



STUDY:

“ADMISSION OF THIRD COUNTRY NATIONALS
TO AN EU MEMBER STATE FOR THE
PURPOSES OF STUDY OR VOCATIONAL
TRAINING AND ADMISSION OF PERSONS NOT
GAINFULLY EMPLOYED”

FINAL REPORT

AUGUST 2000

This study has been carried out by the International Centre for Migration Policy Development (ICMPD), on behalf of the European Commission (Directorate General for Justice and Home Affairs). The opinions expressed by the authors do not necessarily reflect the position of the European Commission.

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List of abbreviations

AGCD	Administration Général de la Coopération au Développement)
AIESEC	Association Internationale des Etudiants en Sciences Economiques et Commerciales
AMS	Arbeitsmarktservice
AMSA	American Medical Student Association
CEEC	Central and Eastern European Country
CSCE	Conference on Security and Co-operation in Europe
CUD	Coopération universitaire au développement
EEA	European Economic Area
ELSA	European Law Students Association
EU	European Union
EUGH	Europäischer Gerichtshof
FYROM	Formal Yugoslav Republic of Macedonia
IAAS	International Association of Agricultural Students
IAESTE	International Association for the Exchange of Students for Technical Experience
ICMPD	International Centre for Migration Policy Development
ZAV	Zentralstelle für Arbeitsvermittlung

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EXECUTIVE SUMMARY

The admission and residence of third country nationals belonging to the categories of persons subject to review here are subject to a complex system of national rules and regulations. It appears that admission policies for students, guest researchers, au pair and pensioners are already more harmonised in the Member States of the EU than admission policies for trainees, artists, journalists and members of the clergy.

Admission policies (two additional remarks)

Despite the present generally restrictive migration policies of Europe the admission policies in the EU Member States for in particular study purposes or vocational training has remained open in all Member States. All Member States have in comparison to their general immigration and admission criteria less restrictive admission policies for the categories of relevance in the present study, as exemplified by the high number of students admitted to UK in 1999. France, Germany and Spain have also admitted relatively large numbers (p. 37 of the study). Quota regimes is probably one of the most concrete ways to limit admission. Italy and until 1998, Austria put admission of students under the quota regime.

All governments are in principle very favourably disposed towards the admission of third country nationals for study or vocational training, since they wish to establish or improve political and economic relations with the countries of origin. Moreover, Belgium, France, Portugal, Spain and UK maintain their relation as former colonial powers through a considerable intake of students from the former colonies. Whereas, countries like Austria, Denmark, Finland, Germany and Sweden have provided study and training facilities for persons from central and eastern Europe to intensify the relationship with these countries especially in the context of the EU enlargement. In addition many countries, especially in the United Kingdom and Ireland, attract students (on a fee-paying basis) to improve the budgets of public and private educational institutions. Moreover, many Universities in the EU Member States have exchange programmes with partner universities in other countries and welcome exchange students and researchers from third countries. Generally, students are considered a low-risk group.

In addition to economic and political reasons merely focused on the benefits of receiving countries, most EU Member States have scholarship and aid programmes to facilitate the admission of students from developing countries or from central and eastern European countries, especially for post graduate studies and vocational training. All EU Member States provide good internet information for potential foreign students on educational programmes and on the admission procedures to gain entry to the country. Most information are in English or French. Only Greece, Portugal and Spain have information only in their national language.

The admission of third country nationals not gainfully employed is regulated and carefully examined in all Member States in order to minimise the risk that the foreigners become dependent on social welfare of the receiving state. The procedures for admission of third country nationals covered by the study are in most EU Member States rather long, time consuming and expensive for the applicants. Only the application for admission to Sweden is free of charges and the procedure is relatively short, whereas the application for admission to Austria, Germany, Finland and Greece are rather expensive and the duration of the procedures is long.

In accordance with the general migration policy in the EU Member States the admission of the group of persons covered by the study is carefully controlled. Thus the admission of students and trainees is of a temporary nature and focused on return after the end of the studies. As until recently the labour markets in all Member States were very tight, with high levels of unemployment, the access to employment was limited for students and other groups in this study. A change of purpose of residence (e.g. from student to labour migrant) is in most countries not possible or only granted under special circumstances (labour market considerations). In a few Member States, a change of purpose for employment is allowed, providing that a work offer has been produced (see pp. 29-30). In some Member States the student is required to sign a declaration that s/he will leave the country upon expiration of the residence permit (France and Netherlands). In principle, presently the main goal is to offer students from third countries the possibility to study, but limit the possibility that foreign students become migrants. The same principle applies to au pairs and trainees as well. Therefore, family reunification for students, au pairs and trainees is only granted if certain conditions are fulfilled.

But, to some extent the immigration policies in the EU Member States are under transformation. Because of shortages in the labour market especially in highly qualified branches (IT), the general trend is to place more emphasis on attracting appropriate skills and adopting a more liberal approach towards immigrants who have economic potential – notably students. The change of purpose (from educational purpose to employment) will in several Member States probably be easy for skilled students in the near future.

Statistics on the admission and residence of third country nationals for the purpose of studying, training, au pair and other purposes under consideration here are difficult to compile. Such statistics are rarely made publicly available and in some Member States they are not even collected by the authority responsible.

The most important category of persons under review here is the category of students – they account for more than 90 % of all such persons admitted to the UK, 67 % in France and 54 % in Germany (Table 1). The next important categories of persons under review here are au pairs and trainees. For those countries where there are data available, only Italy has significant populations of clergy and pensioners from third countries (Table 2).

In absolute numbers, student admissions from third countries are by far the highest in the United Kingdom (222,800 non-EEA nationals in 1999), probably due to language reasons. In France about 31,500 first-time residence authorisations were issued to students in 1998, in Germany a total of 23,526 first-time permits were issued to students and applicants for studies from third countries in 1999 and in Spain 22,056 residence permits were issued to students in 1998. Significant numbers of au pairs from third countries were admitted to Germany (15,167 first-time permits in 1999) and the UK (14,800 admissions in 1999; Table 1).

Of the 15 EU Member States, only two (Austria and Italy) make use of a quota regime for any of the categories of persons concerned in this study (see section 3.3.).

There are two main requirements that third country nationals have to fulfil in order to be admitted for entry and residence as a student in all Member States of the EU: admission to an educational institution; and proof of sufficient financial means of subsistence. In addition, health insurance is a mandatory condition for admission and residence in Austria, Denmark, Germany, Italy and Luxembourg.

There are no universal criteria applied by universities in the Member States for the admission of students (due to the high level of university autonomy in many countries). Sufficient language skills to follow the language of teaching may be a precondition and prospective students may be asked to take a language test, an admission test or a preparatory year.

As a general rule, students have to provide evidence that they can support themselves during their studies and do not have to rely on the public welfare system of the host country. Most Member States have specified a minimum amount of money that students must have at their disposal to cover their subsistence. This varies between Member States, according to the varying costs of living for students in the Member States, and ranges from 420 EURO per month up to 1,059 EURO per month (for students living in London; see Table 2.1.2).

In principle, third country nationals who have been granted residence authorisation for study purposes are not allowed to work. However, the majority of Member States make exceptions for students from third countries, who want to earn a supplementary income during their studies and grant them limited rights to work. In 10 Member States students from third countries may work part-time or during holidays. In order to carry out such part-time employment within the limits permitted, students are required to obtain work permits in some Member States but not in others.

Upon application for a renewal of their residence authorisation all Member States require students to furnish proof that they have had a successful period of study in the host country (as defined in the national regulations for the residence of foreign students).

There is no universal definition of vocational trainees (sometimes also called “professional trainees”) that is valid across all Member States. In general, it can be said that trainees are persons, who carry out a traineeship, which either forms an obligatory part of their training or study programme or is carried out in continuation of a preceding education or training programme. There are large disparities in admission regulations for vocational trainees. This is due to the underlying differences in the Member States training systems for professional occupations. In some Member States vocational trainees need a work permit to carry out their traineeship, while in others they do not need a work permit to do so. To emphasise the temporary nature of the residence of third country nationals admitted for the purpose of carrying out vocational training the majority of Member States have specified a maximum duration of stay for vocational trainees. This maximum duration varies between 12 months and 3 years (see Table 4).

Unpaid trainees (sometimes referred to as “volunteers”) are foreigners who come to work in an enterprise or organisation for the purpose of enlarging and applying their theoretical knowledge and skills without commitment to work and without any right to pay. In some countries, unpaid trainees are differentiated by immigration regulations from other trainees, who are remunerated during their traineeship, while in other Member States there is no such differentiation. For example, in 4 Member States where vocational trainees normally need work permits for their traineeship, unpaid trainees are exempted from such a requirement.

If a trainee’s work experience in a Member States is part of an EU education or exchange programme, the trainee is referred to as an EU-Trainee. EU-Trainees are considered relevant to the current study, since third country nationals from candidate or EU associated countries often qualify for admission as EU-Trainees and several Member States have special entry and residence regulations for EU-Trainees. For example, third country nationals among EU-trainees are exempted from the requirement of obtaining a work permit for their internship in all Member States except Italy, Luxembourg and the Netherlands.

Special regulations may also apply for exchange trainees. These are trainees whose work experience is part of a trainee exchange programme of associations such as AIESEC, AMSA, ELSA, IAAS and IAESTE.

There are no EU-wide rules and regulations for au pairs. The common understanding of what constitutes an “au pair”, however, is fairly similar in all EU countries. In most Member States au pairs have to be between the ages of 17 and 30 years (Table 2.6.1.) and need to conclude a contract with their host family which specifies their rights and obligations (i.e. number of working hours per week, days off, etc.). The young au pair will then be issued a work permit, specifying that this permits only work as an au pair in the host family and that no other employment is permitted. In addition, 10 Member States have set absolute time-limits of between 12 months and 3 years on the maximum duration of stay for persons placed au pair (Table 4).

Immigration regulations for guest researchers normally require a prior invitation from a university or a recognised educational establishment in the host country. In some Member States, guest researchers, guest professors, teachers and language assistants do not require work permits, even if their activities are paid (Table 3).

In many Member States special admission and residence regulations are applied for certain types of artists. Often, exemptions from the requirement of work permits and quota regulations are restricted to short stays or participation in artistic events. As a general rule, however, artists have to possess – or be able to earn – sufficient means of subsistence to cover their costs of living in the host country. Additional employment outside their artistic activity for which they have been admitted is then not permitted.

Special admission and residence regulations usually apply for journalists, as these are the subject of international commitments (see Appendix C). According to these commitments, accredited journalists, who work for foreign media companies shall enjoy special privileges and facilitated entry and residence requirements.

Clergy, which include ministers of a religious order, missionaries or members of a religious community are often granted facilitated entry and residence concessions. As a general rule, members of the clergy need to produce a document confirming that they will be living and working in a religious community recognised in the host country and that they have sufficient means or income at their disposal to sustain themselves. Clergy are exempted from the requirement of work permits in the majority of Member States, if their work is strictly within the framework of their recognised religious order.

Generally, only a few distinctions are made in the Member States between the two categories “pensioners” and “persons with private means”. The main requirement for these two groups of people for entry and residence is that a person has sufficient means of subsistence to cover the cost of living without becoming a burden on the host country. In addition, proof of medical insurance is required in 4 Member States. Persons admitted under the category “pensioner” or “person with private means” are prohibited from taking up paid employment in all Member States except Sweden.

As a rule, applications for visas have to be made to the representative authority abroad. However, applications for admission and residence under the categories concerned here can sometimes be made also within the country. The fees charged for the processing of

applications for visas and residence authorisations differ between Member States and may also vary for different categories of persons (e.g. students are often exempted from application fees, see Table 3.1.).

Residence authorisations for third country nationals in the categories concerned here are normally renewed for a maximum period of one year at a time. A special condition is that the applicant does not stay longer than the maximum time-limits stipulated in the type of permit specified by the majority of Member States for vocational trainees and au pairs and in some Member States for students, unpaid trainees, EU and exchange trainees, guest researchers, artists and clergy (see Table 4).

Residence authorisations for persons falling under any of the categories under review in this study are restricted to a specific purpose for residence. Therefore, a change of the residence authorisation for a new purpose of residence is generally not possible or possible only under exceptional circumstances (see section 4.1.)

As the rights to family reunion with third country nationals in the Member States are normally linked to a permanent or at least long-time residence status, the rights to family reunification for the categories reviewed in this study are subject to special, generally restrictive, regulations. Family reunification with students is possible, in principle, in most Member States (except Greece and Luxembourg), while family reunification with trainees is generally not possible in 6 Member States and family reunification with au pairs is excluded in 8 Member States (see Table 5).

The part of the survey dealing with specific rules and procedures regarding fraud and removal has concluded that there are no specific regulations on these matters for any of the categories of persons covered by this study and that only general regulations pertaining to fraud and removal apply.

The Member States have not reported any important court decisions that have affected the current implementation of the admission and residence regulations for the categories reviewed in this study.

From the analysis it has become apparent that third country nationals in the categories reviewed are treated differently from third country nationals admitted for other purposes. There are two main reasons: First, students, trainees, au pairs, guest researchers, pensioners and persons with private means are not admitted for employment purposes but for educational or other specific purposes. This special status of third country nationals admitted for “non-employment reasons” also necessitates a special requirement for admission: namely, that they bring sufficient financial means with them, in order not to become a burden on the host country.

Second, and more importantly, third country nationals in these categories are not admitted for the purpose of permanent immigration but for temporary residence tied to a specific purpose (e.g. university education, vocational training, au pair). Therefore, specific admission policies have been developed for these categories of persons to ensure that their residence remains temporary and that third country nationals, thus admitted, will leave the host country once the purpose of the stay is achieved.

Conclusion Table: Admission of third country nationals to an EU Member States for the purposes of study or vocational training and admission of persons not gainfully employed					
	Groups	Favourable to admission of specific groups	Employment regulation	Change of purpose of the residence permit	Family reunion
Austria	Students Vocational Trainees (VT ¹)	Dev.countries (post grad.) CEES ² , other	Students not permitted VT only training	In practice not (double quota)	Yes VT no
	Persons not gainfully empl.	Small group Quota	Some need work permits	In practice not (double quota)	yes
Belgium	Students (VT)	All countries	Students limited	Work permit can be authorised	yes
	Persons not gainfully empl.	Small group restrictive	Some need work permits	Work permit can be authorised	yes
Denmark	Students (VT)	All countries VT small numb.	Students limited VT need work p.	Work permit can be authorised	No (exceptions)
	Persons not gainfully empl.	Rather restricted	Most need work permits	Work permit can be authorised	No Exeptions yes
Finland	Students (VT)	All countries CEES	Students limited	In principle not	Yes (except first and last year)
	Persons not gainfully empl.	Rather restricted		In principle not	yes
France	Students (VT)	Former French colonies Other countries	Students limited, some VT need work permit	Can be authorised	Yes After 1 year VT no
	Persons not gainfully empl.	restricted	Do not need a work permit	Can be authorised	Yes After 1 year
Germany	Students (VT)	Dev.countries (post grad.) CEES, other	Students limited VT need a work permit	In special cases	Limited to post graduates VT no
	Persons not gainfully empl.	Small number	Most need a work permit	In special cases	yes
Greece	Students (VT)	All countries Only few VT	Students not permitted VT need work p.		no
	Persons not gainfully empl.	Pensioners only for 6 month	Not allowed		After 5 years
Ireland	Students (VT)	All countries	Students not permitted VT do not need a work permit	In some exeptions	yes
	Persons not gainfully empl.	Small number	Do not need a work permit	In some exeptions	yes
Italy	Students (VT)	All countries VTsmall number	Students limited	Can be authorised within the quota	yes
	Persons not gainfully empl.	Important group clergy	Dependent artists need work permits	Can be authorised within the quota	yes
Luxembourg	Students (VT)	Small number VT small numb.	Students not permitted VT need work permits	Students are not allowed	no

¹ VT= Vocational trainees

² CEES= Central and Eastern European States

	Persons not gainfully empl.	All countries	Some need work permits	Can be authorised	Some groups
Netherlands	Students (VT)	All countries	Students limited VT need work permit	In principle not (some exeptions)	yes
	Persons not gainfully empl.	Pensioners only for 3 month	Most need work permits	In principle not (some exeptions)	yes
Portugal	Students (VT)	All countries VTsmall number	Students limited	Can be authorised	yes
	Persons not gainfully empl.		Some need work permits	Can be authorised	yes
Spain	Students (VT)	Former colonies All countries	Students not permitted VT need work permits	Can be authorised	yes
	Persons not gainfully empl.	Not restricted	No work permits	Can be authorised	yes
Sweden	Students (VT)	Devel.countries All countries	Students limited VT need work permits	Can be authorised	yes
	Persons not gainfully empl.	Rather restrictive	Most need work permits	Can be authorised	yes
United Kingdom	Students (VT)	Former colonies All countries	Students limited VT need work permits	No Exept for trainees	yes
	Persons not gainfully empl.		Most do not need work permits	no	yes

I. INTRODUCTION

1. DESCRIPTION OF RESEARCH MANDATE

The European Treaty provides for the free movement of persons within the territory of the European Union for EU citizens and other persons covered by Community law, whereas third country nationals are subject to immigration control and labour permit regulations. Until recently policies for immigration and issues related to the legal status of third country nationals were considered as matters belonging to the domestic sphere of the Member States. Consequently, the regulations applied by the 15 Members with regard to the admission of immigrants to their territory and the corresponding civil, political and social rights differ in many ways. The legal systems of reception and integration of third country nationals show a wide variety within the European Union, although there has been an intensification of co-operation in the field of migration since the 1980s.

Following previously adopted decisions by the European Council on the harmonisation of migration policies, the European Union is now taking further steps to develop a comprehensive approach for dealing with immigration policy issues, in order to establish an Area of Freedom, Security and Justice. One part of this goal will be the harmonisation of migration policies.

In order to develop comprehensive European migration policies, an inventory and analysis of the various national legal systems is to be prepared. Three studies were launched in the Autumn of 1999 to provide the basis for new legislative initiatives by the Commission regarding the entry and residence of third country nationals. Further to tendering procedures, the selected contractors were:

- ECOTEC Research and Consulting Limited: a study on the admission of third country nationals to Member States of the European Union for the purposes of paid employment or for the purpose of pursuing self-employed activity;
- The International Centre for Migration Policy Development (ICMPD): a study on the admission of third-country nationals to Member States of the European Union for the purposes of study or vocational training and admission of persons not gainfully employed
- Catholic University of Nijmegen, Law Faculty: a study on the legal status of third-country nationals who are long term residents in a Member State of the European Union

ICMPD, in co-operation with Professor John Salt, the Migration Research Unit (MRU), Department of Geography, University College London (UCL) and an advisor from the Institute of Advanced Studies, Dr August Gachter should gather information, analyse and compare the legal frameworks and administrative practices in the Member States with regard to admission of third country nationals to the EU Member States for the purposes of study or vocational training, together with admission of persons not gainfully employed. Entry for the above mentioned purposes was to be understood in its broadest sense to include also admission of au pairs.

Where applicable, the study should underline the differences or similarities between the situation of third country nationals and the situation of EU nationals. It should describe the situation in each Member State, in addition to providing a comprehensive overview. The study should also provide information on the number of persons covered.

The study should analyse and compare procedures relating to, and the legal status of, the above mentioned third country nationals, and in particular:

- cases in which entry and residence is provided for;
- the procedure to be followed;
- the type and length of residence permits issued, as well as the conditions for their renewal;
- the rights and legal status of third country nationals admitted, including possibilities for family reunification;
- the consequences in the event of fraud;
- the cases in which removal is possible.

Co-operation with the relevant national administrations of the Member States was encouraged.

2. AIM AND SCOPE OF THE STUDY

The aim of the study is to analyse and compare the procedures relating to, and the legal status of the admission of third country nationals for the purposes of study or vocational training and persons not gainfully employed. The study will analyse and compare the legal and administrative frameworks in the Member States with regard to the admission of the above mentioned categories of third country nationals. It will also as far as possible present some relevant statistics.

In the comprehensive overview an attempt will be made to define issues that are already harmonised as well as those which are not yet harmonised. One of the main objectives of the study is to compare the admission conditions and procedures of the Member States to be able to establish the present degree of harmonisation. Differences and similarities between the situation of third country nationals and that of EU nationals will be highlighted in the comparative overview

The comparative analysis includes statistical information; covers the admission policies category by category, procedures, permit renewals, the rights and status of third country nationals in comparison with EU/EEA nationals, family reunification, fraud, removal, and legal developments and trends. In connection with the issue of renewals, the possibilities of changing the purpose of stay, in particular the possibilities of change to employed status, will also be analysed, since generally, the policy of the Member States is to prevent disguised admission for employment purposes. An attempt has been made to outline the general rules, in cases where no specific rules exist for the categories in question, while in principle the regime specifically applicable for the categories in question has been emphasised. The details are outlined in the individual chapter for each Member State.

For a stay of less than three months, a tourist visa (if not national of a visa-free country) is in many countries not enough for the purposes of stay covered by the present study, and another form of residence authorisation is necessary. Therefore, the study covers both periods of stay for both more and less than three months.

3. WORK METHOD

A research team was brought together in November 1999, to design a research plan and a questionnaire (see Annex). A uniform research format was elaborated and existing literature reviewed. The Commission has provided a list of contact persons for migration admission in its Member States. This list has been up-dated with regard to several issues and ICMPD has also made use of other contacts. (In the Annex any changes to the contacts provided by the Commission have been noted.) At the kick-off meeting held on 25 November 1999, in which DG/JHA and ICMPD representatives participated, the structures and expected results of the study were discussed.

Due to the Christmas and New Year's holidays, the replies to the questionnaire from the relevant national administrations were delayed. On several occasions the replies were not received in English and translation was needed. In many instances the replies were not complete since almost none of the States had submitted answers covering all the relevant aspects. Consequently, additional lengthy clarifications were necessary. A few States informed us that they did not have the necessary resources to answer our detailed questionnaire: namely, Germany, Austria and Italy. Consequently, ICMPD hired consultants to produce the necessary country reports and carry out independent research as necessary. The country overviews for UK and Ireland have been prepared (according to the questionnaire drawn up by ICMPD) by our project partner Professor John Salt at the University College London.

On the basis of the material that ICMPD had received and analysed by the beginning of February 2000, an interim report was produced, which provided a brief overview of some of the relevant issues together with a draft structure of the final report. In the interim report, we had also included the first draft country studies of a few Member States.

In response to the interim report, the Commission (DG/JHA) forwarded its comments in a letter dated 2nd March 2000 and these have been seriously taken into consideration, together with the questions brought up in the letter. However, due to a lack of information they could only partly be answered, although ICMPD contacted all the Member States once again for further information. For instance, only a few Member States have provided information on discretionary power and almost none information on the relationship between the numbers of applications and admissions covering the categories under consideration. However, it should be noted that generally strict admission policies are reflected in the low numbers of admitted applicants.

The Member States do not often have all relevant information readily accessible and available, in particular on issues relating to administrative practice. Another complicating factor is that in some countries vocational training falls under labour regulations and in others under regulations for the admission of students. We have also encountered problems in collecting comparable statistical information for the relevant categories. Some countries have reported that the statistics are not available, whereas others have indeed forwarded statistical information, but not concerning all issues and categories we had requested. However, we have been able to quantify the results of the study, to some extent, using different sources of statistical information, even though they are strictly speaking not comparable.

