ 2005/71/EC (adapted)

## ~~CHAPTER II~~

### ~~RESEARCH ORGANISATIONS~~

#### Article ~~5~~8

##### Approval ~~⊗~~ of research organisations ~~⊗~~

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↓ 2005/71/EC

1. Any research organisation wishing to host a researcher under the admission procedure laid down in this Directive shall first be approved for that purpose by the Member State concerned.

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 States. Applications for approval by both public and private organisations shall be made in accordance with those procedures and be based on their statutory tasks or corporate purposes as appropriate and on proof 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. Member States may require, in accordance with national legislation, a written undertaking of the research organisation that in cases where a researcher remains illegally in the territory of the Member State concerned, the said organisation is responsible for reimbursing the costs related to his/her 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.

4. Member States may provide that, within two months of the date of expiry of the hosting agreement concerned, the approved organisation shall provide the competent authorities designated for the purpose by the Member States with confirmation that the work has been carried out for each of the research projects in respect of which a hosting agreement has been signed pursuant to Article ~~69~~.

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↓ 2005/71/EC (adapted)

5. The competent authorities in each Member State shall publish and update ~~regularly~~ lists of the research organisations approved for the purposes of this Directive  whenever a change is made to those lists .

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↓ 2005/71/EC

6. A Member State may, among other measures, refuse to renew or decide to withdraw the approval of a research organisation which no longer meets the conditions laid down in paragraphs 2, 3 and 4 or in cases where the approval has been fraudulently acquired or where a research organisation has signed a hosting agreement with a third-country national fraudulently or negligently. Where approval has been refused or withdrawn, the organisation concerned may be banned from reapplying for approval up to five years from the date of publication of the decision on withdrawal or non-renewal.

7. Member States may determine in their national legislation the consequences of the withdrawal of the approval or refusal to renew the approval for the existing hosting agreements, concluded in accordance with Article ~~69~~, as well as the consequences for the residence permits of the researchers concerned.

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↓ 2005/71/EC (adapted)

*Article ~~69~~*

### **Hosting agreement**

1. A research organisation wishing to host a researcher shall sign a hosting agreement with the latter ~~whereby the researcher undertakes to complete the research project and the organisation undertakes to host the researcher for that purpose without prejudice to Article~~  provided that the conditions laid down in Articles 6 and  7  are met .

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↓ new

The hosting agreement shall contain at least the following elements :

- (a) the title and purpose of the research project;
  - (b) an undertaking by the researcher to complete the research project;
  - (c) confirmation by the organisation that it undertakes to host the researcher so that he or she can complete the research project;
  - (d) the start and end date of the research project;
  - (e) information on the legal relationship between the research organisation and the researcher;
  - (f) information on the working conditions of the researcher.
- 

↓ 2005/71/EC

2. Research organisations may sign hosting agreements only if the following conditions are met:

- (a) the research project has been accepted by the relevant authorities in the organisation, after examination of:
    - (i) the purpose and duration of the research, and the availability of the necessary financial resources for it to be carried out;
    - (ii) the researcher's qualifications in the light of the research objectives, as evidenced by a certified copy of his/her qualification in accordance with Article 2 ~~(d)~~ (b);
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↓ 2005/71/EC (adapted)

- ~~(b) during his/her stay the researcher has sufficient monthly resources to meet his/her expenses and return travel costs in accordance with the minimum amount published for the purpose by the Member State, without having recourse to the Member State's social assistance system;~~
- ~~(c) during his/her stay the researcher has sickness insurance for all the risks normally covered for nationals of the Member State concerned;~~
- ~~(d) the hosting agreement specifies the legal relationship and working conditions of the researchers.~~



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↓ 2005/71/EC

3. Once the hosting agreement is signed, the research organisation may be required, in accordance with national legislation, to provide the researcher with an individual statement that for costs within the meaning of Article ~~58~~(3) financial responsibility has been assumed.
4. The hosting agreement shall automatically lapse when the researcher is not admitted or when the legal relationship between the researcher and the research organisation is terminated.
5. Research organisations shall promptly inform the authority designated for the purpose by the Member States of any occurrence likely to prevent implementation of the hosting agreement.

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↓ 2004/114/EC (adapted)

*Article ~~7~~10*

**Specific conditions for students**

1. In addition to the general conditions laid down in Article 6, a third-country national who applies to be admitted for the purpose of study shall:

(a)  provide evidence that he/she has  ~~have~~ been accepted by an establishment of higher education to follow a course of study;

(b) ~~(d)~~ provide evidence, if the Member State so requires, that he/she has paid the fees charged by the establishment<sub>;</sub>

~~(b) provide the evidence requested by a Member State that during his/her stay he/she will have sufficient resources to cover his/her subsistence, study and return travel costs. Member States shall make public the minimum monthly resources required for the purpose of this provision, without prejudice to individual examination of each case;~~

(c) provide evidence, if the Member State so requires, of sufficient knowledge of the language of the course to be followed by him/her<sub>;</sub>

2. Students who automatically qualify for sickness insurance ~~in respect of~~  for  all risks normally covered for the nationals of the Member State concerned as a result of enrolment at an establishment shall be presumed to meet the condition laid down in Article 6(1)(c).