From a practical point of view, the fact that the Member States did not always use the format as provided by the questionnaire has somewhat complicated the processing and analysing of the replies. However, the nature of each national legal systems in question has of course determined the applicability of the questionnaire. Also, several States did not reply to our questionnaire in English and we consequently had to get the replies translated.

The country studies have been compiled and edited according to a uniform format for easy reference and comparison. They have later been sent to the respective relevant national administration for comments, corrections and approval. Concerning Italy, we have however not received a reply on this matter.

The available information with regard to each Member State has then been analysed in a comparative perspective. The insights thus gained have been brought together in the “comparative overview“ chapter, which immediately follows this introduction. The overview provides a comparative analysis of admission policies in the Member States with regard to the categories of persons under review in this study. It is hoped that, by highlighting differences and similarities in the national rules and regulations on the admission of students, trainees, au pairs, pensioners and others, a deeper understanding of the issues pertaining to the formulation of an EU-wide admission policy can be gained. Finally, the synoptic tables at the end of the comparative overview summarise the most important data and policy issues for easy reference.

Table 1.1: Responses to the questionnaire

Country	Questionnaire
Austria	Consultant <i>Dr. Karin König, Vienna Integration Fund</i> replied to the questionnaire, ICMPD independent research
Belgium	The Ministry of Interior replied (in French) to the questionnaire
Germany	Consultant <i>Ulf Häussler (University of Konstanz)</i> replied to the questionnaire, ICMPD independent research
Denmark	Immigration Service replied to the questionnaire
Finland	The Ministry of Interior replied to the questionnaire
France	The Ministry of Interior replied (in French) to the questionnaire
Greece	The Ministries of Foreign Affairs and Public Order replied (in Greek) to the questionnaire
Ireland	<i>John Salt</i> at the <i>University College London</i> produced the country study based on information received from the relevant national authorities
Italy	Country study produced based on ICMPD's own research. Ministry of Labour submitted some information
Luxembourg	Ministry of Justice replied to the questionnaire, ICMPD independent research
Netherlands	The Ministry of Interior replied to the questionnaire. Also received some information material from the Ministry of Justice
Portugal	Ministry of Interior replied to the questionnaire
Spain	Ministry of Interior replied to the questionnaire
Sweden	Ministry of Interior replied to the questionnaire
United Kingdom	<i>John Salt</i> at the <i>University College London</i> produced the country study based on information received from the relevant national authorities

II. COMPARATIVE OVERVIEW

1. SUMMARY OF STATISTICAL FINDINGS: STOCKS AND FLOWS

Statistics on the admission and residence of third country nationals for the purpose of study, training, au pair and other purposes under consideration here are difficult to compile. They are rarely made publicly available and in some Member States they are not even collected by the responsible authorities. Therefore, it was not possible to obtain any statistics on the relevant numbers of admissions for Finland, Ireland and the Netherlands. For all the other Member States, it was possible to compile statistics for at least part some of the categories under consideration in this study. Where available, statistics have been collected on both the relevant flows and the stocks over the past 5 years. An overview of the latest available statistics for each category in each Member State has been compiled and can be found at the end of this chapter (Table 1 on flow data and Table 2 on stock data).

From the available statistical evidence it appears that the categories under review in this study account for only a fraction of total admissions (flows) and an even smaller fraction of the total stock of third country nationals in all the member states. From the available statistical evidence a rough estimate would put the proportion of persons under study here below 20 % of all admissions of third country nationals and less than 5 % of the stock of third country nationals in the Member States.

The most important category of persons under review here is that of students – they account for more than 90 % of all such persons admitted to the UK, 86 % of first time permits issued to such persons in Belgium, 68 % in Denmark, 67 % in France and 54 % in Germany (Table 1 – flow figures).

Students account for more than 85 % of such persons in Austria, more than 72 % in France but only for 20 % in Italy (Table 2 – stock figures).

The next important categories of persons under review are au pairs and trainees. For those countries where there are data available, only Italy has significant populations of clergy and pensioners from third countries.

In absolute numbers, admission of students from third countries is by far the highest in the United Kingdom (222,800 non-EEA nationals in 1999), probably for language reasons. In France about 31,500 first-time residence authorisations were issued to students in 1998, in Germany a total of 23,526 first-time permits were issued to students and applicants for studies from third countries in 1999 and in Spain 22,056 residence permits were issued to students in 1998. In Denmark 3,254 first-time permits were issued to students in 1998, in Sweden a total of 2,866 first-time permits were issued to students and researchers in 1999 and in Belgium 1,665 first-time permits were issued to students in 1999 (see Table 1).

For those countries where such data are available, the stock of students is highest in France (a total of 62,000 non-EU nationals in 1998) and Italy (22,097 by the end of 1999). Relatively large numbers of third country nationals are also studying in Austria (10,923) and Sweden (4,797; see Table 2). In the other Member States, the number of foreign students are significantly lower or not available.

Significant numbers of au pairs from third countries were admitted to Germany (15,167 first-time permits in 1999) and the UK (14,800 admissions in 1999; Table 1). In all the other countries, statistics on au pairs are either not separately available (notably France) or less than 1,000.

A relatively high number of trainees was admitted to Germany (4,661 first-time permits in 1999) and Denmark (1,074 first-time permits in 1998), while the number of trainees in other countries is either very low (Austria, Belgium, Luxembourg) or not available (Table 1). For all the other categories of persons under review in this study statistics are too incomplete to draw general conclusions.

2. COMPARATIVE ADMISSION POLICIES BY CATEGORIES

This section provides a comparative analysis of the admission procedures in the Member States in order to establish the present degree of harmonisation and point out potential areas for future harmonisation efforts.

Third country nationals are required to possess valid entry documents in order to enter any EU/EEA member state. This includes at a minimum a passport or any other valid travel document. For short-term stays (up to three months) third country nationals need a visa (travel visa, short-term visa or the like), if they are not exempted from visa obligations. As a rule, applications for visas must be obtained from the host countries' representative authorities abroad (embassy or consulate).

For longer stays, or for work related activities third country nationals (as well as EU/EEA citizens) need a residence authorisation. Residence authorisations are issued for various purposes and lengths of time (e.g. temporary or permanent residence permits), depending on the Member States' respective admission regulations. For admission to some Member States residence authorisations must be obtained before entry at the representative authority abroad (Austria, Germany, Finland, France, Greece, Italy, the Netherlands, Portugal and Sweden), while in others these can, under certain circumstances, be obtained after entry with a valid visa or under a visa exemption (Belgium, Denmark, Ireland, Luxembourg, Spain and United Kingdom).

2.1. Students

There are two main requirements that third country nationals have to fulfil in order to be admitted for entry and residence as a student in all Member States of the EU. These are

- Admission to an educational institution and
- Proof of sufficient financial means of subsistence in the host country

2.1.1. Admission to a (recognised) educational institution

In general, students comprise only those enrolled in higher education. The type of educational institutions eligible to provide the required certificate of enrolment varies according to the different systems of higher education in the Member States and may include only educational institutions of public law (public universities and public institutions of higher learning) or may also include recognised private educational institutions (private universities and private research institutes). Only in Greece has the Ministry of Education, as well as the educational institution, to approve an application for admission.

There are no universal criteria applied by universities in the Member States for the admission of students (due to the high level of university autonomy in many countries). Generally, prospective students from third countries have to fulfil the same criteria for admission as EU citizens and own nationals (completed secondary school, A-level degree, entrance exam, etc.). Sufficient language skills to follow the teaching may be a precondition and prospective students may be asked to take a language test, an admission test or a preparatory year. If universities apply a “*numerus clausus*” system (grade-point average for admission to certain courses, notably in Germany), they are free also to apply them to non-nationals. Conversely, universities will usually ask prospective foreign students for proof that they are eligible to attend their chosen subject in their home country, so as to avoid circumvention of eligibility regulations in their home country (e.g. Austrian universities do so towards German students).

Fees for studying (tuition) may be applicable for third country nationals even in countries where higher education is free of charge (e.g. Austria), but not for EU citizens. Finally, universities may also limit access to study places for certain subjects with limited capacity (e.g. technical courses, medicine) for third country nationals, while they may not limit such access for EU citizens in a discriminatory way.

2.1.2. Sufficient means of subsistence

As a general rule, students have to provide evidence that they can support themselves during their studies and do not have to rely on the public welfare system of the host country. The Member States usually grant several options for furnishing this proof, including a sufficient balance of money on a bank account in the host country, proof of a sufficient scholarship or stipend or even a letter of guarantee from a person resident in the host country pledging to incur all uncovered costs for the student. Most Member States have specified a minimum amount of money students must have at their disposal to cover their subsistence. This minimum amount needed varies from Member State to Member State, according to the varying costs of living for students in the Member States, and ranges from 420 EURO per month up to 1,059 EURO per month (for students living in London; see Table 2.1.2).

Austria	424
Belgium	454
Germany	460
Denmark	560
Finland	420
France	n.a.
Greece	456
Ireland	n.a.
Italy	516
Luxembourg ³	450
Netherlands	589
Portugal	n.a.
Spain	n.a.
Sweden	618
United Kingdom ⁴	731 – 1,059

Grants and loans

Each Member State has its own rules concerning access to grants and academic fees. Students from EU states will be required to pay the same fees and may apply for the same loans or grants as local students. So if a grant is paid to nationals of the host country to cover course fees, students from other EU states must also be able to receive it. However, this does not apply to maintenance grants to cover daily living expenses. On the other hand, students from third countries have only limited access to study grants and loans in the Member States, although students studying as part of an EU-sponsored exchange programme may also be eligible for a European grant.

2.1.3. Employment during studies

In principle, third country nationals who have been granted residence authorisation for study purposes are not allowed to work. This is the major difference between students from EU/EEA countries, who are allowed to carry out paid employment by virtue of their EU/EEA citizenship and third country nationals, who are legally prevented from work through entry regulations. However, the majority of Member States make exceptions for students from third countries, who want to earn a supplementary income during their studies and grant them limited rights to work. Usually, this right to work will be further limited by a proviso that the work must not interfere with their studies, must be outside normal course hours or must not exceed a maximum number of hours per week. Table 2.1.3 gives an overview of employment regulations for students from third countries in the Member States.

³ In Luxembourg, there is no required minimum amount of subsistence defined in law. However, the amount indicated shows the amount normally required by administrative practise.

⁴ There is no minimum means of subsistence specified by law. However the British Council, which advises both the IND and the Foreign and Commonwealth Office (Migration and Visa Department) who administer the entry clearance scheme, estimates that a student would need £7,825 (12,703 EURO) in order to live in London, Oxford or Cambridge. If studying elsewhere, the student would need between £5,400 (8,766 EURO) and £7,000 (11,364 EURO).

Austria	Employment not permitted
Belgium	Up to 22 hours/week and during academic holidays
Germany	Up to a total annual period of 3 months; during holidays; other exceptions
Denmark	During academic holidays. After 18 months residence: up to 15 hours/week
Finland	Up to 20 hours/week and during academic holidays
France	Half-time work permitted
Greece	Employment not permitted
Ireland	Employment not permitted
Italy	Up to 20 hours a week for a maximum total of 1,040 hours per year
Luxembourg	Employment not permitted
Netherlands	Up to 10 hours/week
Portugal	Supplementary work permitted
Spain	Employment not permitted
Sweden	During academic holidays
United Kingdom	Up to 20 hours/week during term time and full time during vacations

In order to carry out such part-time employment within the limits permitted students are required to obtain work permits in some Member States but not in others. In Denmark, France and the Netherlands students need a work permit to carry out permitted part-time employment, in Finland, Italy, Portugal, Sweden and the UK they do not need a work permit for this purpose. In Belgium students need a work permit for part-time employment except for work during holidays. In Germany, a work permit for students is required only if the employment exceeds an annual total period of three months.

2.1.4. Health Insurance

In addition to the two basic conditions for the admission of students from third countries – the admission to a recognised educational establishment and the requirement of sufficient means of subsistence – several Member States also require a mandatory health insurance for students.

In the following countries a valid health insurance (or a guarantee or sufficient means to cover health care) is mandatory for the admission and residence of third country nationals: Austria, Denmark, Germany, France, Ireland, Italy and Luxembourg. In Austria the students need to obtain the health insurance after entry (national health scheme), but the university provides an insurance against accidents.

In Portugal and Spain all groups covered by the study have either to prove that they are covered by a health insurance of their country of origin or they have to access the social security after arriving in Portugal or Spain.

The following Member States provide access to the national health care systems (if the foreigner is not registered with the social security system, only a basic safety net is available and a right to emergency health care): Belgium, Finland, Netherlands, Sweden, and UK (a non-EU student on an approved course lasting for more than 6 months is entitled to free treatment under the national health scheme. Health insurance is not an entry requirement for anyone in the UK). In Greece the university is obliged to cover the health insurance for students.

2.1.5. Renewal of Residence Authorisation

Students are generally granted only limited residence authorisations, to be renewed on a periodic basis (usually one year, in Germany up to 2 years). While there are no strict time-limits for the residence of students (with the partial exception of Germany, Luxembourg and the Netherlands, see Table 4), there are three main requirements for the renewal of residence authorisations for students:

- Continued enrolment at the educational institution,
- Proof of good study success and
- Continuing sufficient means of subsistence in the host country

Upon application for a renewal of their residence authorisation students have to provide proof that all the conditions for the granting of the original residence authorisation are still met. In addition, all Member States require students to furnish proof that they have had a successful period of study in the host country (as defined in the national regulations for the residence of foreign students). Normally, the educational institutions and in particular the universities have standard forms listing the study progress and the number of exams passed by the foreign student. The completed form, certified by the university, has then to be handed in to the aliens police or other authority responsible for the renewal of the permit together with the other documents required.

In all Member States students are required to demonstrate good study progress in order to get their residence authorisation for the purpose of studying renewed. The precise criteria of what constitutes “good study progress” vary between the Member States according to their particular system of higher education. The definition and scope of exams, “credits” and “course hours” differs between the Member States and therefore the pertinent regulations cannot be directly compared with each other. The following national regulations illustrate the nature of the requirement of “good study progress”.

Some Member States measure study progress in credits (Finland) or study points (Sweden) and a university course is worth a certain number of credits or study points. In Finland, the requirement is 15 credits during the first study year and 20 credits in subsequent study years. In Sweden, during the first year the student needs to have earned 10 study points, the second year 15 points and the third and every year thereafter 20 points.⁵

Other Member States measure progress in number of completed university courses (France, Austria). If a student of a French university has repeatedly failed a university course, the renewal of the residence permit will be refused. In principle, 2 failed attempts are tolerated. In Austria, students must provide proof of at least 8 course-hours successfully completed (that is exams for courses that run at least 8 hours every week for one semester) after each academic year in order to be granted renewal of their permit.

Some Member States define study progress as number of passed exams (Italy, United Kingdom). In Italy renewal is granted if the applicant has passed 2 exams in the academic year. In the United Kingdom evidence of satisfactory progress in his/her course of study, including the taking and passing of any relevant examinations, is required for continued residence in the country.

In Spain the applicant shall meet the requirements for continued studies as set by the educational institution/university for renewal of his/her residence permit. In Germany students

⁵ One year is usually equivalent to 40 points.

may be granted renewal of their residence authorisation as long as they are enrolled in regular studies and have not exceeded the average duration of studies in their particular course of study for more than 3 semesters.

In most Member States, in the case the student was unable to fulfil this requirement due to illness or other significant reasons, a renewal of the permit may still be granted on a discretionary basis.

In addition, Member States have placed limitations on how many times students are permitted to change their subject. This requirement, together with the requirement to present evidence of good study progress with the application for renewal limits the maximum duration of residence for students in the Member States.

2.2. Unpaid trainees

Unpaid trainees (sometimes referred to as “volunteers”) are foreigners who come to work in an enterprise or organisation for the purpose of enlarging and applying their theoretical knowledge and skills without commitment to work and without any right to pay. Work experience of this kind may also be part of the trainee's school or higher education.

In some countries, unpaid trainees are differentiated by immigration regulations from other trainees, who are remunerated during their traineeship, while in other Member States there is no such differentiation. In Austria, for example, unpaid trainees are subject to a maximum duration of stay of 3 months (which may be extended up to 12 months), while there is no such maximum limit for vocational trainees. In the Netherlands the maximum duration of stay for unpaid trainees is 24 weeks, while there are no maximum time limits for vocational trainees. In Luxembourg all trainees (including unpaid trainees) are subject to a maximum time-limit of stay of 12 months, while there is no time-limit for unpaid trainees in the other Member States (see Table 4).

In addition, unpaid trainees may be exempted from the requirement of a work permit, even in countries, where vocational trainees normally need work permits for their traineeship. This is the case in Finland, France, Italy, Spain and the United Kingdom. In Belgium, Germany, Luxembourg and the Netherlands, both unpaid trainees and vocational trainees need work permits. In Austria and Portugal both unpaid trainees and vocational trainees are exempted from the requirements of work permits (see Table 3).

In Greece, the concept of “trainee” is not specified in immigration regulations and all trainees are treated like students for the purpose of entry and residence. In Denmark the concept of “unpaid trainee” does not exist in immigration regulations, while the concept of “vocational trainee” exists. In fact, a residence permit may be refused to a trainee if the remuneration is not adequate (for reasons of protection of the domestic workforce).

2.3. Vocational trainees

While there is no universal definition of vocational trainees (sometimes also called “professional trainees”) that is valid across all Member States, in general it can be said that trainees are persons, who carry out a traineeship, that is to say an apprenticeship at an employer of a profession related to their education or training. The traineeship forms either an obligatory part of their training or study programme or is carried out in continuation of a preceding education or training.

There are large disparities in admission regulations for vocational (or professional) trainees. This is due to the underlying differences in the training systems of the Member States for professional occupations. In some countries professional training for many occupations is organized as “on-the-job“ training (e.g. as apprenticeships) with brief spells of schooling between work. These countries tend to treat vocational trainees at least partly as employees and consequently trainees often require work permits for admission. In other countries the concept of a “trainee” exists only in connection with some higher education. Consequently, in these countries trainees are treated more as students and the respective admission regulations for trainees are then closer to those of students.

In Austria and Portugal vocational trainees from third countries are admitted for the purpose of carrying out a traineeship without the requirement of obtaining work permits.. In other countries vocational trainees need a work permit to carry out their traineeship. This is the case in Denmark, France, Germany, Italy, Luxembourg, the Netherlands, Spain, Sweden and the UK. In Belgium, trainees, who follow traineeships that are considered equal to apprenticeships but which cannot be followed in their home country, are exempted from work permits, while other trainees need a work permit. In Finland, trainees do not need a work permit, if the training is a compulsory part of the studies to obtain a qualification. In Greece, the category of trainees is not defined by immigration regulations and applicants for traineeships are treated as students (see Table 3).

In order to emphasise the temporary nature of the residence of third country nationals for the purpose of carrying out vocational training the majority of Member States have specified a maximum duration of stay for vocational trainees. This maximum duration varies between 12 months and 3 years in Belgium, Germany, Denmark, France, Italy, Luxembourg, Portugal, Spain and Sweden (see Table 4). For vocational trainees in the UK the maximum duration of approved work experience is 12 months, the maximum duration of approved training is 3 years. Austria, Greece, Ireland and the Netherlands do not have maximum limits of stay for vocational trainees.

2.4. EU-trainees (nationals from associated or candidate countries)

If a trainee’s work experience in a Member State of the EU is part of an EU education or exchange programme, the trainee is referred to as an EU-trainee. EU-trainees are relevant for the current study, as third country nationals from candidate states or EU associated countries⁶ often qualify for admission as EU-trainees and several member states have special entry and residence regulations for EU-trainees.

The most important EU education and exchange programmes are LEONARDO, SOCRATES (which include the sub-programmes ERASMUS, COMENIUS, LINGUA, etc.), YOUTH FOR EUROPE and TEMPUS (see also the section on Studying and Training in the European Union in Appendix A).

Third country nationals among EU-trainees are exempted from the requirement of obtaining a work permit for their internship in all Member States except Italy, Luxembourg and the

⁶ Since 1998 the countries of Central and Eastern Europe, Malta and Cyprus are also involved in the LEONARDO programme. During 1999, Bulgaria and Slovenia joined the nine candidate countries already participating fully in the programme (Cyprus, Estonia, Lithuania, Latvia, Hungary, the Czech Republic, Romania, Poland and Slovakia).

Netherlands. In Finland, Luxembourg and the Netherlands, EU-trainees are subject to a maximum duration of stay of 12 months.

2.5. Exchange trainees

Special regulations may also apply for exchange trainees. These are trainees whose work experience is part of a trainee exchange programme of associations such as AIESEC, AMSA, ELSA, IAAS and IAESTE. Exchange trainees are relevant for the current study, because third country nationals may qualify for admission as exchange trainees. In addition, some Member States may have individual trainee exchange programmes as part of their development co-operation programmes, such as the CUD and AGCD programmes in Belgium.

In most Member States exchange trainees benefit from the same regulations as EU-trainees with regard to entry requirements and the requirements for work permits. Specific regulations are listed under the individual country reports.

2.6. Au pair

There is no common EU-wide definition of what constitutes an “au pair” placement, and accordingly, there are no EU-wide rules and regulations for au pairs. The common understanding of what constitutes an “au pair” is however fairly similar in all EU countries. According to this definition, an au pair is a young foreigner, who is temporarily placed into a host family to help with common household tasks in exchange for board and lodging and a small amount of pocket money. The au pair should thereby improve her or his language skills and cultural understanding of the host country (see also the definition of “au pair” placement in the international agreement by the Council of Europe in Appendix B).⁷

Au pairs are defined in immigration regulations in all Member States except Austria, Greece and Ireland. In Austria, third country nationals, who want to work as au pairs are subject to the general regulations for foreign employment (double quota regulations). As these regulations have been very strict since 1993, it is estimated that there are at present no legal au pairs from third countries in Austria. In Greece, there are no provisions for au pairs in immigration regulations and no information concerning the number of au pairs from third countries. In Ireland, immigration procedures do not currently provide for the admission of 'au pairs', other than for EEA nationals.

In all the other Member States, special regulations apply for the admission and residence of au pairs. Generally, au pairs need to conclude a contract with their host family specifying the rights and obligations of the person to be placed au pair (number of working hours per week, days off, etc.) as well as the compensation to be paid by the host family (board and lodging, pocket money, etc.). The au pair will then be issued a work permit, specifying that this permits only work as au pair in the host family and no other employment is permitted. Only in Italy, the Netherlands, Spain and the UK au pairs from third countries do not need a work permit for the duration of their placement as au pairs. In Luxembourg, au pairs from Switzerland do not need a work permit, while au pairs from all other third countries need a work permit.

⁷ “European Agreement On ‘Au Pair’ Placement” of the Council of Europe (ETS No. 68 of 24th November 1969). The agreement entered into force on the 30th June 1971 and to date it has been ratified by 6 countries (Denmark, France, Italy, Luxembourg, Norway and Spain) and signed but not ratified by 4 countries (Belgium, Germany, Greece and Switzerland).