*Article ~~8~~*

**Mobility of students**

~~1. Without prejudice to Articles 12(2), 16 and 18(2), a third-country national who has already been admitted as a student and applies to follow in another Member State part of the studies already commenced, or to complement them with a related course of study in another Member State, shall be admitted by the latter Member State within a period that does not hamper the pursuit of the relevant studies, whilst leaving the competent authorities sufficient time to process the application, if he/she~~

~~(a) meets the conditions laid down by Articles 6 and 7 in relation to that Member State; and~~

~~(b) has sent, with his/her application for admission, full documentary evidence of his/her academic record and evidence that the course he/she wishes to follow genuinely complements the one he/she has completed; and~~

~~(c) participates in a Community or bilateral exchange programme or has been admitted as a student in a Member State for no less than two years.~~

~~2. The requirements referred to in paragraph 1(c), shall not apply in the case where the student, in the framework of his/her programme of studies, is obliged to attend a part of his/her courses in an establishment of another Member State.~~

~~3. The competent authorities of the first Member State shall, at the request of the competent authorities of the second Member State, provide the appropriate information in relation to the stay of the student in the territory of the first Member State.~~

↓ 2004/114/EC (adapted)

### *Article 911*

#### **Specific conditions for school pupils**

1. ~~Subject to Article 3,~~ ~~a~~ A third-country national who applies to be admitted in a pupil exchange scheme shall, in addition to the general conditions ~~stipulated~~  laid down  in Article 6:

↓ 2004/114/EC

(a) not be below the minimum age nor above the maximum age set by the Member State concerned;

(b) provide evidence of acceptance by a secondary education establishment;

(c) provide evidence of participation in a recognised pupil exchange scheme programme operated by an organisation recognised for that purpose by the Member State concerned in accordance with its national legislation or administrative practice;

(d) provide evidence that the pupil exchange organisation accepts responsibility for him/her throughout his/her period of presence in the territory of the Member State concerned, in particular as regards subsistence, study, healthcare and return travel costs;

(e) be accommodated throughout his/her stay by a family meeting the conditions set by the Member State concerned and selected in accordance with the rules of the pupil exchange scheme in which he/she is participating.

2. Member States may confine the admission of school pupils participating in an exchange scheme to nationals of third countries which offer the same possibility for their own nationals.

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↓ 2004/114/EC (adapted)  
⇒ new

Article ~~10~~12

**Specific conditions for ~~unremunerated~~ trainees**

~~1. Subject to Article 3, a~~ A third-country national who applies to be admitted as an unremunerated ~~⇒~~ or remunerated ~~⇐~~ trainee shall, in addition to the general conditions laid down in Article 6:

(a) have signed a training agreement, approved if need be by the relevant authority in the Member State concerned in accordance with its national legislation or administrative practice, for ~~an unremunerated~~  a  placement with a public- or private-sector enterprise or vocational training establishment recognised by the Member State in accordance with its national legislation or administrative practice~~;~~

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↓ new

(b) prove, if the Member State so requires, that they have previous relevant education or qualifications or professional experience to benefit from the work experience.

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↓ 2004/114/EC

~~(b) provide the evidence requested by a Member State that during his/her stay he/she will have sufficient resources to cover his/her subsistence, training and return travel costs. The Member States shall make public the minimum monthly resources required for the purpose of this provision, without prejudice to individual examination of each case;~~

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↓ 2004/114/EC

(c) receive, if the Member State so requires, basic language training so as to acquire the knowledge needed for the purposes of the placement.

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↓ new

The agreement referred to in point (a) shall describe the training programme, specify its duration, the conditions under which the trainee is supervised in the performance of this programme, his/her working hours, the legal relationship with the host entity and, where the trainee is remunerated, the remuneration granted to him/her.

2. Member States may require the host entity to declare that the third country national is not filling a job.

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↓ 2004/114/EC (adapted)

*Article ~~11~~13*

**Specific conditions for volunteers**

~~Subject to Article 3, a~~ A third-country national who applies to be admitted to a voluntary service scheme shall, in addition to the general conditions laid down in Article 6:

~~(a) not be below the minimum age nor above the maximum age set by the Member State concerned;~~

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↓ 2004/114/EC

~~(a)~~ (b) produce an agreement with the organisation responsible in the Member State concerned for the voluntary service scheme in which he/she is participating, giving a description of tasks, the conditions in which he/she is supervised in the performance of those tasks, his/her working hours, the resources available to cover his/her travel, subsistence, accommodation costs and pocket money throughout his/her stay and, if appropriate, the training he/she will receive to help him/her perform his/her service;

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↓ 2004/114/EC

~~(b)~~ (c) provide evidence that the organisation responsible for the voluntary service scheme in which he/she is participating has subscribed to a third-party insurance policy; ~~and accepts full responsibility for him/her throughout his/her stay, in particular as regards his/her subsistence, healthcare and return travel costs;~~

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↓ 2004/114/EC

~~(c)~~ (d) and, if the host Member State specifically requires it, receive a basic introduction to the language, history and political and social structures of that Member State.

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↓ (new)

*Article 14*

**Specific conditions for au-pairs**

A third-country national who applies to be admitted for the purpose of working as an au-pair shall, in addition to the general conditions laid down in Article 6:

(a) be at least 17 but not more than 30 or, except in individually justified cases, more than 30 years of age;

(b) provide evidence that the host family accepts responsibility for him/her throughout his/her period of presence in the territory of the Member State concerned,

in particular with regard to subsistence, accommodation, healthcare, maternity or accident risks;

(c) produce an agreement between the au-pair and the host family defining his/her rights and obligations, including specifications about the pocket money to be received and adequate arrangements allowing him/her to attend courses, and participation in day-to-day family duties.

↓ 2005/71/EC

~~Article 9~~

### ~~Family members~~

~~1. When a Member State decides to grant a residence permit to the family members of a researcher, the duration of validity of their residence permit shall be the same as that of the residence permit issued to the researcher insofar as the period of validity of their travel documents allows it. In duly justified cases, the duration of the residence permit of the family member of the researcher may be shortened.~~

~~2. The issue of the residence permit to the family members of the researcher admitted to a Member State shall not be made dependent on the requirement of a minimum period of residence of the researcher.~~

↓ new

## CHAPTER III

### AUTHORISATIONS AND DURATION OF RESIDENCE

~~Article 15~~

#### ~~Authorisations~~

Long-stay visas and residence permits shall bear the title "researcher", "student", "volunteer", "school pupil", "remunerated trainee", "unremunerated trainee" or "au pair". For third-country national researchers and students coming to the Union under a specific Union programme including mobility measures, the authorisation shall mention the specific programme.

↓ 2005/71/EC (adapted)  
⇒ new

~~Article 16~~

#### ~~Duration of residence permit~~

1. Member States shall issue ~~a residence permit~~ ⇒ an authorisation for researchers ⇐ for a period of at least one year and shall renew it if the conditions laid down in Articles 6, ~~and~~ 7

12 and 9 are still met. If the research project is scheduled to last less than one year, the residence permit authorisation shall be issued for the duration of the project.

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↓ new

2. Member States shall issue an authorisation for students for a period of at least one year and shall renew it if the conditions laid down in Articles 6 and 10 are still met. If the period of studies is scheduled to last less than one year, the authorisation shall be issued for the duration of the studies.

3. For school pupils and au pairs, Member States shall issue an authorisation for a maximum period of one year.

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↓ 2004/114/EC (adapted)  
⇒ new

4. The period of validity of an residence permit authorisation issued to unremunerated trainees shall correspond to the duration of the placement or shall be for a maximum of one year. In exceptional cases, it may be renewed, once only and in the form of a permit and exclusively for such time as is needed to acquire a vocational qualification recognised by a Member State in accordance with its national legislation or administrative practice, provided the holder still meets the conditions laid down in Articles 6 and 10 12.

5. An authorisation residence permit issued to volunteers shall be issued for a period of no more than one year. In exceptional cases, if the duration of the relevant programme is longer than one year, the duration of the validity of the required authorisation residence permit may correspond to the period concerned.

6. In cases where Member States allow entry and residence on the basis of a long-stay visa, a residence permit shall be issued with the first extension of the initial stay. Where the validity of the long-stay visa is shorter than the authorised duration of stay, the long-stay visa shall be replaced by a residence permit without additional formalities before the expiry of the visa.

#### *Article 17*

#### **Additional information**

Member States may indicate additional information related to the stay of the third-country national, such as the full list of Member States that the researcher or student intends to go to, in paper format, or store such data in electronic format as referred to in Article 4 of Regulation (EC) No 1030/2002 and in point (a) 16 of the Annex thereto.

## CHAPTER IV

### ~~RESIDENCE PERMITS~~ ☒ **GROUNDS FOR REFUSAL, WITHDRAWAL OR NON-RENEWAL OF AUTHORISATIONS** ☒

#### ~~Article 12~~

##### ~~Residence permit issued to students~~

~~1. A residence permit shall be issued to the student for a period of at least one year and renewable if the holder continues to meet the conditions of Articles 6 and 7. Where the duration of the course of study is less than one year, the permit shall be valid for the duration of the course.~~

~~2. Without prejudice to Article 16, renewal of a residence permit may be refused or the permit may be withdrawn if the holder:~~

~~(a) does not respect the limits imposed on access to economic activities under Article 17;~~

~~(b) does not make acceptable progress in his/her studies in accordance with national legislation or administrative practice.~~

#### ~~Article 13~~

##### ~~Residence permit issued to school pupils~~

~~A residence permit issued to school pupils shall be issued for a period of no more than one year.~~

#### ~~Article 14~~

##### ~~Residence permit issued to unremunerated trainees~~

~~The period of validity of a residence permit issued to unremunerated trainees shall correspond to the duration of the placement or shall be for a maximum of one year. In exceptional cases, it may be renewed, once only and exclusively for such time as is needed to acquire a vocational qualification recognised by a Member State in accordance with its national legislation or administrative practice, provided the holder still meets the conditions laid down in Articles 6 and 10.~~