It is often required that au pairs have at least a minimum knowledge of the local language in order to be able to carry out their duties in the host families. In addition, several countries require the young au pair to enrol in language courses during their placement in the host country, reflecting the character of the au pair placement as a chance to improve language skills. Enrolment in language courses is obligatory in Belgium, France and Sweden.

Immigration regulations for au pairs usually also define age limits. As can be seen from Table 2.6.1. au pairs usually have to be between 17 and 30 years of age (exactly so in Denmark, Italy, Luxembourg and Spain), while most countries set their age limits for au pairs more narrowly (Belgium, Finland, Germany, The Netherlands, Sweden, UK). Only in France is the maximum age limit for au pairs 35 years.

	Minimum age	Maximum age
Austria	n.a.	n.a.
Belgium	18	22
Germany	-	25 ⁸
Denmark	17	30
Finland	18	30
France	18	35
Greece	n.a.	n.a.
Ireland	n.a.	n.a.
Italy	17	30
Luxembourg	17	30
Netherlands	18	26
Portugal	n.a.	n.a.
Spain	17	30
Sweden	18	30
United Kingdom	17	27

n.a.: not available

In addition, 10 Member States have set absolute time-limits between 12 months and 3 years on the permitted duration of residence for persons placed au pair (Belgium, Denmark, France, Italy, Luxembourg, The Netherlands, Portugal, Spain, Sweden and the UK; see also Table 4).

As au pairs are only temporarily placed in host families, family reunification will normally not be permitted. Family reunion with au pairs has been explicitly ruled out in Denmark, France, Germany, Greece, Luxembourg, The Netherlands and Sweden.

2.7. Guest researchers

Immigration regulations for guest researchers normally require them to have been accepted by a university or a recognised educational establishment in the host country before entry. If that has been obtained by the researcher, a temporary resident authorisation will usually be issued if the guest researcher can demonstrate that s/he has sufficient means of subsistence at his/her disposal for the stay in the host country. Guest researchers, guest professors, teachers and language assistants in some Member States do not require work permits, even if their activities are paid.

Guest researchers do not need work permits in Austria, France, Ireland and Spain. In Germany, no work permit is required for guest researchers if they stay for less than 3 months. For a period exceeding 3 months, academic lecturers and research assistants based in

⁸ No age limit applies, if the au pair stays less than 3 months.

universities do not need a work permit. In Finland, no work permit is required for guest researchers who stay for less than 12 months. In Italy and Portugal, guest researchers need a work permit only if the activity is remunerated. In all other cases, as well as in Belgium, Denmark, Greece, Luxembourg, the Netherlands, and the UK, guest researchers from third countries need a work permit (see Table 3).

Most Member States do not apply time-limits for the duration of stay of guest researchers. However, in Belgium there is a maximum time-limit of 4 years for guest researchers and in Denmark the maximum duration of stay is 2 years. In Finland, guest researchers without a work permit are subject to a maximum time-limit of 12 months. In the UK, persons granted leave to enter as a teacher or language assistant under an approved exchange scheme are subject to a maximum duration of stay not exceeding 12 months (see Table 4)

All Member States permit family reunification for guest researchers, who stay for a considerable period of time (Table 5). In Austria, family members of guest researchers are exempted from quota regulations applicable to other cases of family reunification.

2.8. Artists

In many Member States special admission and residence regulations are applied for certain types of artists. Often, exemptions from the requirement of work permits and quota regulations are restricted to short stays or participation in artistic events. Sometimes, a distinction is made between artists in dependent employment and self-employed artists. As a general rule, however, artists have to possess – or be able to earn – sufficient means of subsistence to cover their costs of living in the host country. Additional employment outside their artistic activity for which they have been admitted is then not permitted.

Third country nationals, who want to enter and work in a Member States as an artist are generally exempted from the requirement of work permits only in France, Ireland and Spain. On the other hand, they generally require a work permit in Italy, the Netherlands, Portugal, Sweden and the United Kingdom. In Austria, artists in dependent employment need a work permit but are exempted from quota regulations applicable to other types of foreign employment, while self-employed artists do not need a work permit. In Belgium, artists and their accompanists, who participate in an artistic show of international reputation do not need a work permit, if their stay does not exceed three consecutive months. In Finland and Germany, artists do not need a work permit for stays up to three months. In Denmark, painters do not need a work permit for a stay of up to three months. In Greece, musicians in classical orchestras are generally exempted from the requirement of work permits, while other artists do not need work permits for participation in cultural events that last up to one month. In Italy, clearly famous or highly qualified professional artists and artists or groups employed by well-known theatrical companies, television companies or public organisations do not need a work permit. In Luxembourg, artists in dependent employment do not need a work permit, if they stay for less than one month (see Table 3).

Portugal is the only country that applies a maximum time-limit (3 years) on the duration of stay for artists (see Table 4). In the Netherlands, artists may not be younger than 18 years, and not older than 45 years, of age, except when staying in the country for less than three months.

Family reunification for persons entering the country as artists is permitted in all Member States except Denmark. In Austria, the family members of artists are exempted from quota restrictions applicable to other types of family reunification (see Table 5).

2.9. Journalists

Special admission and residence regulations usually apply for journalists, as these are the subject of international commitments (e.g. the commitments to “freedom of the press” specified in CSCE documents – see Appendix C). According to these commitments, accredited journalists, who work for foreign media companies enjoy special privileges and facilitated entry and residence requirements.

Foreign journalists are generally exempted from the work permit requirement in Finland, Greece, Ireland, Italy and Spain. In Denmark, foreign journalists do not need work permits for stays of less than 3 months. Journalists working for foreign media companies are generally exempted from the requirements of work permits in Austria and Germany and do not need a work permit in Belgium, if their stay does not exceed 3 consecutive months. In Austria, journalists are also exempted from quota regulations applicable to other types of foreign employment. In all the other countries (Luxembourg, the Netherlands, Portugal, Sweden and UK) journalists need work permits (see Table 3).

Portugal is the only country that applies a maximum time-limit (3 years) on the duration of stay for foreign journalists (see Table 4). In the Netherlands, journalists may not be younger than 18 years, and not older than 45 years, except when staying in the country for less than three months. In Ireland and Portugal, journalists have to provide proof of a valid health insurance.

Special regulations usually apply to the admission of family members of journalists ensuring facilitated access for them. Family reunification for persons entering the country as journalists is permitted in all Member States except Denmark. In Austria, family members of journalists are exempted from the quota restrictions applicable to other types of family reunification (see Table 5).

2.10. Clergy

Clergy, by which is meant ministers of a religious order, missionaries or members of a religious community are often granted facilitated entry and residence concessions. As a general rule, members of the clergy need to produce a document confirming that they will be living and working in a religious community recognised in the host country and that they have at their disposal sufficient income to sustain themselves.

Clergy are generally exempted from the work permit requirements in Austria, Belgium, Ireland, Italy, Portugal, Spain and the UK, if their work is strictly within the framework of their recognised religious order. In Austria, members of the clergy are also exempted from quota regulations applicable to other types of foreign employment. In Finland, clergy need a work permit, if staying for more than 3 months. In all the other countries (Germany, Denmark, Greece, Luxembourg, the Netherlands and Sweden) members of the clergy need work permits for their religious activities (see Table 3).

There are no time-limits on the maximum duration of stay for members of the clergy in any Member State (Table 4). In the Netherlands, members of the clergy may not be younger than 18 years, and not older than 45 years, except when staying in the country for less than three months.

Family reunification with members of the clergy is possible in all Member States. In Austria, the family members of the clergy are exempted from quota restrictions applicable to other types of family reunification (Table 5).

2.11. Pensioners and persons with private means

Few distinctions are generally made in the Member States between the two categories “pensioners” and “persons with private means”. The main requirement for their entry and residence is that they have at their disposal sufficient means of subsistence to cover the cost of living without becoming a burden to the host country (regular and sufficient retirement benefits in the case of pensioners, sufficient funds in the case of persons with private means). In addition, proof of medical insurance is required in Ireland, France, Luxembourg and Portugal.

In Austria, pensioners and persons with private means are subject to a special quota (“residence for private purposes”, including pensioners), determined annually by the federal government. In Denmark and the Netherlands, pensioners and persons with private means cannot be granted residence permits required for stays of more than 3 months. In Greece, stays for private purposes (including pensioners) of more than 6 months are not foreseen in Greek immigration law. In Italy, there are no legal provisions for “persons with private means” but pensioners are covered by admission regulations. In the UK, leave to enter may be granted to retired persons of independent means if the person is at least 60 years old and only for a period initially not exceeding 4 years (see Table 4). In all the other Member States, there are no quota restrictions or time-limits on the maximum duration of stay for pensioners and persons with private means.

Persons admitted under the category “pensioner” or “persons with private means” are prohibited from taking up paid employment in all Member States except one. In Sweden, any foreigner who has been granted a permanent residence permit (including pensioners and persons with private means, who intend to settle permanently in Sweden) is also eligible to work.

Family reunification with pensioners and persons with private means is possible in all Member States except Denmark and Greece. In Austria, the family members of pensioners are subject to the general quota for family reunification determined annually by the federal government. The general condition for family reunification with pensioners and persons with private means is that the person already residing in the country has enough means at his/her disposal to guarantee the living costs of the family members joining him or her.

2.12. Other special categories

In some Member States there are other special categories of third country nationals who are either not gainfully employed or are otherwise exempted from the general regulations on foreign employment and who receive special treatment for immigration purposes and are relevant for this study. The following list provides an overview, only. The respective regulations are listed in the country studies.

In, for instance, Belgium, Sweden and Finland, athletes of a high level are granted residence and work permits. In Finland, applicants for studies who are asked to take an entry examination are granted a tourist visa. In Germany, applicants for university studies for the purpose of formally applying, participants in the voluntary social year or the voluntary ecological year, participants in full-time language classes and persons who enter for the purpose of temporary family aid may be granted a special residence concession for the duration of the activity. In the UK, facilitated entry regulations apply for student nurses,

postgraduate doctors and dentists, prospective students, working holidaymakers who are Commonwealth citizens and between the ages of 17 and 27 and seasonal workers at agricultural camps.

2.13. Special regulations for national groups or countries

Several Member States have agreements and arrangements with third countries that put certain groups of persons in a more favourable position with regard to entry and residence regulations. While these special regulations *per se* are not the subject of this study, there are certain arrangements that have a direct relevance on the admission regulations for the categories under study here. What follows is a brief, indicative list of such agreements, the details of which can be found in the country studies.

Since February 1998 Austria has had an agreement with Hungary that facilitates the exchange of vocational trainees. According to this agreement, Hungarian trainees need only a temporary residence permit for stays up to six months. It is estimated that most of the 428 third country nationals, who came to Austria as trainees in 1998, were Hungarians. Finland has concluded an agreement on the exchange of vocational trainees with Slovakia. Trainees admitted on the basis of this agreement cannot stay longer than 18 months in Finland. Germany has also concluded bilateral agreements covering mainly the employment of trainees with eleven Central, Eastern and South Eastern European countries, plus Turkey. According to these agreements the trainees can stay a maximum of 18 months in Germany. Citizens of the US, Honduras, Monaco and San Marino may apply for a residence permit within 3 months after entry into Germany, provided they do not want to take up paid employment, while other third country nationals must apply for a residence permit abroad. In France, students from Togo, Gabon and Algeria do not need a provisional work permit for half-time employment, while other students from third countries do need such a permit. In Luxembourg, *au pairs* from Switzerland do not need a work permit, while those from other third countries do need one.

3. PROCEDURES

3.1. Comparative application procedures

As noted above, as a rule, applications for visas have to be made to the diplomatic or consular representations abroad. However, applications for admission and residence under the categories concerned here can sometimes be made also within the country, e.g. if a third country national has entered with a visa exemption or is otherwise already lawfully residing in the country. Applications for residence permits have to be made either abroad or within the country. In some countries the applicant needs to be in possession of the residence permit when entering the host country. In others, such as Italy, the Netherlands, Portugal and Spain, the applicant is issued a long-term visa stating the purpose of stay abroad and applies for a residence permit when already in the host country.

Application forms have to be completed in the national language of the host country but alternative languages are often possible. Applications are then processed either by the immigration authorities or by the diplomatic or consular representations. Likewise, the decision-making authority can be located at home or abroad. In several Member States the laws and regulations have left a certain margin of discretionary power to the authorities issuing the required entry documents. However, as the guidelines for these authorities are usually secret and the decisions usually remain unpublished, not much can be said about the administrative practise at embassies and consulates abroad. Similarly, the duration of

procedures varies widely both between Member States and from case to case within each country, depending on the complexity of the case. Finally, the fees charged for the processing of applications for visas and residence authorisations differ between Member States and may also vary for different categories of persons (e.g. students are often exempted from application fees). These points are summarised in our synoptic table below (Table 3.1.).

	Place of application	Deciding Authority	Languages for application	Duration of procedures	Fees (in EURO)
Austria	Abroad	Aliens Police or federal district administrative authority	German	Several months	71 – 100
Belgium	Abroad or in-country	Ministry of Interior, diplomatic representations	Any language	2 ½ months to 4 ½ months	50
Germany	Abroad	Diplomatic representations and the Aliens Office in the <i>Land</i> (Province)	German, other languages	3 months	26 - 61
Denmark	Abroad or in-country	Danish Immigration Service	Danish, English, German, or French	1 day to several months	30 – 50
Finland	Abroad	Directorate of Immigration	Finnish or Swedish ⁹	n.a. (not available)	67 –134
France	Abroad	Embassy; Prefecture	French	1 day to several weeks	25-99
Greece	Abroad	Local Police, Aliens Department, Ministry of Education	Greek, English or French	Up to 2 months	134 – 268
Ireland	Abroad or in-country	Department of Foreign Affairs; diplomatic representations ¹⁰	English	3-5 weeks	16-32
Italy	Abroad	Diplomatic representations	Italian	3 months	31
Luxembourg	Abroad or in-country	Ministry of Justice	Fench, German or English	Up to 3 months	37
Netherlands	Abroad	Ministry of Justice: INS and Aliens Police Department	Dutch, English, French or German	Up to several months	93
Portugal	Abroad	Diplomatic representations, Ministry of Foreign Affairs	Any language	n.a.	Extensions only: study visa: 35; working visa:75-200
Spain	Abroad and in-country	Diplomatic representations, Office for Foreigners, Police Headquarters	Spanish	n.a.	n.a.
Sweden	Abroad	National Immigration Board, embassies	Swedish or English	About 6 weeks	No fees
United Kingdom	Abroad or in-country	Foreign & Commonwealth Office, Immigration and Nationality Department	English, local language	Variable	54 (student, single entry); 81 (au pair)

⁹ Applications in English, German and French as well as some other languages may also be accepted

¹⁰ Some straightforward visitor cases will also be processed by the Immigration Registration office, while other, more difficult, applications for longer term stays will be referred to the Department of Justice, Equality and Law Reform.

3.2. Documents

The national rules on application procedures define which documents must be submitted by the applicant in order to be granted a visa or residence authorisation. While the precise rules vary, standard documents required may include the following:

- application form
- a valid passport (or a photocopy thereof)
- current passport-size photographs
- a persuasive statement of financial means during the stay
- police certificate of good conduct
- birth certificate
- confirmation of university admission (for students in all Member States)
- for students: approval of the Ministry of Education (in Greece) or Ministry of Justice (in Luxembourg)
- evidence of a health insurance (if required)
- confirmation of employment / work contract (if applicable, e.g. for vocational trainees,..)
- an invitation or employment contract from the academic institution in question (for guest researchers or guest professors).

3.3. Quota regimes

Of the 15 EU Member States, only two make use of a quota regime for any of the categories of persons concerned in this study. In Austria, which has a double quota system of immigration regulation (one quota for new (long-term) immigration and one quota for foreign employment as a percentage of total employment ¹¹), third country nationals, who want to come as au pairs to Austria fall under both employment and immigration quotas. Pensioners and persons with private means come under a special, annually determined, immigration quota (“residence for private purposes”). Similarly, the family members of third country nationals are subject to a special quota for „family reunification“, with the exception of the spouses and unmarried minor children (up to the age of 19) of students, trainees, guest researchers, journalists and artists. From July 1993 to December 1997 – under the old Residency Law 1992 – students were also subject to a special annual quota for students but since 1998 – under the new Aliens Act 1997 – have been exempted from any quota regulations. Similarly, trainees, guest-researchers, artists and journalists are exempted from quota regulations in Austria. In Italy, the Ministry of Foreign Affairs, together with the Ministry of University and Scientific Research, fixes an annual quota (contingente) of the number of students from third countries who can gain access to Italian Universities.

3.4. Discretionary power

In most Member States the admission regulations for the categories of persons concerned here have been defined in great detail, but there is still a small margin of discretionary power on the part of the authorities left. In recent years some Member States have taken steps to limit the discretionary power of the authorities even further. In Austria the admission regulations for student and trainees have recently refined with the introduction of the new Aliens Act 1997 and in Germany the Draft General Administrative Provisions to the Aliens Act to be

¹¹ A maximum ceiling of 8% of the total work force in Austria can be third country nationals. In addition, for each province there is also a province ceiling.

adopted in the near future is intended to codify the existing legal practice. In most Member States the legislation functions as a framework legislation and it is left to the implementing authority to complement and specify the legislation through the issuing of instructions, etc. These are intended to unify the legal practice.

It should also be mentioned that the use of certain wordings inevitably implies a certain discretionary power of the authorities, such as the obligation of the student to present “credible evidence” that they fulfil the requirements, or if the authorities are “in doubt” of the intentions of the applicant.

In the following a few examples of situations where the authorities have clearly been granted discretionary power are listed:

- In Finland, if the educational institution provides the student with board and lodging in addition to free tuition, the amount of financial means for maintenance may be reduced at the discretion of the authorities.
- In Belgium, it is within the discretionary power of the authorities to define “sufficient means to cover maintenance”, which is often a condition for admission, and “adequate accommodation”, which is a condition for family reunification. The authorities have also certain discretionary power to decide on removals, if the conditions for renewal cannot be fulfilled.
- In Denmark, if the basic characteristic of a traineeship is training and not work, a work permit is not needed. On the other hand, if the basic characteristic is work, a work permit is needed. It is within the discretionary power of the authorities to make the distinction in each single case.
- In Ireland, applicants for the purpose of study may be called upon at the discretion of the officer dealing with the application to provide further details. Applications for family reunification concerning non-married partners and non-nuclear family members are considered on a case by case basis.

4. RENEWAL

In principle, if the person is residing legally in one of the Member States, a renewal (extension) of the residence authorisation is possible from within the country, if the application is made in good time to the responsible authorities. Residence authorisations for third country nationals in the categories concerned here are normally renewed for a maximum period of one year at a time, only.

The general condition for a renewal is that the applicant continues to fulfil the conditions set out for the issuing of the first-time permit. This includes in particular that the applicant continues to have at his/her disposal sufficient means of subsistence and is continually enrolled in the educational institution (or has a continued contract of traineeship, au pair or as a guest researcher, artist or clergy).

A further condition is that the applicant does not stay longer than any maximum time-limits set out for his or her specific type of permit (see Table 4). Such maximum time-limits have been specified in the majority of Member States with regard to vocational trainees and au pairs and in some Member States with regard to students, unpaid trainees, EU and exchange trainees, guest researchers, artists and clergy. The maximum time-limits specified for vocational trainees and au pairs are between 12 months and 3 years. Maximum time-limits for students from third countries have been specified in Germany (15 years), Luxembourg (4

years) and the Netherlands (6 years). In Italy, students can stay for a maximum of 3 years after the completion of their studies.

In all Member States students are required to demonstrate good study progress (as defined in the national regulations for the residence of foreign students) for the renewal of their residence authorisations (see section 2.1.5. above). In addition, Member States have placed limitations on the number of times students are permitted to change their subject. These two requirements, taken together, limit the maximum duration of residence for students in the Member States.

In Austria, upon their application for renewal students have to furnish proof of a valid health insurance and an adequate accommodation for the first time. In the case of students, who are granted temporary residence permits only, renewals are for 6 months, while for all other categories renewals are for up to one year. In Germany, students may be granted a renewal of their residence authorisation for up to two years, if they can provide proof of sufficient financial means for that period and all the other conditions are fulfilled. In Greece, upon application for renewal foreign students must obtain a further letter of approval from the Ministry of Education certifying the continued existence of sufficient financial means and accommodation as well as good progress in studies. In Italy, residence permits for students can be renewed for the entire length of the studies only for post-graduate or specialisation courses. Residence permits cannot be renewed for a period exceeding 3 years after the duration of the university course.

4.1. Change of purpose of residence

Residence authorisations for persons falling under any of the categories under review in this study are strictly tied to a specific purpose of residence. Therefore, a change of the residence authorisation for a new purpose of residence is generally not possible or possible only under exceptional circumstances. One group of exceptions – which is outside the purview of this study – concerns newly formed family ties, i.e. marriage with a EU citizen or EEA national or with a permanently resident alien. Other exceptions are of a country specific nature and are listed below.

- Austria: a change of purpose is in principle possible from within the country, but in practice the change is very difficult due to the double quota immigration control system
- Belgium: a change of purpose can be authorised if the foreigner is in possession of a work permit or a professional card for self-employment, which can only be obtained when his/her residence is still regular
- Denmark: the foreigner may apply for a new residence permit with a different purpose of residence before the expiration of the present permit.
- Finland: in principle changing the purpose of residence is not allowed. Vocational trainees may be transferred to a different residence permit, if the vocational practise continues further.
- France: in the case of students and persons with private means applicants will only be granted a different residence permit if they are also granted a work permit
- Germany: holders of residence concessions can change the purpose of stay only under exceptional circumstances. Students, for example, only in case of employment as a scientifically qualified person, vocational trainees only in case of on-the-job training that may contribute to the applicants' integration into the labour market of his/her home country; for guest researchers the granting of a new residence permit should be in the public interest).

- Ireland: a change of status for visa required nationals is not usually possible, but there are exceptions, e.g. in the case of a student who after the end of his/her study is offered employment in a directly related field and s/he is able to obtain a work permit for that employment.
- Italy: students are allowed to change the purpose of their residence permit into a residence permit for a working purpose only within the yearly fixed quota of visas issued for working purposes and with the necessary documents certifying a work relation.
- Luxembourg: the applicant may change his/her residence permit, if s/he meets the conditions for the new purpose. However, students are not allowed to change the purpose of admission.
- Netherlands: in general, a third country national cannot change his/her purpose of stay. Holders of a D-document (residence permit) will have to leave the Netherlands and return to the country of origin or country of permanent residence to obtain an authorisation for temporary stay for the new purpose (including students, who want to change their degree programme or university). Limited exceptions are possible for vocational trainees, guest researchers, artists and journalists.
- Portugal: the granting of a work permit is a condition for a change of the purpose of admission.
- Spain: a change of purpose may be granted, if the applicant meets all necessary conditions for the specific permit, for example hold a work contract.
- Sweden: there are no formal obstacles to a change of purpose but the applicant must meet the conditions for the new purpose.
- United Kingdom: no switching to work permit employment or other categories is permitted for any of the given groups of people with the exception of trainees. Trainees can switch to a Training and Work Experience Scheme. Non-visa nationals may switch to student status.