#### ~~Article 15~~

##### ~~Residence permit issued to volunteers~~

~~A residence permit issued to volunteers shall be issued for a period of no more than one year. In exceptional cases, if the duration of the relevant programme is longer than one year, the duration of the validity of the residence permit may correspond to the period concerned.~~

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↓ new

*Article 18*

**Grounds for rejection of an application**

1. Member States shall reject an application in the following cases :

(a) where the general conditions laid down in Article 6 and the relevant specific conditions laid down in Articles 7 and 10 to 16 are not met;

(b) where the documents presented have been fraudulently acquired, falsified or tampered with;

(c) where the host entity or educational establishment was established in the sole purpose of facilitating entry;

(d) where the host entity has been sanctioned in conformity with national law for undeclared work and/or illegal employment or does not meet the legal obligations regarding social security and/or taxation set out in national law or has filed for bankruptcy or is otherwise insolvent;

(e) where the host family, or, if applicable, any intermediary organisation involved in the placement of the au-pair, has been sanctioned in conformity with national law for breach of the conditions and/or objectives of au-pair placements and/or illegal employment.

2. Member States may reject an application if the host entity appears to have deliberately eliminated the positions it is trying to fill through the new application within the 12 months immediately preceding the date of the application.

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↓ 2004/114/EC (adapted)  
⇒ new

*Article ~~16~~ 19*

⇒ **Grounds for** ⇐ ~~**Withdrawal or non-renewal of residence permits**~~ ⇒ **of an authorisation** ⇐

1. Member States ~~may~~ ⇒ shall ⇐ ~~withdraw or refuse to renew a residence permit issued on the basis of this Directive when it has been fraudulently acquired or wherever it appears that the holder did not meet or no longer meets the conditions for entry and residence laid down in Article 6 and in whichever of Articles 7 to 11 applies to the relevant category.~~ ⇒ an authorisation in the following cases : ⇐

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↓ new

(a) where authorisations and documents presented have been fraudulently acquired, falsified or tampered with;

(b) where the third-country national is residing for purposes other than those for which he/she was authorised to reside;



(c) where the host entity was established for the sole purpose of facilitating entry;

(d) where the host entity does not meet the legal obligations regarding social security and/or taxation set out in national law or has filed for bankruptcy or is otherwise insolvent;

(e) where the host family, or, if applicable, any intermediary organisation involved for the placement of the au-pair, has been sanctioned in conformity with national law for breach of the conditions and/or objectives of au-pair placements and/or for illegal employment;

(f) for students, where the time limits imposed on access to economic activities under Article 23 are not respected or if the respective student does not make acceptable progress in the relevant studies in accordance with national legislation or administrative practice.

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↓ 2004/114/EC

⇒ new

2. Member States may withdraw ~~or refuse to renew a residence permit~~ ⇒ an authorisation ⇐ for reasons of public policy, public security or public health.

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↓ 2005/71/EC

#### ~~Article 10~~

##### ~~Withdrawal or non-renewal of the residence permit~~

~~1. Member States may withdraw or refuse to renew a residence permit issued on the basis of this Directive when it has been fraudulently acquired or wherever it appears that the holder did not meet or no longer meets the conditions for entry and residence provided by Articles 6 and 7 or is residing for purposes other than that for which he was authorised to reside.~~

~~2. Member States may withdraw or refuse to renew a residence permit on grounds of public policy, public security or public health.~~

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↓ new

#### *Article 20*

##### **Grounds for non-renewal of an authorisation**

1. Member States may refuse to renew an authorisation in the following cases:

(a) where the authorisation and documents presented have been fraudulently acquired, falsified or tampered with;

(b) where it appears that the holder no longer meets the general conditions for entry and residence laid down in Article 6 and the relevant specific conditions laid down in Articles 7, 9 and 10;

(c) for students, where the time limits imposed on access to economic activities under Article 23 are not respected or where the student does not make acceptable progress in the relevant studies in accordance with national legislation or administrative practice.

2. Member States may refuse to renew an authorisation on grounds of public policy, public security and public health.

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↓ 2005/71/EC (adapted)

## CHAPTER V

### ~~RESEARCHERS' RIGHTS~~

Article ~~12~~ 21

#### Equal treatment

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↓ new

1. By way of derogation from Article 12(2)(b) of Directive 2011/98/EU, third-country national researchers shall be entitled to equal treatment with nationals of the host Member State as regards branches of social security, including family benefits, as defined in Regulation No 883/2004 on the coordination of social security schemes.

2. School pupils, volunteers, unremunerated trainees and au pairs, irrespective of whether they are allowed to work in accordance with Union or national law, 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, except procedures for obtaining housing as provided for by national law.

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↓ 2005/71/EC (adapted)

Article ~~11~~ 22

#### Teaching ~~⊗~~ by researchers ~~⊗~~

1 Researchers admitted under this Directive may teach in accordance with national legislation. 2 Member States may set a maximum number of hours or of days for the activity of teaching.