4.2. Declaration of intention to return

Admission for the categories under review in this study is generally granted for specific purposes only and for a limited period of time. Renewal of the residence authorisation is granted if the other conditions for continued residence are still fulfilled and the purpose of the stay has not yet been achieved. In a limited number of cases a change of the purpose of residence may be granted, if certain exceptional circumstances justify this (see section 4.1.). However, in most cases the third country national is expected eventually to return to his or her country of origin or otherwise leave the country once the specific purpose of his or her stay is fulfilled.

This expectation is imminent in the admission policies of all Member States for the categories of persons under review here. However, only two Member States require applicants for study and other temporary residence purposes to sign declarations that commit them eventually leave the host country once the purpose of the stay is achieved.

In France, when applying for a visa, the applicant is required to sign a paper stating that after expiration of the visa, the applicant will go back to his/her country of origin. However, this signature does not bear any legal effect and the applicant is not under any legal obligation to give any guaranties that s/he actually will return, nor does s/he have to prove the existence of a working contract in his or her country of origin. In the Netherlands students need to declare that the stay in the Netherlands is only for the purpose of studies and the student must leave upon finishing or interrupting the course or study.

In Sweden there is no condition to sign a document stating an obligation to leave the country upon finishing the study, but the applicant must “intend” to leave Sweden on completion of his/her studies. Finally, in Luxembourg there is no such condition either, but the law does not allow students to use the legal status of the residence permit for the purpose of studying as a means of entering Luxembourg with the intent of staying indefinitely.

5. RIGHTS AND STATUS

The fundamental difference between the rights and status of EU/EEA citizens and third country nationals is that the former generally enjoy the “four freedoms” as defined in the relevant EU/EEA treaties, while the latter do not. Therefore, the admission and residence of third country nationals is subject to a complex system of national rules and regulations as summarised in this comparative chapter and explained in detail in the country studies for the categories of persons subject to review here.

Similarly the right to work for persons in these categories has been strictly regulated by national provisions as explained throughout the study. Generally, third country nationals are only permitted to carry out work under the conditions set out for their residence authorisation. In addition to the residence authorisation a work permit may be required to carry out the activity in question (see Table 3). Vocational trainees, unpaid trainees, EU- and exchange trainees, guest researchers, artists, journalists and clergy are only allowed to carry out work activities for which they have been admitted. In some Member States, students are permitted to carry out part-time work parallel to their studies. The permission to carry out part-time work is sometimes subject to the provision that it does not interfere with normal studies, is outside normal course hours or during holidays only (see also section 2.1.3 on employment during studies).

Access to health care and welfare benefits has not been the subject of this study. With regard to the categories of persons concerned here it should be noted that admission and residence is generally dependant on the applicant not becoming a burden on the public welfare system. In addition several Member States demand obligatory health insurance coverage for certain categories where such insurance is not automatically linked to employment in the host country. With regard to students, obligatory health insurance schemes are discussed in section 2.1.4. above, with regard to pensioners and persons with private means under section 2.11. above.

In some Member States, the right to political participation at the local level has also been extended to certain third country nationals. Since 1995 all EU citizens may participate in the EU parliamentary elections and in local elections of the municipality where they reside. Already since 1977 citizens of the Nordic Passport Union may participate in elections at the local level in the Nordic countries. Third country nationals may participate in elections at the local level only in some countries and only after a certain period of residence.

In Denmark and Sweden, third country nationals may participate in local elections at the municipality where they have resided permanently for the past 3 years (in Finland after 2 years, in Portugal active voting rights after 3 years, passive voting rights after 5 years, in Netherlands third country nationals may participate in local elections after they have resided 5 years in the country). In Ireland non-EU citizens may vote at local election level only. In Austria, Belgium, Greece, Luxembourg and Spain third country citizens are not allowed to participate in any elections. Denmark, Finland, Italy, the Netherlands and Sweden have

signed, and Italy, the Netherlands and Sweden have ratified, the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level.¹²

6. FAMILY REUNIFICATION

The right to family reunification with third country nationals is normally linked to a permanent or at least long-time residence status. As the categories under review in this study do not normally entitle third country nationals to permanent residence in the host country (with the partial exception of pensioners and persons with private means), the rights to family reunification in these cases are subject to special, generally restrictive, regulations. In some Member States certain categories of third country nationals are excluded from the right to family reunification altogether, while in others family members may join only under certain temporal restrictions.

Family reunification with students is possible in most Member States if the other conditions for this are fulfilled (see below). In Austria, the family members of students are exempted from quota regulations applicable to other types of family reunification. In Belgium, the authorisation for family reunification must be given, as of right, to the family members of a student, if s/he disposes over sufficient accommodation and means of subsistence to receive the members of his family. In France and Ireland family reunion with a student is granted only after one year of residence. In Finland, authorisation for family reunification is normally not issued for the first or last year of the studies, while in Denmark family reunion will only exceptionally be granted to a student for whom only one year of education is left. In Italy and Portugal residence titles for the purpose of family reunification are only granted if the student has a residence authorisation for at least 1 year. In Germany, family reunification with students is granted only on an exceptional basis. In Greece and Luxembourg students do not have the right to family reunification (see Table 5).

In 6 Member States (Austria, Germany, Denmark, France, Greece and Luxembourg) family reunification with trainees is generally not possible, while family reunification with au pairs is excluded in 7 Member States (Germany, Denmark, France, Greece, Luxembourg, the Netherlands and Sweden). Family reunification with guest researchers and members of the clergy is possible in all Member States, with pensioners and persons with private means in all Member States except Denmark and Greece and with artists and journalists in all except Denmark (see Table 5).

The conditions to be fulfilled by third country nationals in order to have their family members join them in the host country are generally the same as the conditions for all family reunification with third country nationals. The person to be joined by his family has to be able to cover the living costs of his/her family members, in addition to his own subsistence. Some Member States have also set additional conditions such as sufficient accommodation and health insurance coverage for the family members.

The survey on which family members are eligible for family reunification has resulted in the conclusion that in all Member States the same family relationships and age limitations apply to these categories as for third country nationals in general. According to the national regulations, family members eligible for reunification with third country nationals include the spouse and the (unmarried) minor children of the foreigner. Age limits for minor children vary between 16 years (in Germany) to 21 years (in Greece and Portugal), but in most MS the

¹² Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level ETS No. 144, dated 05.02.1992, entered into force on 01.05.1997.

age limit is 18 years. Some Member States allow family reunification also with dependent parents, siblings or same-sex partners.

Family members acquire a residence title for the same time period as the person they are joining. In all countries but Denmark, persons admitted under the title of family reunion do not have the right to work in the host country.¹³ The residence authorisation granted for the purpose of family unification does not entitle the holder to residence in the country independent of the original titleholder. Therefore, if the family relationship is terminated (divorce) or the original titleholder is no longer legally residing in the country, the family member is required to leave the country as well. Only after a certain, usually long, period of residence for the purpose of family reunification may a family member apply for a residence authorisation independent of the original title holder.

7. FRAUD

The survey on specific rules and procedures regarding fraud has resulted in the conclusion that there are no special regulations for any of the categories of persons covered by this study and that general regulations apply. If it has been discovered that a foreigner gave false or incomplete statements or provided false documents as a basis for the application for a residence authorisation or falsified such documents, the residence authorisation may be withdrawn and the foreigner may have to leave the country.

8. REMOVAL

The survey on specific rules and procedures regarding removal has resulted in the conclusion that there are no special regulations for any of the categories of persons covered by this study and that general regulations apply. If a foreigner does not or does no longer reside legally in the country, s/he will be asked to leave. If the foreigner does not do so, s/he may be expelled. In case of serious violation of the law or if the foreigner presents a danger to public security a residence ban may be imposed. Except for Denmark there are no statistics available on the number of removals under any of the categories concerned here.

9. LEGAL DEVELOPMENTS AND TRENDS

The widespread political changes that took place across Europe throughout the 1990s have led to a pronounced upsurge of migration flows to the countries of the EU and to a fundamental revision of the aliens legislation in many Member States. At the same time, the ever closer integration of the EU and the introduction of the “four freedoms” for EU citizens have put the admission and residence regulations for nationals of the EU on a new level, while the abolition of border controls within the Schengen Area has necessitated closer co-ordination and harmonisation of migration policies.

As a result an already complex system of admission policies and residence authorisations has been further differentiated through the adoption of more detailed regulations for certain groups of third country nationals desiring admission to the Member States of the EU. The adoption of new and more comprehensive national aliens legislation has therefore brought changes in admission and residence regulations for the groups of persons under review in this study. However, both the scope and the speed of these changes has been quite uneven across

¹³ But in Denmark, of the categories concerned here, only guest researchers, clergy and students in the last year of study have a right to family reunification.

the Member States of the EU. Table 9.1 gives a brief overview of the dates when the main aliens legislation were adopted in the Member States.

Austria	Aliens Act 1997, in effect since 1.1.1998
Belgium	Law on Entry, Residence and Removal of Foreigners on the Territory of Belgium 15 December 1980
Germany	Aliens Act of 09.07.1990
Denmark	Danish Aliens Act of 1983, Danish Executive Order on Aliens of 1984
Finland	Finnish Aliens Act (378/1991) entered into force on 1 March 1991
France	Ordinance No. 45, last modified 11 May 1998 Decree No. 46, last modified 5 May 1999
Greece	Law on “Entry-Exit, Residency, Employment, Foreigner Expulsion, Identification, Procedure of Foreign Refugees and other Decrees” of 1991
Ireland	1935 Aliens Act; 1946 Aliens Order, 1999 Immigration Act
Italy	Aliens Act 1998 (Law Nr. 40/1998); Decreed Law Nr. 286 of 25 July 1998; Decree of the President of the Republic Nr. 394 of 31.08.1999
Luxembourg	Law on Entry and Residence of Foreigners Of 28 March 1972, last modified on 18.08.1995
Netherlands	Aliens Law 1994
Portugal	Decree Law No 244/98, dated 8 August 1998
Spain	Aliens Law (Ley Organica) 4/200 of 11.01.2000
Sweden	Alien’s Act (1989); Aliens Decree (1989)
United Kingdom	Immigration Act 1971 and 1988; British Nationality Act 1981

In the course of revising their existing aliens legislation and, more often, through the introduction of additional administrative rules and procedures most Member States have by now a comprehensive legislative framework in place to regulate the admission and residence of all the categories under review in this study in place. If there are no specific rules for a specific category under review here (e.g. in Greece, Ireland and Luxembourg), the general admission and residence regulations for third country nationals apply.

All Member States but France have reported no important court decisions that have contributed to the current implementation of the admission and residence regulations for the categories under review here. This may be due to the fact that most decisions are subject to appeal only within the relevant national administration. To date, there have also not been any relevant decisions of the European Court of Justice covering any of the categories under review here (see Appendix E “EU-Bestimmungen und Judikatur des EuGH”). In France, *le Conseil Constitutionnel* decided on 13 August 1993 (case law decision no 93-325) that Art. 23 of the *loi relative à la maîtrise de l’immigration et aux conditions d’entrée, d’accueil et de séjour des étrangers en France* was contrary to the Constitution. Since, if the previous marriage of a student was annulled and the former spouse was already in France, family reunion was possible only after two years after the dissolution of the first marriage, according to Art. 23.

From the detailed country studies it has become apparent that third country nationals under the categories under review here are treated differently from other third country nationals for two main reasons: First, students, trainees, au pairs, guest researchers, pensioners and persons with private means are not admitted for employment purposes but for educational or, in the case of pensioners and persons with private means, simply residence reasons. Artists and journalists enjoy special treatment because they are not considered part of the “normal” labour force. The special status of third country nationals admitted for “non-employment reasons” also necessitates a special requirement for admission: that they bring sufficient financial means with them, so as not to become a burden on the host country.

Second, and more importantly, third country nationals in these categories are not admitted for the purpose of permanent immigration but only for temporary residence tied to a specific purpose, only (with the partial exception of pensioners and persons with private means). Therefore, specific admission policies have been developed therefore, for these categories of persons that should ensure that their residence remains temporary and that third country nationals, thus admitted, will leave the host country once the purpose of the stay is achieved (e.g. university education, vocational training, au pair).

10. STATISTICS

The temporary admission of third country nationals who are “not gainfully employed” or do not otherwise become part of the “regular labour force” of the host country also has implications for the statistical treatment of these groups of persons and, therefore, the general trends in migration flows that can be discerned for these groups. As persons “not gainfully employed” are not part of the labour market statistics and such data are only rarely collected for general immigration statistics, no general conclusion can be drawn on migration trends in this area. Admissions of non-EEA students in the UK have decreased by 22 % between 1995 and 1999, while the number of first-time residence permits for students from third countries has increased by 16 % in Belgium (1996-1999), by 44 % in Denmark (1994-1998), by 33 % in Germany (1998-1999) and by 23 % in Sweden (1997-1999). Between 1995 and 1999, the stock of students from third countries has decreased by 64 % in Italy. One contributing factor is most probably the quota regulation for students which was introduced in 1998. In Austria the same stock has increased by 11 %.

The following tables (Table 1 and Table 2) provide an overview of the latest available statistics on the number of persons admitted under each category under review in this study.

Table 1: Number of persons admitted under each category (flow figures, year is 1999 except where otherwise indicated)

Categories→	Students	Unpaid Trainees	EU Trainees	Vocational Trainees	Au pair	Guest Researchers	Pensioners	Artists	Journalists	Clergy
Austria	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	431	n.a.	n.a.	n.a.
Belgium ¹⁴	1,665	n.a.	591 ¹⁵	102	173	50	6	n.a.	n.a.	39
Denmark ¹⁶	3,254	n.a.	n.a.	1,074	478	n.a.	n.a.	n.a.	n.a.	97
Finland	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
France ¹⁷	31,500	Cf. Vocational trainees	Cf. Vocational trainees	13,840 ¹⁸	Cf. vocational trainees	471 (1998-2HY ¹⁹)	n.a.	85 (1998-2HY)	n.a.	n.a.
Germany	23,526 ²⁰	Cf. Vocational trainees	Cf. Vocational trainees	4,661 ²¹	15,167	n.a.	n.a.	n.a.	n.a.	n.a.
Greece	8,000 (5 years) ²²	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Ireland	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Italy	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Luxembourg	n.a.	n.a.	n.a.	54	n.a.	n.a.	n.a.	22	n.a.	n.a.
Netherlands	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Portugal ²³	1,459	Cf. Students	Cf. Students	Cf. Students	Cf. Artists	Cf. Students	1,919 ('98)	266 ('98)	Cf. Artists	Cf. Pensioners
Spain	22,056 ²⁴	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Sweden ²⁵	2,866	n.a.	n.a.	300 (est.)	600 (est.)	n.a.	n.a.	5,000 (est.)	n.a.	n.a.
United Kingdom	222,800 ²⁶	n.a.	n.a.	n.a.	14,800	n.a.	60	n.a.	n.a.	1,050

¹⁴ Statistics refer to the total number of residence permits issued for the first time to third country nationals only.

¹⁵ These include students and trainees on scholarships or on exchange programmes of organizations such as AGCD and CUD and through EU exchange programmes.

¹⁶ Data refer to 1998 and first-time permits only.

¹⁷ All statistics refer to first-time permits issued in 1998. Statistics for guest researchers and artists refer to the period 8 July 1998 to 31 December 1998, the first half-year, in which these categories were accorded this residence title.

¹⁸ Statistics of vocational trainees refer to "short-term visitor" visas, including all groups of trainees (stagiaire professionnels et information) and all au pairs.

¹⁹ 2 HY = second half year

²⁰ Statistics refer to first-time permits issued by diplomatic representations abroad, only. Of these, 17,474 are students and 6,052 are applicants for studies.

²¹ Including unpaid trainees, EU-trainees and exchange trainees.

²² The official estimate by the Greek Ministry of Public Order is that some 8,000 students from third countries came to Greece between 1995 and 1999.

²³ Statistics under „students“ are all study-visas issued to students, unpaid volunteers, EU and exchange trainees, vocational trainees, and unpaid researchers. Statistics under „artists“ are all working visas issued to au pairs, artists, journalists and others. Statistics under „pensioners“ are all residential visas issued to pensioners, clergy and others.

²⁴ Data refer to 1998.

²⁵ Data refer to students and researchers and first-time residence permits only. Other data are estimates and refer to first-time permits only.

Table 2: Number of persons admitted under each category (stock figures, year is 1999 except where otherwise indicated)

Categories→	Students	Unpaid Trainees	EU Trainees	Vocational Trainees	Au pair	Guest Researchers	Pensioners	Artists	Journalists	Clergy
Austria	10,923 ²⁷	211	n.a.	217	0	n.a.	10,847 ²⁸	1,381	116	n.a.
Belgium	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Denmark	3,863 ²⁹	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Finland	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
France ³⁰	62,000	Cf. Vocational trainees	Cf. vocational trainees	23,400 ³¹	Cf. vocational trainees	n.a.	n.a.	n.a.	n.a.	n.a.
Germany	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Greece	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Ireland	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Italy ³²	22,097	n.a.	n.a.	153	n.a.	n.a.	45,900	n.a.	n.a.	40,584
Luxembourg	< 100 ³³	n.a.	n.a.	54	n.a.	n.a.	n.a.	22	n.a.	n.a.
Netherlands	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Portugal	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Spain	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Sweden	4,797 ³⁴	n.a.	n.a.	n.a.	n.a.	See students	n.a.	n.a.	n.a.	n.a.
United Kingdom	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.

n.a. = not available

²⁶ Data include 155,000 students admitted for less than 12 months and 67,800 students admitted for more than 12 months. Source: Immigration Research and Statistics Service.

²⁷ Includes 2,277 pupils and 8,646 students.

²⁸ Includes pensioners and persons with residence for private purposes (third country nationals, only).

²⁹ Data refer to 1998 and include 3,254 first-time permits and 609 permit renewals.

³⁰ All data refer to 1998.

³¹ Statistics under vocational trainees refer to “short-term visitor” visas, including all groups of trainees (stagiaire professionnels et information) and all au pairs.

³² Data refer to outstanding residence concessions as of 31 December. Year is 1999 for Students and Clergy, 1998 for Trainees and 1997 for pensioners.

³³ An unofficial estimate by the Ministry of Justice in Luxembourg puts the number of students from third countries at less than 100.

³⁴ Data refer to students and researchers. These include 2,866 first-time residence permits issued and 1,931 renewals of residence permits.

Table 3: Requirements for work permits – are work permits for the categories listed required/excluded?

Categories→	Students	Unpaid Trainees	EU Trainees	Vocational Trainees	Au pair	Guest Researchers	Pensioners	Artists	Journalists	Clergy
Austria	Not allowed to work	No	No	No	Yes	No	Not allowed to work	Yes/no ³⁵	Yes/no ³⁶	No
Belgium	Part-time work ³⁷	Yes	No	Yes/no ³⁸	Yes	Yes	Not allowed to work	Yes/no ³⁹	Yes/no ⁴⁰	No
Denmark	Part-time work ⁴¹	Not admitted if unpaid	No	Yes	Yes	Yes	Not admitted for more than 3 months	Yes/no ⁴²	Yes/no ⁴³	Yes
Finland	Part-time work ⁴⁴	No	No	Yes ⁴⁵	Yes	Yes/no ⁴⁶	Not allowed to work	Yes/no ⁴⁷	No	Yes/No (see artists)
France	Part-time work ⁴⁸	No	No	Yes	Yes	No	Not allowed to work	No	n.a	n.a.
Germany	Part-time work ⁴⁹	Yes	No	Yes	Yes	Yes/No ⁵⁰	n.a.	Yes/no ⁵¹	Yes/no ⁵²	Yes

³⁵ Artists in dependent employment need a work permit, self-employed artists do not need a work permit

³⁶ Journalists accredited with foreign media companies do not need a work permit, foreign journalists working with domestic media companies do need a work permit

³⁷ Students may work up to a maximum of 22 hours per week outside of course hours. They need a work permit, except for work during academic holidays.

³⁸ Trainees, who follow training considered equal to an apprenticeship that cannot be followed in his or her home country, are exempted from work permits.

³⁹ No work permit is needed for artists and accompanists, who participate in an artistic show of international reputation, if their stay does not exceed three consecutive months.

⁴⁰ Foreign journalists, who work for foreign-based journals or media are exempted from the requirement of a work permit, if their stay does not exceed three consecutive months.

⁴¹ A work permit can be granted in June, July and August. Students who have had a residence permit for 18 months can get a work permit with a right to up to 15 hours of work per week..

⁴² Painters who stay in Denmark on a three month visa do not need a work permit for the first three months of their residence.

⁴³ For stays of less than 3 months, journalists do not need a work permit and a visa is sufficient.

⁴⁴ Students may work part-time (max. 20 hours a week) during the semester or full-time during holidays (May 1 - September 30 and December 15 - January 15) without a work permit.

⁴⁵ If on the job training is a compulsory part of the studies to obtain a qualification, a work permit is not required.

⁴⁶ If the guest researcher intends to stay for more than one year a work permit is required.

⁴⁷ If staying longer than three months, artists and clergy need a work permit in Finland.

⁴⁸ Students need to obtain a provisional work permit to work on a half-time basis. Nationals from Togo, Gabon and Algeria do not need such a permit.

⁴⁹ No work permit for students is required provided that the employment does not exceed an annual total period of three months, Other kinds of part-time employment may be permitted, if the work does not interfere with the studies.

⁵⁰ For less than 3 months no work permit is required. For a period exceeding 3 months, academic lecturers and research assistants in universities do not need a work permit.

⁵¹ A work permit is not required for a period of stay not exceeding 3 months.

⁵² Accredited journalists working for foreign-based media companies do not need a work permit.

Categories→	Students	Unpaid Trainees	EU Trainees	Vocational Trainees	Au pair	Guest Researchers	Pensioners	Artists	Journalists	Clergy
Greece	Not allowed to work	Treated as students	Treated as students	Treated as students	Treated as students	Yes	Not allowed to work	Yes/no ⁵³	No	Yes
Ireland	Not allowed to work	Not allowed to work	No	Treated as students	No provisions	No	Not allowed to work	No	No	No
Italy	Part-time work ⁵⁴	No	Yes	Yes	No	No/Yes ⁵⁵	n.a.	Yes	n.a.	No
Luxembourg	Not allowed to work	Yes	Yes	Yes	Yes	Yes	n.a.	Yes/No ⁵⁶	Yes	Yes
Netherlands	Part-time work ⁵⁷	Yes	Yes	Yes	No	Yes	Not allowed to work	Yes	Yes	Yes
Portugal ⁵⁸	Supplementary work allowed	No	No	No	Yes	Yes/No ⁵⁹	Not allowed to work	Yes	Yes	No
Spain	Not allowed to work	No	No	Yes	No	No	No	No	No	No
Sweden	Summer jobs only ⁶⁰	n.a.	n.a.	Yes	Yes	n.a.	No work permit needed	Yes	Yes	Yes
United Kingdom	Part-time work ⁶¹	No	No	Yes ⁶²	No	Yes	No	Yes	Yes	No

n.a.: not applicable

⁵³ For cultural events up to one month, no work permit is needed; musicians in orchestras (classical music) do not need work permits; otherwise work permits are needed.

⁵⁴ Students are allowed to work up to 20 hours a week without a work permit for a total maximum of 1,040 hours a year.

⁵⁵ If the research activity is remunerated the alien has to obtain an entry visa for work purposes.

⁵⁶ Artists do not need a work permit, if they stay less than one month. All artists in dependent employment, who stay longer than one month need a work permit.

⁵⁷ Students are allowed to work up to 10 hours a week with a work permit.

⁵⁸ Students, persons who carry out non-remunerated traineeships, vocational trainees, trainees included in an exchange programme, and trainees included in an EU study programme need to have a study visa only.

⁵⁹ Invited researchers who exercise a non-remunerated task only need a study visa. If their activity is paid, they need a working visa Type III or IV.

⁶⁰ Students are allowed to work only between 15 May – 15 September.

⁶¹ Students are allowed to work up to 20 hours a week during term time and full time during vacations.

⁶² The work permit is issued by the Department for Education and Employment under the Training and Work Experience scheme either for training or for employment.

Table 4: Specified maximum duration of stay – is a maximum duration specified by law or other regulations? If so, what is it?

Categories→	Students	Unpaid Trainees	EU Trainees	Vocational Trainees	Au pair	Guest Researchers	Pensioners	Artists	Journalists	Clergy
Austria	No	12 months	No	No	No	No	No	No	No	No
Belgium	No	No	No	12 months	12 months	4 years	No	No	No	No
Denmark	No	No	No	2 years	2 years	2 years	No	No	No	No
Finland	No	12 months	12 months	No	No	No/12 months ⁶³	No	No	No	No
France	No	No	No	18 months	18 months	No	No	No	n.a.	n.a.
Germany	15 years ⁶⁴	No	No	1 year ⁶⁵ /2 years ⁶⁶	No	No	No	No	No	No
Greece	No	No	No	No	No	No	6 months	No	No	No
Ireland	No	No	No	No	No	No	No	No	No	No
Italy	No	No	No	2 years	2 years	No	No	No	No	No
Luxembourg	4 years ⁶⁷	12 months	12 months	12 months	2 years	No	No	No	No	No
Netherlands	6 years ⁶⁸	24 weeks	12 months	No	12 months	No	3 months	No	No	No
Portugal	No	No	No	3 years	3 years	No	No	3 years	3 years	No
Spain	No	No	No	18 months	2 years	No	No	No	No	No
Sweden	No	n.a.	n.a.	18 months	12 months	n.a.	No	No	No	No
United Kingdom	No	No	No	12 months: 3 years ⁶⁹	2 years	No ⁷⁰	No	No/ 12 months ⁷¹	No/ 12 months	No

n.a. not available

⁶³ If a work permit is needed, there is no maximum duration of stay. If no work permit is needed, the maximum duration of stay is 12 months.

⁶⁴ If the foreigner receives a stipend, until the end of the stipend

⁶⁵ If the foreigner has been employed by a German enterprise abroad or by a joint venture, where one of the partner companies is a German company

⁶⁶ If the foreigner shall receive on-the-job training in a German enterprise as key personnel, provided that such training is envisaged in an international agreement or in an agreement concluded by associations defending private sector interest

⁶⁷ Students can complete only the first 2 years of study, are allowed to change subject once and may fail once. However, for the last two points, exceptions can be made.

⁶⁸ The maximum period may be reduced or extended, depending on the programme's total duration.

⁶⁹ The maximum duration of approved work experience is 12 months, the maximum duration of approved training is 3 years.

⁷⁰ A person seeking leave to enter the United Kingdom as a teacher or language assistant under an approved exchange scheme may be given leave to enter for a period not exceeding 12 months.

⁷¹ A person seeking leave to enter the United Kingdom as a representative of an overseas newspaper, news agency or broadcasting organisation or as a writer, composer or artist may be admitted on a short-term basis for a period not exceeding 12 months or with a long-term work permit.

Table 5: Is family reunion with persons falling under the following categories possible?

Categories→	Students	Unpaid Trainees	EU Trainees	Vocational Trainees	Au pair	Guest Researchers	Pensioners	Artists	Journalists	Clergy
Austria	Exempted from quota	No, too short	No, too short	No, too short	Under general quota	Exempted from quota	Special quota for priv. purp.	Exempted from quota	Exempted from quota	n.a.
Belgium	Yes ⁷²	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Denmark	No ⁷³	No	No	No	No	Yes	No	No	No	Yes
Finland	Yes ⁷⁴	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
France	Yes, after 1 year	No, too short	No, too short	No, too short	No, too short	Yes, after 1 year	Yes, after 1 year	Yes, after 1 year	n.a.	n.a.
Germany	No/Yes ⁷⁵	No	No	No	No	Yes	Yes	Yes	Yes	Yes
Greece	No	No	No	No	No	Yes, after 5 years	No	Yes, after 5 years ⁷⁶	Yes	Yes, after 5 years
Ireland ⁷⁷	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Italy ⁷⁸	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Luxembourg	No	No	No	No	No	n.a.	Yes	Yes	Yes	Yes
Netherlands	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
Portugal ⁷⁹	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Spain	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Sweden	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
United Kingdom	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

n.a. not available

⁷² The authorisation must be given, as of right, to the family members of a student, if he disposes over sufficient accommodation and means of subsistence to receive the members of his family.

⁷³ Exceptions can be made in some cases, concerning students for whom only one year of education is left.

⁷⁴ Without well-established grounds, a permit is not issued for the first or last year of the studies.

⁷⁵ Limited exceptions are made for postgraduate students, students receiving a stipend, nationals of certain countries of origin and extreme hardship cases.

⁷⁶ Artists playing classical music in orchestras do not need prior consulate approval and can have their family members join them immediately.

⁷⁷ Applications for family reunification by a visa-required national would generally not be approved until the person had been legally residing in Ireland for 12 months and had the expectation of residing for at least a similar period of time.

⁷⁸ Generally, the right to family reunification is recognised only for those third country nationals who have a residence permit for a minimum of 1 year

⁷⁹ Third country nationals who have been duly granted a residence authorisation for at least one year have the right to family reunification, if the other conditions are fulfilled.

III. COUNTRY STUDIES

1. INTRODUCTION

The country studies follow the following format:

1. General admission regulations
2. Conditions (for admission)
3. Procedure
4. Renewal
5. Change of purpose of admission
6. Rights and status of third country nationals in comparison to EU/EEA nationals
7. Family reunification
8. Fraud
9. Removal
10. Legal developments
11. Statistics
12. Conclusions

The concluding chapter attempts to outline the main characteristics by listing activities for which work permits are required, whether maximum duration of stay has been limited, etc.

The different sections under each country study, dealing with the above mentioned subject areas, include general information of relevance for the categories of persons dealt with in the present study. The later sub-sections include information specifically applicable to the categories of persons of relevance for the present study, as indicated. Concerning some subject areas, in particular type of permits required, conditions for admission and renewal of permits, all Member States have to a large extent submitted category specific information. On the other hand, notably the rules concerning in particular fraud and removal are not specific to our categories, but are in principle applicable to all third country nationals.

The expression short-term visas is used for visas issued for a short, temporary stay, usually for tourist or similar purposes, and not exceeding three months. A short-term visa is frequently mentioned as a requirement, but it should be noted that a large number of third country nationals are not subject to visa requirements. although it is beyond the scope of this study to describe the present visa regime of each Member State. The Member States have however largely harmonised their visa regimes (EU Council regulation determining third countries whose nationals must be in possession of visas and Schengen co-operation).

The implementation of the principle of free movement for EU/EEA citizens entitles these to reside and work in any EU Member State. EU/EEA citizens need only possess a valid travel document to be admitted to a Member State, but, the questions of residence authorisation still arises, as generally they must apply later for one of these when already in the host country. Therefore an attempt has been made to touch upon the conditions for obtaining and renewing the residence authorisations also for EU/EEA citizens as well as third country nationals.

2. AUSTRIA

2.1. General admission regulations

To enter Austria and reside there legally, citizens from non-EEA countries need a so-called entry or residence permit (“*Einreise-“* or “*Aufenthaltstitel“*”), issued according to the duration and purpose of their stay. Travel or tourist visas (visa C) are issued for entry and stay of up to three months; residential visas (visa D) for entry and stay for business trips, language courses and the like for up to 6 months. A temporary residence permit (*Aufenthaltserlaubnis*)⁸⁰ is issued to persons of third countries wishing to reside in Austria for a limited period of time. Temporary residence permits are normally issued for one semester. A Permanent residence permit (*Niederlassungsbewilligung*)⁸¹ is issued to persons of third countries wishing to reside in Austria for an unlimited period of time (i.e. those wishing to have a main focal point of their life in Austria or want to reside in Austria for purposes of work) need a permanent residence permit.⁸² Permanent residence permits are normally issued for one year.

Special-purpose residence permits exist, *inter alia*, for:

- students; family members of students;
- pupils; family member of pupils;
- voluntary workers (Volunteers);
- artists;
- trainees; and
- private purposes (for pensioners or other persons with sufficient financial means).

The Aliens Act 1997⁸³ is based on a system of annual quotas for persons wishing to (permanently) reside in Austria. There are 4 sub-quotas⁸⁴ determined annually:

- for purposes of employed or self-employed workers (including their family members – spouses and unmarried children up to 19);
- highly skilled workers and their family members (as above);
- family reunification with migrants already permanently residing in Austria as of January 1, 1998 (spouses and unmarried children up to 14); or
- immigration for private purposes – persons residing permanently in Austria without pursuing employment.

The permanent residence permits are, in principle, subject to quota regulations, but there are a number of exceptions (artists, journalists, clergy..). Immigration to Austria for employment purposes is tightly restricted since the applicant in this case is subjected to a second quota system according to the Foreigners’ Employment Act (double quota system). A maximum ceiling of 8% of the total work force can be third country nationals.⁸⁵ For each province there is also a province ceiling.

⁸⁰ Art 7 (4) of the Aliens Act (1997)

⁸¹ Art 7 (3)

⁸² The term should not be confused with the expiration date, a PRP usually has a limited validity for the first five years; it is first issued for one year, then twice for two years and may then be issued with an unlimited duration.

⁸³ Fremdenengesetz

⁸⁴ Art 18 (1) and (4)

⁸⁵ Art 12 (a) of the Foreigners’ Employment Act (AuslBG).

Citizens from EU/EEA countries and Switzerland⁸⁶ only need a valid travelling document (an identity card is sufficient) to come to Austria.

Table 2.1. Overview of required permits for admission and residence

Categories	Up to 3 months	Up to 6 months	More than 6 months
Students (higher education only)	Travel visa Category C ⁸⁷	Residential visa Category D ⁸⁸	Temporary residence permit
Unpaid trainees	Temporary residence permit	Permanent residence permit	Permanent residence permit
EU-Trainees ⁸⁹	Permanent residence permit	Permanent residence permit	Permanent residence permit
Exchange Trainee ⁹⁰	Permanent residence permit	Permanent residence permit	Permanent residence permit
Vocational trainees (trainees)	Permanent residence permit ⁹¹	Permanent residence permit	Permanent residence permit
Au pair	Permanent residence permit Work permit	Permanent residence permit Work permit	Permanent residence permit Work permit
Guest researchers ⁹²	Temporary residence permit	Temporary residence permit	Permanent residence permit
Guest researchers ⁹³	Permanent residence permit	Permanent residence permit	Permanent residence permit
Pensioners and persons with private means	Permanent residence permit	Permanent residence permit	Permanent residence permit
Artists, if self-employed	Permanent residence permit	Permanent residence permit	Permanent residence permit
Artists, in dependent employment	Permanent residence permit Work permit	Permanent residence permit Work permit	Permanent residence permit Work permit
Journalists, in foreign media companies	Permanent residence permit	Permanent residence permit	Permanent residence permit
Journalists, in domestic media companies	Permanent residence permit Work permit	Permanent residence permit Work permit	Permanent residence permit Work permit
Clergy	Permanent residence permit	Permanent residence permit	Permanent residence permit

⁸⁶ Swiss citizens receive equal treatment due to a bilateral treaty.

⁸⁷ Possible visa exemptions, depending on visa agreements with country of which the applicant is a citizen (see Appendix A).

⁸⁸ Japanese students do not require a visa for stays of up to 6 months.

⁸⁹ EU trainee: The trainee's work is part of an EU education or research programme. The most important education programmes are LEONARDO and SOCRATES (which include the sub-programmes ERASMUS, COMENIUS, LINGUA, etc.), YOUTH FOR EUROPE and TEMPUS.

⁹⁰ Exchange trainee: The trainee's work is part of a trainee exchange programme. These are programmes of associations such as AIESEC, AMSA, ELSA, IAAS and IAESTE.

⁹¹ For Hungarian citizens a temporary residence permit is sufficient for stays of up to 6 months.

⁹² If remunerated by public institutions, such as Universities.

⁹³ Including, if applicable: guest teachers, foreign language assistants, other instructors.

2.1.1. Students

Students are persons in higher education after the termination of secondary education (*Matura*), who are older than 18 years. Only students of universities, undergraduate and postgraduate schools with public status are acknowledged in practice⁹⁴ – other students would have to obtain a permanent residence permit for private purposes (e.g. students of the private International University Vienna). Pupils are persons attending compulsory schools (*Pflichtschule*) or who are in secondary education (only schools with public status are acknowledged).

Students (undergraduates or postgraduates (“*Diplom-“* or “*Doktoratstudium“*)) and pupils must have a visa (for stays up to 3 and 6 months) or a temporary residence permit for longer study periods. If the study period in Austria does not exceed 6 months, a visa (either a tourist visa category C for stays up to 3 months or a residential visa category D for stays up to 6 months) is sufficient. Students from countries which have visa-free agreements with Austria do not need visas for stays of up to 3 months.⁹⁵ However, it is absolutely out of question that a residence permit (*Aufenthaltstitel*) may be granted after entering Austria with a tourist visa or a visa exemption.⁹⁶ The visa and the residence permits are issued solely for the purpose of studying solely and do not entitle the holder to carry out any paid employment in Austria. Thus, the student may not work during holidays.⁹⁷

Since the beginning of 1998 students from third countries are no longer subject to quota regulations.

2.1.2. Unpaid trainees

Unpaid trainees (*volontäre*) will enlarge and apply their knowledge and skills and are not subject to labour and social legislation. Unpaid trainees who intend to stay in the country for 3 months must apply for a temporary residence permit and are not subject to quota restrictions. For a stay exceeding three months, a permanent residence permit is necessary and quota restrictions are applied. This permits them to work only within the scope of an unpaid traineeship. The employer is required to notify the regional job centre office (*Arbeitsmarktservice, AMS*) two weeks in advance of the traineeship.⁹⁸

2.1.3 Vocational trainees

Vocational trainees (*Ferial-, Berufspraktikanten*) carry out the activities that are provided for students or pupils at an Austrian teaching institution with public status (*Öffentlichkeitsrecht*) by the curriculum of their study or training course.⁹⁹ A permanent residence permit is required

⁹⁴ According to a new law on the accreditation of private universities (Universitätsakkreditierungsgesetz 1999) some private universities will be given „public status“ in this sense, e.g. the American Webster University.

⁹⁵ As of July 1999, there were visa agreements with 41 non-EEA states, exempting citizens from these countries from visa obligations for stays up to 3 months (Type C visas).

⁹⁶ There are exceptions from this rule for citizens of the USA and for persons being granted a so-called humanitarian residence permit (*Humanitäre Aufenthaltserlaubnis*).

⁹⁷ Vocational/holiday workers (*Ferialarbeiter*) currently have only a very small chance of receiving either a work permit (*Beschäftigungsbewilligung*) and/or a settlement permit (*Niederlassungsbewilligung*). Students and pupils may only work during the summer holidays, if such work experience is required for the completion of their degree according to the curriculum of their studies.

⁹⁸ There is also a provision Art. 3 (9) FEA, which enables an extension of an unpaid traineeship up to 12 months under the conditions of Art. 3 (5), if certain criteria are met.

⁹⁹ Vocational Schools (*Berufsschulen*) for apprentices are not included, since apprenticeships are considered to be employment and require work permits for third country nationals – those pupils would either have a family visa or a PRP for purposes of working.

regardless of length of stay. For Hungarian citizens a temporary residence permit is sufficient for a stay of up to six months. The employer has to do is to notify the regional job centre office (*Arbeitsmarktservice, AMS*) two weeks in advance of the training to receive a note of that (*Anzeigebestätigung*). No quota restrictions are applied.

2.1.4 EU trainees and exchange trainees

If the trainee's work is part of either an EU education or research programme (EU trainee) or a trainee exchange programme (exchange trainee), a permanent residence permit is required, regardless of length of stay. No additional work permit is required and these categories are exempt from quota regulations. It is not necessary to notify the job centre, as these activities are exempt from the Austrian Foreigners' Employment Act.

2.1.5 Au pair

There are no special provisions in the Austrian law regarding the status of an au pair. Therefore, third country nationals, who want to reside for a certain period in Austria as an au pair therefore, are subject to the general aliens legislation (double quota regulation).¹⁰⁰ A permanent residence permit and a work permit are required regardless of length of stay. The law is being applied restrictively in order to avoid circumvention of employment regulations for third country nationals in particular for citizens from Central and Eastern European countries. Due to the fact, that the quotas of the provinces are fully exhausted and additional workers from third countries can only be hired under special circumstances (e.g. workers with special skills), which do not apply to au pairs, as a rule au pairs from third countries have not been accepted in recent years.

In principle, agencies who want to place au pairs with host families must be registered with the Ministry of Social Affairs and possess a license (*Gewerbeschein*; currently only ÖKISTA and *Auslandssozialdienst der Caritas*). Due to the above mentioned quota regulations, these agencies are currently allowed to place only citizens of the EEA as au pairs.

2.1.6 Guest researchers

Guest researchers (foreign language assistants, academics) need a permanent residence permit for paid employment, but are exempted from quota regulations. Since their activities are exempted from the Austrian Foreigners' Employment Act, they do not need a work permit.¹⁰¹ Any additional employment is however not permitted. Normally permanent residence permits are issued for the duration of their contract with the university but not longer than one year. The permanent residence permit can be extended within Austria.

If the activities to be carried out will not last longer than six months and are to be financed by a local authority (*Gebietskörperschaft*) or by any other public body (*Körperschaft Öffentlichen Rechts*, e. g. federal state, region, municipality, university) a temporary residence permit is needed. The temporary permit cannot be extended.

¹⁰⁰ Art. 4 of the Decree on the Implementation of the Aliens Act 1997, II 1997/418 and II 1998/225.

¹⁰¹ Guest researchers are exempted from the Austrian Foreigners' Employment Act, according to §1 (2) lit. b) and i) and j) of the act itself and for research personnel of institutions listed in the decree of the Minister for Social Affairs, BGBl. 1990/609, as amended by BGBl. 1993/729 and 1994/666

2.1.7. Pensioners and persons with private means

Pensioners and persons with private means are treated as one category in the Austrian immigration law. Both need a permanent residence permit, which is normally issued for one year at the first-time application abroad. The category is subject to a special sub-quota “private purposes“, which includes pensioners. This quota is determined annually by the federal government.¹⁰²

2.1.8. Artists

Artists need a permanent residence permit if their stay is considered to be for purposes of employment as an artist in Austria. However, artists are exempted from all quota regulations, if their subsistence is covered by the proceeds from their artistic activity.¹⁰³

Artists who are in dependent employment must apply for a work permit, while self-employed artists do not need a work permit. The work permit is not subject to quota regulations like most other types of dependent employment (basic right to freedom of the arts).¹⁰⁴

In addition, artists may (for concerts, events, film productions etc.) be employed in Austria without a work permit for up to three days.¹⁰⁵ In such cases they receive a temporary residence permit at the embassy.¹⁰⁶ The regional branch of the Labour Market Service (AMS) must be notified of the employment on the actual day(s) of employment.

2.1.9. Journalists

Journalists need a permanent residence permit. They are exempted from quota regulations and do not need a work permit, if they work for foreign media companies and earn their subsistence through this activity.¹⁰⁷ On the other hand, foreign journalists who work for domestic media companies, fall within the Foreigners’s Employment Act (double quota regulations).

2.1.10. Clergy

Persons working as clergy need a permanent residence permit. If they are active for one of the recognised religious communities in Austria, they are exempted from the Foreigners’ Employment Act and quota regulations.¹⁰⁸

2.2. Conditions

Every applicant for a temporary or permanent residence permit has to submit the following documents to the representative authority:

¹⁰² Art. 19 (5) and Art. 18 (4) Aliens Act 1997

¹⁰³ Art. 19 (2/2) Aliens Act 1997

¹⁰⁴ Art. 4(a) Foreigners’ Employment Act

¹⁰⁵ Art. 3 (4) FEA

¹⁰⁶ This exception was introduced in 1998 into the aliens act (Art. 90 (4)). Normally, all applications for residence permits are processed and issued by the responsible authority in Austria.

¹⁰⁷ Journalists, who are accredited with foreign media companies enjoy a special employment status according to Art. 19 (2/1) Aliens Act 1997 and Art 1 (2g) Foreigners’s Employment Act, which follows the recommendations and decisions of the Final Documents of Helsinki (CSCE) and the way Austrian journalists are treated in other states.

¹⁰⁸ Art. 19 (2/3) Aliens Act 1997 and Art 1 (2d) Foreigners’s Employment Act

- One application form filled in in German for each person;
- passport (photocopy);
- current passport-size photo;
- birth certificate;
- police clearance certificate (not older than 3 months);¹⁰⁹ and
- a convincing statement of their financial means during their stay.

Applicants for a temporary or permanent residence permit have to provide a convincing statement of their financial means to cover their stay (at least ATS 35, 000/ EURO 2,546 per person for the period of 6 months; e. g. proof of a bank account or a savings book with sufficient balance at an Austrian bank, the confirmation of a scholarship,¹¹⁰ or an attested document guaranteeing maintenance from person(s) liable to provide maintenance; this document can also be provided by an Austrian citizen. In addition, the following conditions apply for the concerned categories.

2.2.1. Students

At the time of the first application the proof of health insurance is waived for students. Every student enrolled at a university is automatically insured against cases of accident (*Unfallversicherung*), but health insurance has to be obtained separately later. There are very cheap rates for students for personal insurance from state run insurance companies (e.g. 250 ATS/ 18 EURO per month at the public *Gebietskrankenkasse*). Finally, upon application for a residence permit students must submit a confirmation of university admission.¹¹¹

Students from non-EU/EEA countries have to pay tuition of ATS 4,000 (EURO 291) per semester for study at an Austrian public university. Exempted from this tuition are students from developing countries, countries with bilateral agreements with Austria and convention refugees.

EU/EEA citizens and Switzerland do not need any entry or residence permit if they possess enough means to cover the costs of their living and have a health insurance covering all risks.