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↓ 2004/114/EC (adapted)

⇒ new

## ~~CHAPTER IV~~

### ~~TREATMENT OF THE THIRD-COUNTRY NATIONALS CONCERNED~~

Article ~~17~~ 23

#### Economic activities by students

1. Outside their study time and subject to the rules and conditions applicable to the relevant activity in the host Member State, students shall be entitled to be employed and may be entitled to exercise self-employed economic activity. The situation of the labour market in the host Member State may be taken into account.

2. Where necessary, Member States shall grant students and/or employers prior authorisation in accordance with national legislation.

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 10 ⇨ 20 ⇩ hours per week, or the equivalent in days or months per year.

~~3. Access to economic activities for the first year of residence may be restricted by the host Member State.~~

4. Member States may require students to report, in advance or otherwise, to an authority designated by the Member State concerned, that they are engaging in an economic activity. Their employers may also be subject to a reporting obligation, in advance or otherwise.

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↓ new

#### Article 24

##### **Job-searching and entrepreneurship for researchers and students**

After finalisation of research or studies in the Member State, third-country nationals shall be entitled to stay on the territory of the Member State for a period of 12 months in order to look for work or set up a business, if the conditions laid down in points (a) and (c) to (f) of Article 6 are still fulfilled. In a period of more than 3 and less than 6 months, third-country nationals may be requested to provide evidence that they continue to seek employment or are in the process of setting up a business. After a period of 6 months, third-country nationals may additionally be requested to provide evidence that they have a genuine chance of being engaged or of launching a business.

#### Article 25

##### **Researchers' family members**

1. By way of derogation from Article 3(1) and Article 8 of Directive 2003/86/EC, family reunification shall not be made dependent on the holder of the authorisation to stay for the purposes of research having reasonable prospects of obtaining the right of permanent residence and having a minimum period of residence.

2. 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 in those provisions may only be applied after the persons concerned have been granted family reunification.

3. By way of derogation from the first subparagraph of Article 5(4) of Directive 2003/86/EC, authorisations for family members shall be granted, where the conditions for family reunification are fulfilled, within 90 days from the date on which the application was lodged, and 60 days from the date of the initial application for family members of third-country national researchers covered by the relevant Union programmes including mobility measures.

4. By way of derogation from Article 13(2) and (3) of Directive 2003/86/EC, the duration of validity of the authorisation of family members shall be the same as that of the authorisation granted to the researcher insofar as the period of validity of their travel documents allows it.

5. By way of derogation from the second sentence of Article 14(2) of Directive 2003/86/EC, Member States shall not apply any time limit in respect of access to the labour market.

## CHAPTER VI

### MOBILITY BETWEEN MEMBER STATES

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↓ 2005/71/EC  
⇒ new

#### Article ~~13~~ 26

#### ⇒ Right to ⇒ Mobility between Member States ⇒ for researchers, students and remunerated trainees ⇒

1. A third-country national who has been admitted as a researcher under this Directive shall be allowed to carry out part of his/her research in another Member State under the conditions as set out in this Article.

~~2.~~ If the researcher stays in another Member State for a period of up to ~~three~~ ⇒ six ⇐ months, the research may be carried out on the basis of the hosting agreement concluded in the first Member State, provided that he has sufficient resources in the other Member State and is not considered as a threat to public policy, public security or public health in the second Member State.

~~3.~~ If the researcher stays in another Member State for more than ~~three~~ ⇒ six ⇐ months, Member States may require a new hosting agreement to carry out the research in that Member State. ⇒ If Member States require an authorisation in order to exercise mobility, such authorisations shall be granted in accordance with the procedural guarantees specified in Article 30 ⇐ ~~At all events, the conditions set out in Articles 6 and 7 shall be met in relation to the Member State concerned.~~ ~~5.~~ Member States shall not require researchers to leave the territory in order to submit applications for ~~applications for the visas or residence permits~~ ⇒ authorisations ⇐.

~~4. Where the relevant legislation provides for the requirement of a visa or a residence permit, for exercising mobility, such a visa or permit shall be granted in a timely manner within a period that does not hamper the pursuit of the research, whilst leaving the competent authorities sufficient time to process the applications.~~

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↓ new

2. For periods exceeding three months, but not exceeding six months, a third-country national who has been admitted as a student or as a remunerated trainee under this Directive shall be allowed to carry out part of his/her studies/traineeship in another Member State provided that before his or her transfer to that Member State, he/she has submitted the following to the competent authority of the second Member State:

(a) a valid travel document;

(b) proof of sickness insurance for all risks normally covered for the nationals of the Member State concerned;

(c) proof that he/she has been accepted by an establishment of higher education or a training host entity;

(d) evidence that during his/her stay he/she will have sufficient resources to cover his/her subsistence, study and return travel costs.

3. For the mobility of students and trainees from the first Member State to a second Member State, the authorities of the second Member State shall inform the authorities of the first Member State on their decision. The cooperation procedures set out in Article 32 shall apply.

4. For a third-country national who has been admitted as a student, transfers to a second Member State exceeding six months may be granted under the same conditions as those applied for mobility for a period exceeding three months but less than six months. If Member States require a new application for an authorisation to exercise mobility for a period exceeding six months, such authorisations shall be granted in accordance with Article 29.