2.2.2. Trainees

In addition to the above trainees must submit:

- evidence of a health insurance which is valid in Austria;
- evidence of adequate accommodation;
- confirmation of employment / work contract:

¹⁰⁹ The police certificate of good conduct is not required for citizens of states where these are not available (e.g. the US).

¹¹⁰ For persons receiving a scholarship from an Austrian local authority (*Gebietskörperschaft*), the confirmation of this grant is sufficient proof. However, the scholarship must provide at least ATS 35, 000/EURO 2,543.55 per semester; in the case of lower grants, proof of additional financial support is required.

¹¹¹ To apply for university admission, students have to provide a high-school graduation certificate that is equal in law to an Austrian high-school graduation certificate.¹¹¹ Proof of sufficient proficiency in German (before registration at university) in order to be able to follow their courses

proof that they enjoy direct access (in their home countries) to the course of studies they wish to pursue in Austria

In addition some courses of study might have limited numbers of open places for third country nationals.

Admission to art colleges is normally granted upon an entry exam and do not require the aforementioned certificates.

- confirmation that the relevant authorities have been notified of their employment / a provisional work permit / or a work permit.

2.2.3. Guest researchers

In addition to the above, guest researchers must submit:

- evidence of a health insurance which is valid in Austria;
- evidence of adequate accommodation; and
- an invitation or employment contract from the academic institution in question.

2.3. Procedure

Applicants must apply for a visa at the respective Austrian diplomatic/consular representation in their home country or country of permanent residence (with the exception of students, see below). First application for temporary and permanent residence permits can only be made in the applicant's home country¹¹² (a later application in Austria is not possible). The embassy or consulate will also issue the visas.

Applications for temporary residence permits are processed in Austria by the office responsible of the Aliens Police, which then passes the decision to the embassy/consulate abroad. Applications for permanent residence permits are processed by the federal district administrative authority (*Bezirksverwaltungsbehörde*), which is either the magistrate (e.g. in Vienna) or the district principal administrative authority (*Bezirkshauptmannschaft*). The residence permit is normally issued by the embassy/consulate abroad in the form of a 'vignette' to be pasted into the applicant's passport.

Since the applications for temporary and permanent residence permits have to be made abroad but is processed in Austria, the postage time alone means that the issue of this document can take several months.

On their arrival in Austria, all foreigners (including EU/EEA citizens) are obliged to register with the police (at the local registration office (*Meldeamt*) within 3 working days. To do this, they need a passport and a registration form (*Meldezettel*), which is available at any tobacconist's shop (*Trafik*) and must be signed by the landlord/lady or the main tenant. The same authority is to be notified of any changes of address or legal status within 3 days. This police registration should be cancelled when leaving Austria.

Any of the documents required which are not in German (with the exception of passports) have to be submitted in German translation. Foreign certificates have to be witnessed officially by a notary or an official authority. Upon application for a residence permit, fees are due in the amount of ATS 180 (EURO 13) for the application and certified translations, additional pages ATS 50 (EURO 3.6) each double sheet.¹¹³ Upon issue of the residence permit a fee between ATS 800 (EURO 58.14) and ATS 1,200 (EURO 87.21) is charged. Visas for students of Austrian universities are free of charge.

¹¹² Exceptions: US and Japanese citizens, family members of Austrian and EEA citizens and persons who are permitted to work as professional trainees in accordance with bilateral agreements (e.g. Hungary) may apply for a residence permit after having entered Austria.

¹¹³ The cost of the permit application is calculated according to the number of documents required.

2.3.1. Students

Students may send in their application for a residence permit together with their application for university admission (recommended). Applications for fall and spring semesters must arrive at the university no later than September 1st and February 1st respectively.

If they have already applied for the residence permit in their home countries, students are allowed to enter Austria provisionally with a visa category D if the 'vignette' does not arrive in time, or if they are in danger of missing a semester. Their residence permit can then be collected after their arrival in Austria. They should inform the relevant authorities of their contact address in Austria as soon as they arrive. The provisional visa category D is free of charge and is issued by the Austrian diplomatic representation abroad.

2.3.2. Unpaid trainees and guest researchers

If they have already applied for the residence permit abroad, also unpaid trainees and guest researchers are allowed to enter Austria provisionally with a visa category D if the 'vignette' and to later collect the residence permit. The embassy/consulate and not the Aliens Police takes the decision on the temporary residence permits for guest researchers who want to stay for a maximum period of 6 months.¹¹⁴

2.3.3. Artists and journalists

The applications for permanent residence permit which artists and journalists need are processed by the aliens police.

2.4. Renewal

Applications for visas can only be made abroad i.e. before entry into Austria. Therefore, visas - unlike all other types of residence permit - cannot be extended.

Temporary residence permits are normally only issued for one semester while permanent residence permits for one year. An extension of the residence permit can be applied for in Austria before the current residence permit expires.¹¹⁵ Extensions of permanent residence permits are normally granted for two years at a time. After five years continuous residence within the country, an unlimited permanent residence permit can be granted.

The following documents are required in all cases:

- valid passport;
- current photo;
- registration form;
- evidence of adequate accommodation in Austria (lease or utilisation agreement);
- evidence of full-coverage health insurance (name of health insurance entity (*Krankenkasse*), social insurance number, evidence of contributions); and
- evidence of continued secure financial means

¹¹⁴ Art. 90 (4) Aliens Act 1997

¹¹⁵ It can normally also be done shortly after the date of expiration, this is only a problem if the period of delay is a considerable one or the person has left the country in the meantime and wants to return

2.4.1. Students

Students can apply for an extension of their temporary residence permits at the aliens police department (*Fremdenpolizei*), at the federal police station (*Bundespolizeidirektion*) or at the district administrative authority (*Bezirksverwaltungsbehörde*). In addition to the documents listed above, students need confirmation of their continuing university enrolment and after two semesters proof of successful study at the university. Students must provide proof of at least 8 course-hours successfully completed (that is exams for courses that run at least 8 hours every week for one semester) after each academic year in order to be granted renewal of their permit. In case the student is unable to fulfil this requirement due to illness or other significant reasons, the aliens police may nevertheless grant renewal of the permit on a discretionary basis. Proof of health insurance has to be submitted when applying for renewal of the permit. Similarly, proof of adequate accommodation has to be submitted upon applying for renewal of the permit.

2.4.2. Trainees and unpaid trainees

Trainees and unpaid trainees (staying more than 3 months) can apply at the federal police station or the district administrative authority of the place where they are living. In addition, to the documents listed above unpaid and other trainees need an employment agreement or work permit.

2.4.3. Guest researchers

Guest researchers with a permanent residence permit can apply at the municipal administrative authority (*Magistrat, Magistratisches Bezirksamt*) or at the district administrative authority of their place of residence. Guest researchers with a temporary residence permit cannot extend their residence permit. In addition to the documents listed above, guest researchers need an employment contract with the academic institution where they work or confirmation of a research scholarship.

2.4.4. Pensioners and persons with private means

These categories can apply for an extension of their permanent residence permit at the municipal administrative authority or at the district administrative authority.

2.4.5. Journalists and artists

These categories must apply for an extension of their permanent residence permit at the federal police station or at the district administrative authority.

2.5. Change of purpose of admission

Changing the purpose of residence is in principle possible within Austria for all categories of persons discussed. But, in practice it is very difficult due to the double quota immigration control system. If for instance a student wants to change his/her residence purpose of stay to dependent work (employment) status s/he has to apply for that change of purpose with the local administrative authority by providing a provisional work permit which is only issued within the framework of the extremely restrictive foreigners' employment act (federal quota of work permits). Is s/he able to provide such a permit s/he must additionally be allotted a quota space within the respective yearly determined residence quota for employed and self-employed persons.

2.6. Rights and status of third country nationals in comparison to EU and EEA nationals

The right to work:

- Citizens from EEA countries are entitled to settle and work in Austria without a visa or residence permit. They can apply for an “Identity Card for EEA citizens“ but this is not mandatory. The issuing of this ID Card costs ATS 490 (EURO 35.61).
- Third country nationals: visas (students) and the residence permits are issued for the purpose stated solely and do not entitle the holder to carry out any other type of paid employment in Austria.

The health and welfare system:

Most rights and benefits in Austria are tied either to dependent employment, generally a legal residence status, a certain period of residence or just a regular, not a certain purpose of residence. Considerable differences exist between EEA and non-EEA citizens on the whole. Even third country nationals with employment status are discriminated against in Austria in many respects, e.g. with regard to unemployment relief assistance (*Notstandshilfe*), access to public housing, social welfare (*Sozialhilfe*), family allowance (*Familienbeihilfe*) - within the first five years of residence (after that period third country nationals are put on equal footing with Austrian and EEA citizens without regard to their residence status or purpose of residence).

Political participation:

Third country nationals are excluded from participating in elections for the general political representative bodies on all levels (municipal, province and federal level). They may vote, but not run for elections as representatives for the university bodies (*Hochschülerschaft*), work councils (*Betriebsräte*) and other interest bodies for employees and employers (*Kammern*) with the exception of nationals of those countries with which the EC has association, European or co-operation treaties.¹¹⁶

They are free to form associations. However, with regard to the right of assembly a third country national may not announce one (*Anmelden*), as this is restricted to Austrian citizens.

2.7. Family reunification

Family unification with third country nationals, who have settled in Austria, is generally possible only for spouses and unmarried children up to the age of 14. It is subject to special family quota regulations and subject to the requirement of proof of adequate means of subsistence, a valid health insurance that covers all risks and adequate living space.¹¹⁷

However, the spouses and unmarried minor children (up to the age of 19) of students, trainees, guest researchers, journalists and artists are exempted from quota regulations, if they do not carry out any paid employment.¹¹⁸

Family members usually receive the same type of residence permit for the purpose of family reunion as the main person, for the same duration and under the condition of a shared household (e.g. family union with a student – temporary residence permit). These permits can be renewed if the conditions required for its issue are still fulfilled. The conditions for a

¹¹⁶ Turkey, Hungary, Poland, Slovenia, Slovakia, Czechia, Rumania, Bulgaria, Baltic and Maghreb states

¹¹⁷ Art 18 (1) Aliens Act 1997

¹¹⁸ The residence time for trainees and guest researcher are often too short to warrant a residence permit for family unification. In this case, family members can usually join on a tourist visa C or a residential visa D.

change of purpose are very restrictive and similar to that of the main person (see above). The right to settlement remains, even if after 4 years from the date of issue of the settlement permit for family unification purposes, the conditions for the issue of such no longer remain valid (e.g. marriage).¹¹⁹

2.8. Fraud

In case fraud (fake statements on application) is discovered after entry into the host country, this may lead to the refusal of the extension of a residence permit and consequently to expulsion or in the worst case to a residence ban.

Only data on residence bans on the grounds of fraud for all immigrants are available. According to the statistics available as of 31 July 1999 a total of 3,426 residence bans were imposed because of fraud. 264 of these had been imposed in the first half of 1999.

2.9. Removal

If one of the conditions for the issue of the residence permit is no longer met, the residence permit can be withdrawn. The permit can also be withdrawn in cases of serious administrative and certain criminal offences.

If a residence permit is withdrawn, the person is either expelled or a residence ban is imposed. If no appeal procedure is pending or if the suspensive effect of the appeal procedure is withdrawn because of a threat to public order, the person is obliged to leave the country. If the person does not comply, s/he may be forcibly removed from the country by means of arrest, detention and deportation.

Persons with permanent residence permits are protected against removal by increasing residential security (first step after 5 years, then 8 and ten years of uninterrupted legal residence).

The time taken to effect a removal from the country varies greatly depending on whether or not a recourse has been submitted, whether or not the person departed voluntarily or whether or not deportation procedures have to be introduced (detention is restricted with a maximum of 2 months, but in exceptional cases it may extend to six months).

2.10. Legal developments

The current immigration legislation (Aliens Law 1997) entered into force on 1.1.1998. It superseded the Residency Law of 1992, which had been in force since July 1993 to December 1997. Under the Residency Law 1992 students were subject to a special yearly quota. This quota was 2,500 in 1995, 2,340 in 1996 and 2,370 in 1997. The quota was usually exhausted quite early in the year, since it had been handled relatively generously. It was occasionally revised upwards when demand exceeded the quota. Before 1993 students were not subject to quota regulations.

Important legal changes occurred in 1993 when the new Aliens Act (*Fremdengesetz 1992*) and a new Residence Law (*Aufenthaltsgesetz*) were introduced. For the first time Austria introduced an immigration control system using an annual quota system. Under this law,

¹¹⁹ Art. 20 (1) Aliens Act 1997

students were subject to quotas as well, a change of purpose from tourist or asylum seeker to immigrant worker was no longer possible, a condition of adequate housing was introduced, etc. The whole system was very restrictive for persons already residing legally in the country at the time the new regulations entered into force and led to the loss of residence status of many long-term legal residents. This administrative practice was subsequently held to be unconstitutional in many cases and led to another substantial reform of residence law in 1997.

Since the beginning of the 1990s, when the „iron curtain“ was abolished and migratory movements from the former socialist countries and the number of asylum seekers started to rise, Austria's legislation in the field of immigration has been in turmoil. Since then, an immigration control system has been set up and gradually tightened. All this in accordance with the developments and discussions on the European level, within the various discussion fora of the European Community, the Council of Europe and intergovernmental fora.

The 1997 Aliens Act, was designed to give „integration priority over new immigration“. It was also spurred by the need to adapt Austrian legislation to the Schengen and Dublin agreements. It aims on the one hand at continuing the system of strict control of future labour migration by annual quotation. On the other hand, it is designed to give increasing security of residence to long-term legal residents after five, eight and ten years. After these periods of residence expulsion may no longer be imposed even if the immigrant has problems with meeting the otherwise required criteria with regard to the housing and income situation. After ten years of uninterrupted legal residence, expulsion may only be imposed in case of severe or repeated criminal offences. Immigrants who have grown up and lived for a long time in Austria may not be expelled at all. By this part of the reform Austria is acknowledging for the first time that it has become a country of long-term immigration. The third part of the Act contains new or extended measures designed to deter illegal immigration.

The Aliens Act 1997 provides for a strict immigration control system by requiring the potential immigrant to apply for an immigrant's visa in the home country and by preventing him/her a change of status, e.g. from tourist or asylum seeker or illegal immigrant to legal immigrant within the country. The new aliens act continues to be based on a system of annual quotas for persons wishing to settle in Austria for various purposes, especially for employed or self-employed work, and for an indefinite period of time. These persons need a permanent residence permit. Different categories of residence are provided for by the law together with different categories of „quotas“. Residence permits subject to annual quotation may be given to highly skilled workers and their families, employed and self-employed workers and their families, family reunification with migrants already legally residing in Austria as of January 1, 1998, provided sufficient income and adequate housing are guaranteed for the newcomers. Immigration to Austria in order to carry out dependent employment is tightly restricted since the applicant in this case is subjected to a second quota system according to the foreigners' employment act.

The law moreover defines types of residence which are of a limited nature such as residence as a student. Students, for example, need a temporary residence permit, which is not subjected to an annual quota.

Since the last two significant revisions of the aliens legislation in Austria (Residence Law of 1992 and Aliens Law 1997) it is practically impossible for au pairs from third countries to obtain the required residence and work permit in Austria. While au pairs had to obtain work permits even before 1993, this could be done by application once already within the country. In this way, a considerable number of young people from non EC countries worked as au pairs in Austria.

Currently, both the enforcement of the new regulations and the regulations themselves are under scrutiny (by the Ministry for the Interior, parliamentary parties, interest organisations of workers and entrepreneurs, churches and NGOs). At present, no statement can be made as to whether legal changes may be expected, nor which ones these could be.

The incoming coalition government, which assumed office in February 2000 plans to change admission regulations for au pairs to allow those from third countries to work in Austrian families for a strictly limited period of time.

As the admission regulations for all the categories of persons concerned here have been defined in great detail, there is only a small margin of discretionary power on the part of the authorities left. It can be said that the first-time applications are treated relatively liberally in the case of students, but much more restrictively for the other categories of persons concerned. Students, for example, only have to present “credible evidence“ that they fulfil the conditions for first-time admission (e.g. that the financial means of subsistence are actually theirs and that they will be able to obtain housing and a health insurance), while they have to provide more solid evidence only upon their application for renewal of the residence permit. Pensioners, on the other hand, are regularly required to present proof of where their financial means originate from. For vocational trainees, and even more so unpaid trainees, the admission procedures are very exacting. Traineeships have first to be cleared by the Labour Market Service (AMS) to avoid circumvention of foreign employment regulations.

2.11. Statistics

2.11.1. Students

Statistics regarding the residence status of students are only available for the total stock of third country nationals, who reside in Austria with a residence permit for the purpose of studying. These include first issuances and for the most part those that were at some point since 1993 extended under the new system of the Residence Act 1992 (in force until the end of 1997).¹²⁰

Table 2.2: Residence permits to citizens of non-EU-member states per category (Stock)

Categories	1995 (5 Sept.)	1996 (1 July)	1997 (1 July)	1998 (1 July)	1999 (31 Dec.)
Students/pupils	8,004	10,354	10,234	11,449	10,923
Students	7,757				8,646
Pupils	247				2,277

Source: Federal Ministry of the Interior, Central Aliens Register

¹²⁰ According to the statistics of the Ministry of the Interior of January 2000, in 1999 a total of 15.110 temporary residence permits were issued without quota restrictions. There is no further specification as to the different residence purpose (there are 16 categories on the whole according to §4 of the decree implementing the aliens act 1997, BGBl. II 1997/418 as amended by BGBl. II 1998/225).

2.11.2. Trainees

As of 31st December 1999, there were 211 volunteers and 217 trainees with a temporary residence permit (third country nationals only) registered in Austria. It is estimated that most of these persons originate from Hungary, as a bilateral agreement between Austria and Hungary facilitates the admission of Hungarian trainees and volunteers.

2.11.3. Au pairs

According to data of the largest of the au pair agencies ÖKISTA, in 1999 it placed only 43 au pairs from EEA countries in Austria, while it placed 363 Austrians as au pairs abroad.

2.11.4. Guest researchers

There are no statistics available on the number of guest researchers from third countries in Austria. However, the total number of temporary and permanent residence permits for employment purposes that are exempted from the Foreigners Employment Act (which includes guest researchers, clergy and others) was 2,136 (186 temporary residence permits and 1,950 permanent residence permits) as of 31st December 1999.

2.11.5. Persons with private means and pensioners

The special quota for private purposes (first-time residence permit) was 630 in 1998, 660 in 1999 (of which 431 places have actually been filled) and is 490 persons for the year 2000. The stock of third country nationals residing in Austria for private purposes (including pensioners) has shown moderate increases over the last few years.¹²¹

Table 2.3: Residence permits to citizens of non-EU-member states by category (Stock)

Categories	1995 (5 Sept)	1996 (1 July)	1997 (1 July)	1998 (1 July)	1999 (31 Dec.)
Private purposes	5.782	5.719	5.102	6.751	8.638
Pensioners	4.022	5.826	6.933	6.319	2.209
Total	9.804	11.545	12.035	13.070	10.847

Source: Federal Ministry of the Interior, Central Aliens Register

2.11.6. Artists

According to statistics of the Ministry of the Interior as of 31st December 1999 there were 567 artists with a temporary residence permit and 814 artists with a permanent residence permit in Austria.

2.11.7. Journalists

According to statistics of the Ministry of the Interior as of 31st December 1999 there were 116 journalists with a permanent residence permit in Austria.

2.11.8. Renewals, change of purpose, family reunification, fraud

As of 31st July 1999, 6,624 temporary residence permits had been extended (no further specification as to the residential purposes).

Also, as of 31 July 1999, in 147 cases of the issuance of a permanent residence permit the purpose had been changed (subject to quota restrictions), no further specifications are given.¹²²

As of 31st December 1999, there were 436 family members of students and 34 family members of pupils (third country nationals only) in Austria. No other data on family unification are available.

Only data for residence bans on the ground of fraud for all immigrants are available. According to the statistics available as of 31 Jul 1999 a total of 3,426 residence bans were existing on the whole that were imposed because of fraud. 264 bans thereof had been imposed in the first half of 1999.

2.12. Conclusion

The general immigration policy and legislation has been profoundly revised over the course of the last decade, which was also reflected in changes in the admission policies for the categories of persons concerned here. For students, admission regulations have first been tightened then relaxed again, which is also reflected in a slight upward trend of admissions of new students from third countries. The number of students from third countries in Austria has traditionally been quite significant. It is important to note, then, that students are not allowed to take up any work, not even part-time employment. At the same time, the number of unpaid and vocational trainees is relatively low owing to a restrictive practise to avoid circumvention of labour market regulations on the part of employers. For the same reason, au pairs from third countries have recently been all but excluded from gaining admission to Austria. Pensioners and persons of private means are subject to a special quota restriction and the admission of artists, clergy and journalists working for foreign media companies is handled on a case by case basis. The number of admissions of persons in these latter categories is relatively low.

Although the general admission policy for third country nationals is rather restrictive in Austria, the government is favourably disposed towards the admission of third country nationals for studies – mainly post graduate studies. For students from developing countries and CEEC a certain number of scholarships are available. The procedure for the admission of third country nationals is time consuming and expensive for the applicant.

¹²¹ Persons listed under „pensioners“ concern pensioners with valid residence permits that where issued, when this category was still listed separated. Since pensioners are now subsumed under „private purposes“, the category „pensioners“ will gradually be phased out.

¹²² Ministry of the Interior, Section III, EDV-Referat, Statistik, Juli 1999, Zl.: 7.007/286-III/12/EDV/99

3. BELGIUM

3.1. General Admission Regulations

Table 3.1 Overview of required permits for admission and residence in Belgium

Category	Up to 3 months	More than 3 months
Students (Higher education only)	Short-term visa (Visa C)	Temporary residence permit (Visa D)
Unpaid trainees	Short-term visa (Visa C) and work permit	Temporary residence permit (Visa D) and work permit
EU-Trainees ¹²³	Short-term visa (Visa C)	Temporary residence permit (Visa D)
Exchange Trainee ¹²⁴	Short-term visa (Visa C)	Temporary residence permit (Visa D)
Vocational Trainees ¹²⁵	Short-term visa (Visa C) and work permit	Temporary residence permit (Visa D) and work permit
Au pair	Short-term visa (Visa C) and work permit	Temporary residence permit (Visa D) and work permit
Guest researchers	Short-term visa (Visa C) and work permit	Temporary residence permit (Visa D) and work permit
Artists	Short-term visa (Visa C) and work permit ¹²⁶	Temporary residence permit (Visa D) and work permit
Journalists	Short-term visa (Visa C) and press card	Temporary residence permit (Visa D) and press card
Clergy	Short-term visa (Visa C)	Temporary residence permit (Visa D) and work permit
Pensioners	Short-term visa (Visa C)	Temporary residence permit (Visa D)
Persons with private means	Short-term visa (Visa C)	Temporary residence permit (Visa D)
Athletes	Short-term visa (Visa C) and work permit	Temporary residence permit (Visa D) and work permit

A third country national may enter the territory of Belgium, if s/he fulfils the conditions as set out in art. 5.1 of the Schengen Implementation Convention and the conditions set out in art. 3 of the Law on Entry, Residence and Removal of Foreigners of 15 December 1980.

¹²³ EU trainee: The trainee's work is part of an EU education or research programme. The most important education programmes are LEONARDO and SOCRATES, which include the subprogrammes ERASMUS, COMENIUS, LINGUA, etc.; YOUTH FOR EUROPE and TEMPUS should also be mentioned.

¹²⁴ Exchange trainee: The trainee's work is part of a trainee exchange programme. These are programmes of associations such as AIESEC, AMSA, ELSA, IAAS and IAESTE.

¹²⁵ Trainees, who follow training that are considered equal to apprenticeships that cannot be followed in his or her home country, are exempted from work permits.

¹²⁶ No work permit is needed for artists and his accompanists, who participate in an artistic show of international reputation, if their stay does not exceed three consecutive months.

For a period of stay not exceeding three months, all categories of third country nationals concerned in the present study are subject to the general regulations on travel visa (Visa C).

For a stay exceeding three months they need a temporary residence permit (visa D). Upon arrival in Belgium, the foreigner must present the temporary residence permit to the local administration of his/her place of residence. The administration will then issue a Certificate of Registration with the Aliens' Registry. This document allows the foreigner to travel visa-free within the Schengen area for a maximum of 3 months.¹²⁷ In cases when a residence permit has been granted for more than one year, the Certificate of Registration is still issued for a maximum length of one year. It then has to be renewed. A valid Certificate of Registration serves as the proof of a valid residence permit.

In principle the authorisation is issued for an unlimited duration, except if the nature or the duration of the activities are such that a limit must be fixed. This is the case for all the categories concerned in the present study.

Foreigners, who are subject to the requirement of a work permit must first obtain the work permit in order to obtain the residence permit. Work permit A is issued for unlimited duration and is valid for all kinds of dependent employment. Work permit B is issued for a fixed duration of a maximum of 12 months and is limited to one single employer only.

There are no quotas for any of the categories of persons concerned in the present study.

Citizens of EU/EEA can enter the territory with a valid passport or identity card. They are required to register at the municipal administration of the locality where they reside within 8 days after their entry to the territory (except for those who reside in a pension/hotel or are hospitalised or in detention).¹²⁸ EU/EEA citizens, who enter the territory for more than 3 months receive a provisional document when registering.

3.1.1. Students

A student is authorised to reside in the country only for the duration of the studies. Students may work during academic holidays without a work permit. They may also work a maximum of 22 hours per week during the studies, as work is seen as a supplementary activity carried out outside the time normally devoted to studies (outside of course hours). To do this they then need a work permit, which is granted if they provide a copy of their work contract specifying clearly the time-schedule when they are occupied with work.

3.1.2. Unpaid trainees

Unpaid trainees need a work permit, also if the stay does not exceed three months.

3.1.3. Vocational trainees

Students following vocational training after their studies must have a work permit.

Foreigners who enter the country to follow training courses that are considered equal to apprenticeships (e.g. training in jewellery) are exempt from the requirement of a work permit. The following categories do not need a work permit:

¹²⁷ In addition, the foreigner has to possess a valid travel document, according to Schengen regulations.

¹²⁸ Art. 41 a of the Law on Entry, Residence and Removal of Foreigners of 15 December 1980.

Students, who reside legally in Belgium and have to carry out a traineeship for the purposes of their studies in Belgium

Those, who come within the framework of an exchange programme or within an international institution of public law (this includes trainees at EU institutions based in Belgium).

Those who come to carry out a traineeship of less than 12 months which is approved by the competent authorities within the framework of development co-operation or an exchange programme based on reciprocity.

3.1.4. Trainees and exchange trainees

These include students and trainees on scholarships or on exchange programs of organisations such as *AGCD (Administration Générale de la Coopération au Développement)* and *CUD (Coopération universitaire au développement)* and through EU programmes such as Tempus, Erasmus, Socrates, Odysseus and Leonardo. EU trainees and exchange trainees can either acquire the status of a student or the status of a trainee, depending on the type of application they file. EU-trainees and exchange trainees are exempted from the requirement of a work permit.

3.1.5. Au pairs

Au pairs are authorised to reside in the country for a maximum period of 12 months. They need a work permit to carry out their activities.

3.1.6. Guest researchers

Guest researchers and professors are allowed to reside in the country for a maximum period of 4 years. They need a work permit even if the stay does not exceed three months.

3.1.7. Artists

Artists need a work permit, even if the stay does not exceed three months. The work contract has to be in conformity with a standard format.¹²⁹ Artists, who participate in an artistic show of international reputation, as well as their accompanists are exempted from the requirement of work permits, if their residence in Belgium does not exceed three consecutive months.

3.1.8. Journalists

For a stay not exceeding three months, a foreign journalist should hold a short term visa and a press card. For a stay of more than three months a journalist needs a temporary residence permit and a press card. If s/he works for a foreign-based journal or media company and comes to Belgium in the framework of a work mission s/he is exempted from the requirement of a work permit. In this case the press card is considered as a permission to self-employment.

3.1.9. Clergy

If the person wants to work, s/he needs a work permit. However, ministers of a recognised religious order are exempted from the requirement of a work permit within the framework of their mission.

3.1.10. Athletes

Athletes need a work permit, also if the stay does not exceed three months.

¹²⁹ The format is given in Annex II of the Royal Decree concerning the execution of the law of 30 April 1999 regarding the employment of foreign workers.

3.2. Conditions

A third country citizen must provide the following documents when applying for a temporary residence permit:

- a travel document, which is valid for three months beyond the envisaged stay
- a health certificate
- a police clearance certificate, if the applicant is older than 18 years (21 years for students)
- an account of means of subsistence as applicable

3.2.1. Students

Residence is granted to students, who wishes to pursue his studies at an institute of higher education or attend a preparatory year at an institute of higher education, if they produce the following:¹³⁰

- a certificate of enrolment from a recognised educational establishment, that certifies that the foreigner is enrolled as a regular full-time student.¹³¹
- proof that s/he disposes over sufficient means of subsistence (letter of guarantee, scholarship, personal resources). The minimum means of subsistence that a student has at his/her disposal over amounts to 18,300 BF (450 EURO) per month for the academic year 1999-2000.¹³²

3.2.2. Vocational trainees

Foreigners following vocational training after their studies must have a work permit. The traineeship must be full time occupation, a traineeship contract must be established, and it must be part of a training programme. Trainees are authorised to reside on the territory for a maximum period of 12 months.

A trainee has to fulfil the following conditions:

- hold a work permit
- commit her/himself not to carry out any paid employment during the period of the traineeship
- be between 18 and 30 years of age (this condition does not apply for trainees recruited by universities or other higher institutions).

However, since a foreigner, who enters the country to follow training courses that are considered equal to apprenticeships (e.g. training in jewellery) is exempted from the need to acquire a work permit, he must only produce:

- a traineeship contract
- the proof that this type of training cannot be followed in his home country
- proof of sufficient means of subsistence (scholarship, stipend, letter of guarantee or personal resources)

3.2.3. Au pair

To qualify as an au pair, the applicant has to fulfil the following conditions:

¹³⁰ Art. 58, 59 and 60 of the Law on Entry, Residence and Removal of Foreigners of 15.12.1980.

¹³¹ A foreigner registered as a part-time student may still qualify, if he can justify that his studies constitute his principal activity and the preparation or complement of a full-time study.

¹³² This amount has been determined by royal decree of 8th June. This amount is indexed and is revised every year in May for the following academic year.

- age: 18 and 22 years;
- make the commitment not to carry out any employment during the duration of the stay;
- have a high school certificate equivalent to a diploma of secondary higher education;
- have basic knowledge in one of the national languages in which the person wants to become fluent;
- follow courses in a recognised educational establishment in order to improve his/her skills in the chosen language or languages;
- not previously been issued any kind of work permit in Belgium; and
- have a contract of traineeship conforming to a standard format ¹³³

When the applicant is issued the work permit, the host family will receive an authorisation for employment.

3.2.4. Guest researchers

Invited professors and researchers have to fulfil the following conditions: ¹³⁴

- hold a work permit;
- have a doctorate or another academic title considered equivalent or possess other exceptional scientific qualifications (the latter are to be certified by the host institution);
- be received or invited by a recognised educational establishment (university, institute of higher learning or recognised scientific establishment);
- their remuneration must correspond to the scale applied in educational establishments in Belgium;
- invited guest researchers must participate full-time in an academic project; and
- invited guest professors must contribute to the teaching or research of the host institution.

3.2.5. Clergy

Clergy need to provide an invitation and a letter of guarantee from their religious order.

3.2.6. Journalists

Journalists need to provide a letter of invitation from an inviting organisation and a copy of their national press card.

3.2.7. Pensioners

Pensioners, who want to settle in Belgium must prove that they regularly receive sufficient income. References may be required at the discretion of the authorities.

3.2.8. Persons with private means

Persons with private means must provide proof that they possess sufficient financial resources to live in Belgium. The resources must be transferable to Belgium.

3.2.9. Athletes

¹³³ The format is given in Annex III of the Royal Decree concerning the execution of the law of 30 April 1999 regarding the employment of foreign workers.

¹³⁴ Art. 9 of the Royal Decree concerning the execution of the law of 30 April 1999 regarding the employment of foreign workers.

Athletes need to prove that they exercise a sports activity at a high professional level. In addition, they need a contract of engagement by the office for employment of the region concerned.

3.3. Procedure

As a rule, the foreigner has to apply for the residence permit at the diplomatic mission or consulate of Belgium in his/hers home country or country of permanent residence. However, if the foreigner already resides in the country, in exceptional circumstances the application can be filed in Belgium, at the municipal authorities of the place of his/her residence.

The Ministry of the Interior decides on the applications and disposes in this regard of a discretionary power of evaluation. The Ministry of the Interior has delegated the processing of certain types of applications to the diplomatic representations.

The application can be filed in any language of the applicant's choice, on the condition that it is translated (upon application) into one of the national languages (French, Dutch, German) by a certified translator.

An authorisation for settlement (consolidation of residence in Belgium) can only be granted to a foreigner, who has previously been authorised or admitted to residence in Belgium for an unlimited duration. The foreigner then receives an Identity Card for Foreigners that is valid for 5 years from the date of its issuance and is renewable.

The categories of applications of relevance in the present context, entitle the authorities to a certain discretionary power. It is estimated that the elapsed time between the filing of an application and the delivering of a temporary residence permit is about 2 ½ months in the case of trainees, students and workers. This time can extend up to 4 ½ months for persons with private means and humanitarian cases.

The fee for a temporary residence permit (visa D) is 50 EURO.

3.3.1. Journalists

When providing a national press card, the protocol service of the Ministry of Foreign Affairs issues a provisional press card (valid for three months) before the foreigner can obtain a permanent press card (issued upon authorisation of the Authorising Committee of the International Press Association). The permanent press card is valid for a fixed duration of five years (the current cards are valid from 1997 to 2001).

3.4. Renewal

In the case of a residence permit of limited duration the local administration will extend the residence permit every year, after having verified that the conditions for residence are still are fulfilled. The renewed residence permit is normally valid for one year.

If the foreigner has received a residence permit of unlimited duration (in principle not possible for the groups of relevance in the present study), the administration will, in principle, renew the residence permit every year. At the fourth renewal - when the foreigner has resided regularly in the country for 5 years - s/he can file an application for settlement. If settlement is granted, the foreigner will receive an Identity Card for Foreigners, which is valid for 5 years.

3.4.1 Students

Students have to provide a certificate of enrolment for the following school year, a certificate of exams passed during the preceding year and proof of means of subsistence.

Since the work and the residence permits are issued for the same length, the first renewal of the work permit granted to students must be obtained prior to obtaining the residence permit. Their employer must file an application for renewal of the work permit at least one month before the work permit expires.

3.5. Change of purpose of admission

A change of status could be authorised, if the foreigner is in possession of a work permit or a professional card for self-employment, which he can only obtain when his or her residence is still regular.

3.6. Rights and Status of third country nationals in comparison to EU and EEA nationals

EU/EEA citizens do not need a work permit to carry out paid employment in Belgium. Third country nationals on the other hand need a work permit to carry out paid employment, except clergy, artists (certain cases, see above) and journalists, if their stay does not exceed three months. All occupations are principally open for foreigners, with the exception of certain ones in the public sector (certain functions in the police, in the magistrates, in the fiscal administration and in the diplomatic service). Likewise, all foreigners are authorised to exercise an independent professional activity under the conditions laid down by law.

Welfare benefits (material, social, medical or psychological, accommodation) are in principle open to all persons and families, including third country nationals. However, restrictions have been introduced for foreigners who reside less than three months in Belgium. Foreigners, who reside illegally on the territory can only benefit from emergency medical assistance.

EU citizens can validate all their periods of insurance accumulated in other Member States of the EU in order to benefit from social insurance payments. Accumulated social security benefits are also payable if the person does not reside on the territory of Belgium (with exceptions).

Third country nationals also benefit from social security in Belgium but contrary to EU citizens, they cannot validate their periods of insurance accumulated abroad and cannot export their social insurance payments (with the exception of certain states, which have concluded bilateral conventions on social security with Belgium).

Citizens of the EU can participate in local elections on the conditions that they

- are 18 years or older on the day of the election;
- are inscribed in the population register; and
- have not been subject to a decision excluding them from the right to vote.

Third country citizens are not eligible to participate in any elections in Belgium. However, the Constitution has been modified and according to Article 8 the right to vote could in future be extended to foreigners resident in Belgium who are not nationals of an EU Member State. It is further specified that a law to this effect cannot be adopted before 1 January 2001.

3.7. Family Reunification

Eligibly family members are spouses (of more than 18 years of age) and dependent children (of less than 18 years of age).¹³⁵

The spouse of a foreigner, who resides regularly with him or her is regarded as having a right to residence and is exempted from the requirement of having to obtain a temporary residence permit prior to entry into Belgium. S/he may enter Belgium with only a passport (containing, if applicable, a visa). Thus, s/he does not need to provide the documents proofing that s/he fulfils the conditions required for benefiting from the provisions of Art. 10 of the Law on Entry and Residence.

The application for family reunification is filed at the municipal authorities at the place of residence of the main permit holder. The documents required for his/her entry or residence and other documents that proof that s/he fulfils the conditions for family reunification have to be provided. S/he is then issued a provisional certificate of registration valid for one year (with the possibility of an extension for three months). This document does not entitle the holder to visa-free travel within the Schengen area.

The application is then examined to establish whether it is well-founded or not, including verification of certain conditions like the cohabitation and whether the children are dependant. If the decision on this verification is favourable, the applicant is issued a definitive residence title that also entitles her/him to visa-free travel within the Schengen area, namely a Certificate of Registration with the Aliens' Registry.

Priority is given to the administration of those authorisations that are granted "as of right", such as family reunification, based on exhaustive legal provisions. If the conditions for these are fulfilled, the authorisation will be accorded automatically.

Concerning EU/EEA-citizens, eligibly family members are the spouse, children (up to the age of 21 years) and parents (if dependent on the EU/EEA citizens and his/her spouse) as well as the spouses of the children and parents.¹³⁶ Whereas EU/EEA citizens do not need to obtain a prior authorisation for entry and long-term residence, their spouses and other family members, who do not possess the citizenship of an EU/EEA country, are subject to the general entry conditions with regard to the required entry documents.

¹³⁵ Art 10/4 of the Law on Entry..

¹³⁶ Art. 40 of the Law on Entry, Residence and Removal of Foreigners.

3.7.1. Students

The situation of a family member, who joins a student who is a third country national is different. The family member receives a temporary residence permit that allows her/him to obtain a Certificate of Registration with the Aliens' Registry. The student, who is joined by his family has to have sufficient means of subsistence and adequate accommodation to receive the member or the members of his/her family.

Residence permits of family members of persons holding residence permits of limited duration (students, trainees, au pair, guest researchers and professors, etc.) are renewed for the same duration as the permits of the main permit holders.

The family members of a person, who has been authorised or admitted with a residence permit of unlimited duration can - after one year of residence - receive a settlement permit that confers a right to residence independent of the residence of the person that they joined.

3.8. Fraud

If a foreigner provides false documents as a basis for his/her application and if s/he does not fulfil the conditions required for residence, the authorities will withdraw the residence permit. Criminal proceedings may also be opened against the foreigner.

3.9. Removal

If the authorities committed errors when issuing of a residence permit and this is noticed within 60 days, the residence permit may be withdrawn. A residence permit may also, any time, be withdrawn as a result of attempted fraud.

If the conditions required for residence or for the renewal of a residence permit are not fulfilled, the administration will take a decision to remove the foreigner in question. A distinction is made between the removal of foreigners with residence permits of limited and unlimited duration. If the foreigner prolongs his/her residence after the expiration of the limited duration for which s/he was authorised to reside, an order to leave the territory can be issued against her/him and the members of his/her family. With regard to residence permits of unlimited duration, a decision to remove the foreigner is usually taken by the Ministry of Interior. The decision includes a 10-year ban to enter Belgium. If the foreigner has settled (right of settlement), the decision to remove can only be taken by the King (royal order of expulsion). Such a decision can only be taken if the foreigner has gravely disturbed the public order or the national security and it includes also a 10-year ban to enter Belgium.

The person concerned is notified of the decision of removal and is given a time-limit to leave the territory voluntarily. The local police then proceeds with an investigation to verify if the person concerned has actually left the territory. If this is not the case, it then informs the Foreigners' Office, which can take the decision to detain the foreigner for later removal. The duration of this procedure varies. From the time of detention, the removal has to be carried out within 5 months.

3.9.1. Students

The following are explicit and absolute grounds, on the basis of which the Ministry of the Interior is required to take the decision to remove students who:

- prolong their studies in an excessive manner considering the results; or
- s/he exercises a lucrative activity that hinders the pursuit of their studies; or
- s/he does not present themselves for exams without a valid reason.

The Ministry of Interior has discretionary power to decide on a removal, if at least one of the following applies:

- students prolong their residence after having completed the studies and are no longer in possession of a regular residence title; or
- the student cannot prove that they possess sufficient means of subsistence; or
- the student (or a member of their family) has benefited from social assistance of an amount; or exceeding the triple monthly amount of the minimum means of subsistence.

3.10. Legal Developments

In December 1970 the students organised significant demonstrations and demanded more openness for welcoming foreign students, in particular the cancellation of the obligation of providing a certificate of a decent life and high morals (*un certificat de bonnes vies et moeurs*)¹³⁷ and the requirement of having a guarantor. Very quickly the movement and the demands broadened to include a comprehensive improvement of the situation of foreigners.

The Ministry of Justice then installed a commission charged with elaborating a law on aliens. The commission should carry out an examination of the diverse arrangements regarding the status, rights and obligations of foreigners in Belgium. A draft Alien's Law was submitted in 1972 and, after numerous amendments, became the Law on Entry, Residence and Removal of Foreigners on 15 December 1980.

In 1984 an important amendment was introduced concerning the status of students. From then on, authorisation for residence was only granted for studies in a school of higher education or to follow a preparatory year in a school of higher education (as opposed to primary or secondary education).

In 1996, the conditions for family reunification applicable to students were specified through a legal amendment to art. 10 of the Law of 1980. According to the amendment, a residence authorisation must be granted to the family of a foreign student, if s/he is able to prove that s/he can dispose of more than the means of subsistence and has sufficient accommodation. At the same time, the conditions for removal of a student from the territory were modified. In certain cases, the delegate of the Minister can decide on the removal of a student, whereas previously all the decisions on removal had to be issued by the Minister himself. A further legal revision concerning the status of foreign students is planned.¹³⁸

¹³⁷ In Belgium, the difference between a police clearance certificate and a certificate of a decent life and high morals is the following: The latter is issued by request of the person concerned, who has to produce it when being hired for work and only contains effective condemnations. The police clearance certificate is more exhaustive. It recalls condemnations already deleted or for which there was a rehabilitation. This extract is edited for internal usage of the judicial services or the administration. As these documents conform to definitions of other countries, the police clearance certificate required for gaining admission is, in fact, the equivalent to the certificate of a decent life and high morals in Belgium.

¹³⁸ Recently (on 22 December 1999) the law concerning the regularisation of residence of certain categories of foreigners residing on the territory has been adopted. The foreigners concerned are:

- those who have applied for refugee status without having received a decision within a time-limit of 4 years (3 years for families with school-aged children)
- those who are unable (for reasons outside their will-power) to return to their home countries

3.11. Statistics

The following statistics refer to the total number of initial residence permits issued to third country nationals, in the years listed. As renewals of residence permits are issued by the competent local authorities, no statistics on the total stock of third country nationals in each category are available.

	1995 ¹³⁹	1996	1997	1998	1999
Students	1268	1436	1538	1648	1665
Scholars ¹⁴⁰	1355	998	479	273	591
Trainees	312	98	127	138	102
Researchers	150	161	152	117	50
Au pairs	259	360	387	246	173
Pensioners	9	10	7	4	6
Clergy	105	95	60	73	39

Source: Ministry of the Interior, Belgium

3.12. Conclusion

Despite a generally restrictive migration policy, the number of third country nationals admitted for studies or training, especially from former colonies and other third countries, has somewhat increased during the last few years. Persons in most of the categories concerned in this study – with a few exceptions – normally require a work permit to carry out their activities. Notably, exceptions are trainees, who are admitted for a trainee exchange programme within the framework of Belgium's development co-operation. Students also do not need a work permit if they only wish to work during the summer time. (However, for part-time work during the academic year students need a work permit). To emphasise the temporary nature of their admission, limits have been set on the maximum duration of stay for vocational trainees and au pairs (12 months). Family reunion for students has been facilitated since 1996.

-
- those who are seriously ill
 - those who can assert humanitarian circumstances and have developed durable social relationships in the country.

It was planned to review the status of foreign students but the adoption, on 22 December 1999, of the law concerning the regularisation of residence of certain categories of foreigners residing on the territory (see above) has delayed this project for an unknown period of time.

¹³⁹ February – December 1995

¹⁴⁰ These include students and trainees on scholarships or on exchange programs of organizations such as AGCD (Administration Générale de la Coopération au Développement) and CUD (Coopération universitaire. au développement) and through EU programmes such as Tempus, Erasmus, Socrates, Odysseus and Leonardo.

4. DENMARK

4.1. General Admission Regulations

All categories of relevance for the present study need a temporary residence permit to enter Denmark, regardless whether staying for only three months or for more than three months, with the exception of journalists and painters. It should particularly be noted that unpaid trainees, pensioners and persons with private means cannot be granted a residence permit. The residence permit will be issued for a maximum period of one year, with the possibility for prolongation if the conditions are still fulfilled, provided that the applicant did not request a residence permit with a shorter validity.