5. Member States shall not require students to leave the territory in order to submit applications for authorisations for mobility between Member States.

#### *Article 27*

#### **Rights for researchers and students covered by Union programmes including mobility measures**

1. Member States shall grant third-country nationals, who have been admitted as researchers or students under this Directive and who are covered by Union programmes including mobility measures, an authorization covering the whole duration of their stay in the Member States concerned where:

(a) the full list of Member States that the researcher or student intends to go to is known prior to entry to the first Member State;

(b) in the case of students, the applicant can provide evidence of acceptance by the relevant establishment of higher education to follow a course of study.

2. The authorisation shall be granted by the first Member State that the researcher or student resides in.

3. Where the full list of Member States is not known prior to entry into the first Member State:

(a) for researchers, the conditions as set out in Article 26 for stays in another Member States for periods of up to six months shall apply;

(b) for students, the conditions as set out in Article 26 for stays in another Member States for periods between three and six months shall apply.

#### *Article 28*

#### **Residence in the second Member State for family members**

1. When a researcher moves to a second Member State in accordance with Articles 26 and 27, and when the family was already constituted in the first Member State, the members of his family shall be authorised to accompany or join him.

2. No later than one month after entering the territory of the second Member State, the family members concerned or the researcher, in accordance with national law, shall submit an application for a residence permit as a family member to the competent authorities of that Member State.

In cases where the residence permit of the family members issued by the first Member State expires during the procedure or no longer entitles the holder to reside legally on the territory of the second Member State, Member States shall allow the person to stay in their territory, if necessary by issuing national temporary residence permits, or equivalent authorisations, allowing the applicant to continue to stay legally on their territory with the researcher until a decision on the application has been taken by the competent authorities of the second Member State.

3. The second Member State may require the family members concerned to present with their application for a residence permit:

(a) their residence permit in the first Member State and a valid travel document, or their certified copies, as well as a visa, if required;

(b) evidence that they have resided as members of the family of the researcher in the first Member State;

(c) evidence that they have a sickness insurance covering all risks in the second Member State, or that the researcher has such insurance for them.

4. The second Member State may require the researcher to provide evidence that the holder:

(a) has an accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in the Member State concerned;

(b) has stable and regular resources which are sufficient to maintain himself and the members of his family, without recourse to the social assistance of the Member State concerned.

Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members.

↓ 2005/71/EC (adapted)

## ~~CHAPTER V~~

### ~~PROCEDURE AND TRANSPARENCY~~

#### ~~Article 14~~

##### ~~Applications for admission~~

~~1. Member States shall determine whether applications for residence permits are to be made by the researcher or by the research organisation concerned.~~

~~2. The application shall be considered and examined when the third-country national concerned is residing outside the territory of the Member States to which he/she wishes to be admitted.~~

~~3. Member States may accept, in accordance with their national legislation, an application submitted when the third-country national concerned is already in their territory.~~

~~4. The Member State concerned shall grant the third-country national who has submitted an application and who meets the conditions of Articles 6 and 7 every facility to obtain the requisite visas.~~

#### ~~Article 15~~

#### **Procedural safeguards**

~~1. The competent authorities of the Member States shall adopt a decision on the complete application as soon as possible and, where appropriate, provide for accelerated procedures.~~

~~2. If the information supplied in support of the application is inadequate, the consideration of the application may be suspended and the competent authorities shall inform the applicant of any further information they need.~~

~~3. Any decision rejecting an application for a residence permit shall be notified to the third-country national concerned in accordance with the notification procedures under the relevant national legislation. The notification shall specify the possible redress procedures available and the time limit for taking action.~~

~~4. Where an application is rejected, or a residence permit, issued in accordance with this Directive, is withdrawn, the person concerned shall have the right to mount a legal challenge before the authorities of the Member State concerned.~~

↓ 2004/114/EC (adapted)

## **CHAPTER ~~V~~ VII**

### **PROCEDURE AND TRANSPARENCY**

#### *Article ~~18~~ 29*

#### **Procedural guarantees and transparency**

~~1. A decision on an application to obtain or renew a residence permit shall be adopted, and the applicant shall be notified of it, within a period that does not hamper the pursuit of the relevant studies, whilst leaving the competent authorities sufficient time to process the application.~~

↓ new

1. The competent authorities of the Member States shall decide on the complete application for an authorisation and shall notify the applicant in writing, in accordance with the notification procedures laid down in the national law of the Member State concerned, as soon as possible and at the latest within 60 days from the date on which the application was lodged,

and within 30 days in the case of third-country national researchers and students covered by Union programmes including mobility measures.

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↓ 2004/114/EC (adapted)  
⇒ new

2. If the information supplied in support of the application is inadequate, ~~processing of the application may be suspended and~~ the competent authorities shall inform the applicant of any further information they need ⇒ and indicate a reasonable deadline to complete the application. The period referred to in paragraph 1 shall be suspended until the authorities have received the additional information required ⇐ .

3. Any decision rejecting an application for ~~a residence permit~~ ☒ an authorisation ☒ shall be notified to the third-country national concerned in accordance with the notification procedures provided for under the relevant national legislation. The notification shall specify the possible redress procedures available, ☒ the national court or authority with which the person concerned may lodge an appeal ☒ and the time limit for taking action.

4. Where an application is rejected or ~~a residence permit~~ ☒ an authorisation ☒ issued in accordance with this Directive is withdrawn, the person concerned shall have the right to mount a legal challenge before the authorities of the Member State concerned.

#### *Article 19*

#### ~~Fast-track procedure for issuing residence permits or visas to students and school pupils~~

~~An agreement on the establishment of a fast-track admission procedure allowing residence permits or visas to be issued in the name of the third-country national concerned may be concluded between the authority of a Member State with responsibility for the entry and residence of students or school pupils who are third-country nationals and an establishment of higher education or an organisation operating pupil exchange schemes which has been recognised for this purpose by the Member State concerned in accordance with its national legislation or administrative practice.~~

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↓ new

#### *Article 30*

#### **Transparency and access to information**

Member States shall make available information on entry and residence conditions for third-country nationals falling under the scope of this Directive, including the minimum monthly resources required, rights, all documentary evidence needed for an application and the applicable fees. Member States shall make available information on the research organisations approved under Article 8.



*Article ~~20~~ 31*

**Fees**

Member States may require applicants to pay fees for the processing of applications in accordance with this Directive. ⇒ The amount of such fees shall not endanger the fulfilment of its objectives. ⇐

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~~CHAPTER VI~~

~~FINAL PROVISIONS~~

~~Article 16~~

~~Reports~~

~~Periodically, and for the first time no later than three years after the entry into force of this Directive, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary.~~

~~Article 17~~

~~Transposition~~

~~1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 12 October 2007.~~

~~When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.~~

~~2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.~~

~~Article 18~~

~~Transitional provision~~

~~By way of derogation from the provisions set out in Chapter III, Member States shall not be obliged to issue permits in accordance with this Directive in the form of a residence permit for a period of up to two years, after the date referred to in Article 17(1).~~

~~Article 19~~

~~Common Travel Area~~

~~Nothing in this Directive shall affect the right of Ireland to maintain the Common Travel Area arrangements referred to in the Protocol, annexed by the Treaty of Amsterdam to the Treaty on European Union and the Treaty establishing the European Community, on the application of certain aspects of Article 14 of the Treaty establishing the European Community to the United Kingdom and Ireland.~~

~~Article 20~~

~~Entry into force~~

~~This Directive shall enter into force on the twentieth day following its publication in the Official Journal of the European Union.~~

~~Article 21~~

~~Addressees~~

~~This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.~~

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↓ 2004/114/EC

**CHAPTER ~~VI~~ VIII**

**FINAL PROVISIONS**

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↓ new

*Article 32*

Contact points

1. Member States shall appoint contact points which shall be responsible for receiving and transmitting the information needed to implement Articles 26 and 27.
2. Member States shall provide appropriate cooperation in exchanges of the information referred to in paragraph 1.

*Article 33*

Statistics

Annually, and the first time no later than [ ] Member States shall, in accordance with Regulation (EC) No 862/2007 of the European Parliament and of the Council<sup>31</sup>, communicate to the Commission statistics on the volumes of third-country nationals who have been granted authorisations. In addition, and as far as possible, statistics shall be communicated to the Commission on volumes of third-country nationals whose authorisations have been renewed or withdrawn, during the previous calendar year, indicating their citizenship. Statistics on the admitted family members of researchers shall be communicated in the same manner.

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<sup>31</sup> OJ L 199, 31.7.2007, p. 23.

The statistics referred to in paragraph 1 shall relate to reference periods of one calendar year and shall be supplied to the Commission within six months of the end of the reference year. The first reference year shall be [...]

↓ 2004/114/EC (adapted)  
⇒ new

#### *Article ~~21~~ 34*

##### **Reporting**

Periodically, and for the first time by ☒ [five years after the date of transposition of this Directive] ☒ ~~12 January 2010~~, the Commission shall ⇒ evaluate the application of this Directive and ⇐ report to the European Parliament and the Council on the application of this Directive in the Member States and propose amendments if appropriate.

#### *Article ~~22~~*

##### **~~Transposition~~**

~~Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 12 January 2007. They shall forthwith inform the Commission thereof.~~

~~When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.~~

#### *Article ~~23~~*

##### **~~Transitional provision~~**

~~By way of derogation from the provisions set out in Chapter III and for a period of up to two years after the date set out in Article 22, Member States are not obliged to issue permits in accordance with this Directive in the form of a residence permit.~~

#### *Article 24*

##### **Time limits**

~~Without prejudice to the second subparagraph of Article 4(2) of Directive 2003/109/EC, Member States shall not be obliged to take into account the time during which the student, exchange pupil, unremunerated trainee or volunteer has resided as such in their territory for the purpose of granting further rights under national law to the third country nationals concerned.~~

#### *Article 25*

##### **Entry into force**

~~This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.~~



#### Article 35

### Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [two years after the entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directives repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### Article 36

### Repeal

Directives 2005/71/EC and 2004/114/EC are repealed with effect from [day after the date set out in the first subparagraph of Article 35(1) of this Directive], without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex I, Part B.

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

#### Article 37

### Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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↓ 2004/114/EC (adapted)

#### Article ~~26~~ 38

### Addressees

This Directive is addressed to the Member States in accordance with the ~~Treaty establishing the European Community~~  Treaties .

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*



## **ANNEX I**

### **Part A**

#### **Repealed Directive with list of its successive amendments** (referred to in Article 37)

Directive 2004/114/EC of the European Parliament (OJ L 375, 23.12.2004, p. 12)  
and of the Council

Directive 2005/71/EC of the European Parliament (OJ L 289, 03.11.2005, p. 15)  
and of the Council

### **Part B**

#### **List of time-limits for transposition into national law [and application]** (referred to in Article 36)

Directive	Time-limit for transposition	Date of application
2004/114/EC	12.01.2007	
2005/71/EC	12.10.2007	

## ANNEX II

### CORRELATION TABLE

Directive 2004/114/EC	Directive 2005/71/EEC	This Directive
Article 1 (a)		Article 1 (a)
Article 1 (b)		-
-		Article 1 (b) and (c)
Article 2 introductory wording		Article 3 introductory wording
Article 2 (a)		Article 3 (a)
Article 2 (b)		Article 3 (c)
Article 2 (c)		Article 3 (d)
Article 2 (d)		Article 3 (e)
-		Article 3 (f) and (g)
Article 2 (e)		Article 3 (l)
Article 2 (f)		Article 3 (h)
Article 2 (g)		-
-		Article 3 (i)
-		Article 3 (m) to (s)
Article 3 (1)		Article 2 (1)
Article 3 (2)		Article 2 (2) (a) to (e)
-		Article 2 (2) (f) and (g)
Article 4		Article 4
Article 5		Article 5 (1)
-		Article 5 (2)
Article 6 (1)		Article 6 (a) to (e)
-		Article 6 (f)
Article 6 (2)		-

-		Article 7
Article 7 (1) introductory wording		Article 10 (1) introductory wording
Article 7 (1) (a)		Article 10 (1) (a)
Article 7 (1) (b) and (c)		-
Article 7 (1) (d)		Article 10 (1) (b)
Article 7 (2)		Article 10 (2)
-		Article 10 (3)
Article 8		-
-		Article 11
Article 9 (1) and (2)		Article 12 (1) and (2)
Article 10 introductory wording		Article 13 (1) introductory wording
Article 10 (a)		Article 13 (1) (a)
Article 10 (b) and (c)		-
-		Article 12 (1) (b)
-		Article 12 (2)
Article 11 introductory wording		Article 14 (1) introductory wording
Article 11 (a)		-
Article 11 (b)		Article 13 (1) (a)
Article 11 (c)		Article 13 (1) (b)
Article 11 (d)		Article 13 (1) (c)
Articles 12 to 15		-
-		Articles 14, 15 and 16
Article 16 (1)		Article 20 (1) introductory wording
-		Article 20 (1) (a) to (c)

Article 16 (2)		Article 20 (2)
-		Article 21
Article 17 (1) first subparagraph		Article 23 (1)
Article 17 (1) second subparagraph		Article 23 (2)
Article 17 (2)		Article 23 (3)
Article 17 (3)		-
Article 17 (4)		Article 23 (4)
-		Articles 15, 24, 25, 27
-		Article 17
Article 18 (1)		-
-		Article 29 (1)
Article 18 (2), (3) and (4)		Article 29 (2), (3) and (4)
Article 19		-
-		Article 30
Article 20		Article 31
-		Articles 32 and 33
Article 21		Article 34
Articles 22 to 25		-
-		Articles 35, 36 and 37
Article 26		Article 38
-		Annexes I and II
	Article 1	-
	Article 2 introductory wording	-
	Article 2 (a)	Article 3 (a)



	Article 2 (b)	Article 3 (i)
	Article 2 (c)	Article 3 (k)
	Article 2 (d)	Article 3 (b)
	Article 2 (e)	-
	Articles 3 and 4	-
	Article 5	Article 8
	Article 6 (1)	Article 9 (1)
	-	Article 9 (1) (a) to (f)
	Article 6 (2) (a)	Article 9 (2) (a)
	Article 6 (2) (a), (b) and (c)	-
	Article 6 (3), (4) and (5)	Article 9 (3), (4) and (5)
	Article 7	-
	Article 8	Article 16 (1)
	Article 9	-
	Article 10 (1)	Article 19 (2) (a)
	-	Article 19 (2) (b)
	Article 10 (2)	-
	Article 11 (1) and (2)	Article 22
	Article 12 introductory wording	-
	Article 12 (a)	-
	Article 12 (b)	-
	Article 12 (c)	Article 21 (1)
	Article 12 (d)	-
	Article 12 (e)	-
	-	Article 21 (2)
	Article 13 (1)	Article 26 (1)

	Article 13 (2)	Article 26 (1)
	Article 13 (3) and (5)	Article 26 (1)
	Article 13 (4)	-
	-	Article 26 (2), (3) and (4)
	Articles 14 to 21	-