Table 4.1 Overview of required permits for admission and residence

Category	Up to 3 months	More than 3 months
Students	Temporary residence permit	Temporary residence permit
Unpaid trainees	Short-term visa	Residence permit cannot be granted
EU-Trainees ¹⁴¹ (only students)	Temporary residence permit	Temporary residence permit
Exchange Trainee ¹⁴²	Temporary residence permit Work permit	Temporary residence permit Work permits
Vocational trainees	Temporary residence permit Work permit	Temporary residence permit Work permits
Au pair	Temporary residence permit Work permit	Temporary residence permit Work permits
Guest researchers ¹⁴³	Temporary residence permit Work permit	Temporary residence permit Work permits
Artists	Temporary residence permit Work permit	Temporary residence permit Work permit
Painters	Short-term visa	Temporary residence permit Work permit
Clergy	Temporary residence permit Work permit	Temporary residence permit Work permit
Journalists	Short-term visa	Temporary residence permit Work permit
Pensioners and persons with private means	Short-term visa	Residence permit cannot be granted

There are no quotas or ceilings for admission of third country nationals under any of the categories concerned.

¹⁴¹ EU trainee: The trainee's work is part of an EU education or research programme. The most important education programmes are LEONARDO and SOCRATES, which include the sub-programmes ERASMUS, COMENIUS, LINGUA, etc.; YOUTH FOR EUROPE and TEMPUS should also be mentioned.

¹⁴² Exchange trainee: The trainee's work is part of a trainee exchange programme. These are programmes of associations such as AIESEC, AMSA, ELSA, IAAS and IAESTE.

¹⁴³ Including, if applicable: guest teachers, foreign language assistants, other instructors.

EU and EEA citizens may enter and stay in Denmark for up to 3 months or, if the alien is looking for work, for up to 6 months from the date of entry without the need for registration and without the requirement of a residence permit. For stays over 6 months registration and a residence permit are required.¹⁴⁴

4.1.1. Exchange trainees, vocational trainees, artists and guest researchers

Trainees, artists (with the exception of painters) and guest researchers may be issued a residence permit, provided this is appropriate and taking into account essential employment or business considerations. A work permit is also required.¹⁴⁵

4.1.2. Journalists and painters

If journalists and painters do not stay longer than three months, they only need a short-term visa, and not a work permit. For a stay exceeding three months, residence and work permits are necessary.

4.1.3. Unpaid trainees, pensioners and persons with private means

Unpaid trainees, pensioners and persons with private means from third countries, can stay in Denmark up to three months with a tourist visa. If the trainee is unpaid, a residence permit cannot be granted. Pensioners and persons with private means also cannot be granted a residence permit. These three categories cannot stay for more than three months in the country. If they do have family members residing in Denmark they could, of course, be admitted under family reunification regulations.

4.2. Conditions

4.2.1. Students

Students from third countries and students from EU/EEA countries alike will be granted a residence permit:

- if they can document that they have been admitted to an educational institution; and
- if they can document that they have enough means to cover the costs of living,¹⁴⁶

To cover the costs of living, the students have to dispose over a sum of 50,000 DKK (6,715 EURO), which is the amount equal to the basic stipend for Danish students for the academic year 1999/2000 (12 months). Students can provide proof of their means of subsistence through a sufficient balance on a bank account, a letter of guarantee or a scholarship.

According to the law¹⁴⁷, students from EU/EEA countries may or may not be requested to have a health insurance coverage. Denmark has concluded special agreements with some EU/EEA countries, e.g. Austria and the United Kingdom, and students from these countries will not be requested to have a health insurance coverage.

¹⁴⁴ These provisions appear from the Danish Executive Order on nationals of a country which is a member of the European Community or comprised by the Agreement on the European Economic Area (Order no. 761 of August the 22nd 1994, as amended by Order no. 684 of August the 12th 1996).

¹⁴⁵ Section 9 (2)(3) in the Danish Aliens Act

¹⁴⁶ Section 9 (2)(4) of the Danish Aliens Act and Section 24-26 in the Danish Executive Order on Aliens (Order no. 19 of January the 18th 1984, as amended by Order no. 689 of August the 17th 1995).

¹⁴⁷ Section 10 (3) the Danish Executive Order on nationals of a country which is a member of the European Community or comprised by the Agreement on the European Economic Area (Order no. 761 of August the 22nd 1994, as amended by Order no. 684 of August the 12th 1996).

4.2.2. Vocational trainees

In general trainees have to fulfil the following conditions:

- the trainee must be between the age of 18 and 30;
- the trainee needs to provide a traineeship contract; and
- the traineeship supplements an already started or achieved education in the trainees home country

The remuneration for the trainee should be adequate to the type of work carried out. The residence permit may be refused if the remuneration is not adequate.

Trainees who are EU or EEA citizens can be granted a residence permit if the traineeship can be characterised as actual and real employment and it is paid.¹⁴⁸

4.2.3. EU-Trainees

A residence permit to participants in certain EU programmes can only be granted to students and not to trainees. If the basic characteristic of the traineeship is training, rather than work, the trainee does not need a work permit; on the other hand, a work permit is needed if the main characteristic is work. It is within the discretionary power of the authorities to make this distinction in every single case.

4.2.4. Exchange Trainees

Exchange trainees need residence and work permits. If the trainee is an exchange student, the stay has to be arranged through a recognised organisation such as IAESTE, IAAS, ELSA, AIESEC.

4.2.5. Au pair

Au pairs have to fulfil the following conditions:

- the au pair must be between the age of 17 and 30;
- the au pair has to sign a contract with the host family, including board and lodging and their compensation (the minimum compensation for au pairs is 2,200 DKK (295 EURO) per month; and
- the host family must be characterised as a family, the family has to consist of one or several minor children and one of the parents must be a Danish citizen.

A knowledge of the Danish language is not a pre-condition for admission as an au pair. However, it will be easier to receive a residence and work permit if the background, education and language of the au pair is culturally closer to Danish society than if it is not.

4.2.6. Guest researchers

The guest researcher or professor needs to provide a letter of invitation from a host educational institution.

4.2.7. Artists

To receive a work permit, artists have to show a work contract that proves that their income is above a certain amount sufficient to support themselves.

4.2.8. Clergy

Clergy have to fulfil the following conditions:

- the clergy produce a document stating within which religious community they will be working;
- the religious community has to be a recognised or approved religious community or a Lutheran religious community with a close connection to the Danish National Evangelical Lutheran Church, or an ecclesiastical organisation of several recognised or approved communities;
- in some cases it is also a condition that the clergy has an authority to officiate at a wedding.

4.2.9. Pensioners and persons with private means

Since third country citizens belonging to these categories are not granted residence permits, only the conditions for admission of EU/EEA citizens are of relevance.

EU/EEA citizens belonging to these categories may be granted a residence permit, if they can prove that they have at their disposal per month a sum equivalent to the minimum monthly social income (7,000 DKK or 940 EURO for singles; 14,000 DKK or 1,880 EURO if the applicant is joined by the spouse; 9,000 DKK or 1,208 EURO if the spouse is joined by his/her child or children; 18,000 DKK or 2,416 Euro if the spouses are joined by their child or children). They also need a health insurance.¹⁴⁹

4.3. Procedure

In general, a residence permit for temporary stay for the categories of relevance in the present context must be obtained before entry into Denmark.¹⁵⁰ This means that an application for a residence permit can be submitted in Denmark only under exceptional circumstances (e.g. if the applicant is staying legally in Denmark with another residence permit, if s/he is staying in Denmark on a visa and there is every probability that the application will be met, or if s/he suffers from a serious disease).

The Danish Immigration Service is responsible for examining the application for a temporary resident permit, regardless of whether the applicant has applied at the Danish embassy in his/her home country or if s/he has applied directly in Denmark.

The applicant has to provide a valid passport and a passport photograph and other documents as needed. The application may be made in Danish, English, German, or French.

Application fees for tourist (or transit) visas at Danish embassies and consulates abroad amount to 225 DKK (30 EURO), for residence and work permits they amount to 370 DKK (50 EURO). For applications within Denmark no fees are charged.

¹⁴⁸ Section 6 in the Danish Executive Order on nationals of a country which is a member of the European Community or comprised by the Agreement on the European Economic Area.

¹⁴⁹ Section 10 (1) in the Danish Executive Order.

¹⁵⁰ Section 9 (7) of the Danish Aliens Act concerning persons listed under Section 9 (2) (iii) and (iv).

The duration of application procedures may vary between one day in obvious cases to several weeks and months in difficult cases that involve the forwarding of the application and work contract to the Foreign Labour Market Council in Denmark.¹⁵¹

4.3.1 Journalists

Well-known journalists of foreign media companies will be able to get a bona fide visa under expedited procedures.

4.4. Renewal

To obtain a renewal of a residence permit the applicant must show that s/he still fulfils the conditions for residence – e.g. students have to be able to provide documents that show they are still studying and can still support themselves; guest researchers have to provide documents that show they are still employed.

The maximum duration of residence for au pairs, trainees and guest researchers is two years. For clergy, the maximum duration varies between two and four years depending on the religious community of which they are part (e.g. for Muslim communities: 2 years; for Lutheran communities: 4 years).

4.4.1. Students

Students must have been following a course of study according to the requirements set by the institute of education in question. They must have participated in exams and lessons, handed in reports, etc.

4.5. Change of permit

If an applicant has a residence permit for the purpose of study and s/he wants to start working, s/he has to apply for a new residence permit before the present permit expires. The work permit will be tied to a specific employment, which means that s/he cannot change the employment without applying for a new residence permit and work permit.

Foreigners who want to change their permit can do so while still lawfully resident in the country. For example, au pairs who during their second year decide to stay in Denmark for further study can submit an application for a residence permit for the purpose of study under the same conditions as students applying for residence from their home country, provided that they have already started the studies in their home country.

4.6. Rights and status

All foreigners, who are issued a residence permit will automatically receive a Social Security Number, which entitles them to be part of the Danish health insurance scheme after 6 weeks of residence in Denmark.

¹⁵¹ In the case of artists with special skills, their application and work contract will be forwarded to one of the specialised Councils on the Foreign Labour Market. For musicians, for example, this would be the Public Council on Music.

One of the key differences between the rights and the status of a third country national and a national of an EU/EEA member state is that the EU/EEA-citizen does not require a work permit and can freely change their employment.

Since 1977 citizens of the Nordic Passport Union may participate in elections at the local level. In 1981 this right was extended to third country nationals for local elections at the municipality where they have resided permanently for the past 3 years.¹⁵² Since 1995, all EU citizens may participate in the EU parliamentary elections and in local elections at the municipality where they reside.

In general, students from third countries are not allowed to work. However, a work permit can be granted for work in (?) in June, July and August and students who have had a residence permit for 18 months can get a work permit entitling them to up to 15 hours of work per week.

4.7. Family reunification

Generally, a holder of a residence permit which is issued for the purpose of a temporary stay in Denmark does not have a right to family reunification. However, under certain types of temporary residence permits family reunification is possible (see below) and spouses and children are eligible. The residence permit will be valid for a period corresponding to the validity of the residence permit of the main permit holder.

Third country nationals, who come to Denmark to join their family member who is a EU/EEA citizen, do not need a residence permit and are allowed to work without a work permit.

Family members do not require a work permit if they want to work.¹⁵³ However, if the family member wants to continue to stay in Denmark after his/her spouse has left, or wants to be independently resident and carry out a dependent employment (or be self-employed), s/he has to apply for an independent residence permit and a work permit.¹⁵⁴ The applicant then has to fulfil the normal conditions (e.g. if it is an application for dependent employment, the permit may be issued providing that essential employment or business considerations make it appropriate).

4.7.1. Students

Generally, students have no right to be joined by their family members. However, students who have only one year left of their education and can fulfil certain additional conditions, e.g. are able to support them can be joined by members of their family.

4.7.2. Guest researchers and clergy

Guest researchers and members of the clergy may apply for family reunification. The Danish Aliens Act¹⁵⁵ does not specifically refer to these categories, however, the administrative rules restrict this right to these groups of persons.

¹⁵² Denmark is signatory to the 1992 Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level.

¹⁵³ Section 14 (1)(vii) of the Danish Aliens Act.

¹⁵⁴ Section 9 (2)(iii) of the Danish Aliens Act.

¹⁵⁵ Section 9 (2)(iv) of the Danish Aliens Act

4.8. Fraud

If a residence permit is obtained by fraud, it will – no matter if it is time limited or permanent – always be revoked.¹⁵⁶

4.9. Removal

A residence permit may also be revoked:

- if the grounds referred to in the application or permit were not correct or are no longer present;
- if the alien is not in possession of a requisite passport or other travel document allowing him to return to the country of issue;
- if the alien fails to comply with conditions laid down for his residence permit or work permit; or
- if the residence permit is conditional upon a resident person being able to maintain the applicant but can no longer do so.¹⁵⁷

When the Danish Immigration Service is informed that the holder of the permit does not fulfil the grounds referred to in the application or permit any longer, the permit holder will appear before the Danish Immigration Service prior to a decision being made. It is not possible to say anything definite about the duration of the procedure.

If the permit is withdrawn, the holder of the permit has to leave the country within a certain period of time. If the holder of a permit which is revoked stays in Denmark after the expiry of the time-limit for exit, s/he is no longer staying legally and can be expelled from the country.¹⁵⁸

4.10. Legal developments

The Danish Aliens Act was adopted on 8 June 1983 and entered into force on 1 October 1983. This law replaced the Law on Admittance to the Country for Aliens, which had been adopted on 22 June 1973.

There have been a number of changes and modifications to the Danish Aliens Act as well as additional regulations through executive orders. The Danish Executive Order on Aliens, which is one of these important regulations in Denmark, was adopted on 18 January 1984. Another important regulation is the Danish Executive Order on Nationals of a Country, which is a Member of the European Community or Comprised by the Agreement on the European Economic Area, which was adopted on 22 August 1994 and entered into force on 1 September 1994. This Executive Order replaced the Danish Executive Order on Stay in Denmark for Aliens Covered by the Provisions of the European Community.

Most issues dealt with in this study fall within the discretionary power of the authorities. There have been no important court decisions that have contributed to the current implementation of the regulations. The reasons might be that not many administrative decisions can be submitted for a review by the competent court.¹⁵⁹ Most decisions are appealed to the Minister of Interior.

¹⁵⁶ Section 19 (2) of the Danish Aliens Act.

¹⁵⁷ Section 19 (1)(i)(ii)(iii) and (iv) of the Danish Aliens Act.

¹⁵⁸ Section 25 (b) of the Danish Aliens Act

¹⁵⁹ cf. Section 52 of the Danish Aliens Act.

A key historical event was the general halt to immigration in 1973 and ever since permits are seldom issued based on employment or business considerations. In principle, residence is only granted for family reunion.

4.11. Statistics

Admission

Table 4.2: Residence permits granted to third-country citizens during the period 1994-1998

	1994	1995	1996	1997	1998
Students	2,253	2,526	2,629	2,809	3,254
Trainees	527	651	909	1,015	1,074
Au pair	116	194	318	438	478
Clergy	153	134	82	83	97

Source: Danish Immigration Service

Table 4.3: Numbers of permits granted and first time applications submitted by third-country nationals refused in 1999.

	Number of granted permits	Number of refused applications
Students	3,611	176
Trainees	994	233
Au pairs	526	87
Musicians and artists	382	38

Source: Danish Immigration Service

Renewals

In addition to the first-time permits listed above, the numbers of permit renewals granted in the years listed were as follows.

Table 4.4: Renewals granted to third-country citizens during the period 1994-1998.

	1994	1995	1996	1997	1998
Students	502	474	488	559	609
Trainees	94	128	200	325	424
Au pair	31	37	67	110	237
Clergy	132	116	136	114	121

Source: Danish Immigration Service

Table 4.5: Number of granted as well as refused applications for renewals submitted by third-country nationals in 1999.

	Number of granted renewals	Number of refused renewals
Students	717	52
Trainees	422	75
Au pairs	280	51
Musicians and artists	50	1

Source: Danish Immigration Service

Removals

Table 4.6: Number of removals of third country citizens during the period 1994-1998.

	1994	1995	1996	1997	1998
Students	n.a.	n.a.	11	4	29
Trainees	n.a.	n.a.	4	4	13
Au pair	n.a.	n.a.	4	16	17
Clergy	n.a.	n.a.	1	0	0

n.a. = not available

Source: Danish Immigration Service

Fraud

The number of cases of fraud is contained in the number of removals but there are no separate statistics on these cases available.

4.12. Conclusions

In Denmark, admission for work-related purposes is handled restrictively and this is reflected in the admission policies for trainees, au pairs, guest researchers, artists, journalists and clergy, all of whom - with a few exceptions - need a work permit to carry out their activities. The granting of the work permit is in many cases tied to a prior approval by the Labour Market Council. Unpaid trainees are generally not admitted in order to avoid competition with the domestic labour force. On the other hand, admission of students is less restrictively handled; in 1999, 3,611 students were granted admission and only 176 applications from students were refused. They are also permitted to work during the summer months and - after 18 months of residence - on a part time basis during studies, if they possess a work permit. In the case of au pairs from third countries, who also need a work permit, preference is given to young persons originating in Europe. Although, the general policy of restricting long-term immigration and access to the labour market for third country nationals is also reflected in the maximum duration of stay for pensioners (3 months), vocational trainees, au pair and guest researchers (2 years) and members of the clergy (2-4 years). Family reunion for all groups covered by the study is possible only in some exceptional cases.

5. FINLAND

5.1. General admission regulations

For a stay not exceeding three months, a short-term visa (category F) is needed.¹⁶⁰ But, categories needing a work permit, require a residence permit also for a stay not exceeding three months. For a stay exceeding three months, a residence permits is always needed. Visas and residence permits are issued by the Finnish diplomatic representations.

5.1 Overview of required permits for admission and residence

Categories	Up to 3 months	More than 3 months
Students (higher education only)	Short-term visa, if required	Residence permit
Unpaid trainees	Short-term visa, if required	Residence permit
EU-Trainees ¹⁶¹	Short-term visa, if required	Residence permit
Exchange Trainee ¹⁶²	Short-term visa, if required	Residence permit
Vocational trainees	Short-term visa, if required	Residence permit, work permit
Vocational trainees (compulsory part of a Finnish degree)	Short-term visa, if required	Residence permit
Au pair	Residence permit, work permit	Residence permit, work permit
Guest researchers ¹⁶³ staying only one year or taking part in an exchange programme	Short-term visa, if required	Residence permit
Guest researchers, others	Residence permit, work permit	Residence permit, work permit
Pensioners	Short-term visa, if required	Residence permit
Artists	Short-term visa, if required	Residence permit, work permit ¹⁶⁴
Clergy	Short-term visa, if required	Residence permit, work permit
Athletes ¹⁶⁵ and sports instructors	Residence permit, work permit	Residence permit, work permit
Journalists	Short-term visa, if required	Residence permit
Persons with private means	Short-term visa, if required	Residence permit

¹⁶⁰ F.1 A tourist;

F.2 A representative in the field of business, culture, science or art;

F.3 A participant in an international conference;

F.4 A person attending an entrance examination of an educational institution;

F.5 A person entitled to permit-free employment under section 18 of the Aliens' Decree or under Regulation M 1/1996 of the Ministry of Labour; or

F.6 Other persons entering the country for a maximum period of three months. The Finnish Aliens' Decree (142/1994), Annex I

¹⁶¹ EU trainee: The trainee's work is part of an EU education or research programme. The most important education programmes are LEONARDO and SOCRATES, which include the sub-programmes ERASMUS, COMENIUS, LINGUA, etc.; YOUTH FOR EUROPE and TEMPUS should also be mentioned.

¹⁶² Exchange trainee: The trainee's work is part of a trainee exchange programme. These are programmes of associations such as AIESEC, AMSA, ELSA, IAAS and IAESTE.

¹⁶³ Including, if applicable: guest teachers, foreign language assistants, other instructors.

¹⁶⁴ An actor belonging to a foreign film team and who does not have a Finnish contractor is not required to have a work permit.

¹⁶⁵ For instance, participants in Finnish teams

The initial residence permit is issued for a temporary stay ('B' status)¹⁶⁶. Permits are generally issued for one year, but they can also be issued for shorter periods, according to the intended length of stay. Quotas or ceilings on admissions are not applied in Finland.

A work permit is generally granted for one year. It can be granted for a shorter period if the work is short-term in nature. On the basis of the Aliens Decree, section 18(3), the Ministry of Labour has elaborated an administrative instruction concerning categories not needing a work permit. This instruction will be valid until 30 April 2004.

If a person is a citizen of an EU/EEA country, s/he may reside, work, practise a profession, apply for jobs or study in Finland for up to three months without a residence permit. If the intended stay exceeds three months, a residence permit is required, but the application can be submitted in Finland. EU/EEA citizens do not need a work permit. The EU/EEA agreement does not affect the right of Nordic citizens¹⁶⁷ to reside and work in Finland without any permits.

5.1.1 Students

For a stay not exceeding three months a short-term visa may be necessary. For a stay exceeding three months, a residence permit will be granted if the applicant has been admitted to a Finnish university, or to an educational institution providing instruction for a specific profession.

In general, a residence permit is not granted for studies at folk high schools, religious institutes or other corresponding educational institutions where instruction is not given with the aim of obtaining a degree or professional qualification. However, a permit may be granted for such studies on special personal grounds, such as becoming acquainted with the Finnish language and culture before pursuing further studies in Finland, supplementing studies in the home country, or gaining additional professional training. A residence permit is generally also not granted for distance learning, correspondence courses, Finnish language courses or other such studies. Students may work part-time (max. 20 hours a week) during the semester or full-time during holidays,¹⁶⁸ without a work permit.

Students who are EU/EEA-citizens and staying longer than three months in the country are issued a residence permit for a period of one year at a time or for the intended length of stay. EU/EEA students are also entitled to take up employment during their studies without a work permit. Citizen of the other Nordic countries do not need a visa or a residence permit to study in Finland.

¹⁶⁶ B.1 Residence permit is issued for employment, self-employment or vocational practice;

B.2 Residence permit issued for studies;

B.3 The person resides or works in the country temporarily;

B.4 A family member of a person belonging to category B when the residence permit is issued based only on the stay in Finland of the family member. The Finnish Aliens' Decree (142/1994), Annex I

¹⁶⁷ Citizens of Denmark, Iceland, Norway and Sweden

¹⁶⁸ May 1 - September 30 and December 15 - January 15

- **Applicants for studies**

If an applicant for studies is required to pass an entrance examination organised by the educational institution before being admitted as a student, a short-term visa is needed (if not citizen of a visa-free country).

5.1.2 Unpaid trainees, EU-trainees and exchange trainees

For a stay not exceeding three months, a short-term visa may be necessary. For a stay exceeding three months but less than one year, unpaid trainees, EU-trainees and exchange trainees need a residence permit but not a work permit.

5.1.3 Vocational trainees (training compulsory part of a Finnish degree)

If on the job training is a compulsory part of the studies in order to obtain a Finnish degree, a residence permit is required but a work permit is not necessary. For a stay not exceeding three months, a short-term visa may be necessary.

5.1.4 Vocational trainees (other)

For a stay not exceeding three months, a short-term visa may be necessary. For a stay exceeding three months, residence and work permits are required.¹⁶⁹

5.1.5 Au pairs

An au pair always needs both a residence permit and a work permit, even if staying for less than three months.

5.1.6 Guest researchers (staying only one year or taking part in an exchange programme)

For a stay not exceeding three months a short-term visa may be required. For a stay exceeding three months, a residence permit is needed, but not a work permit.

5.1.7 Guest researchers (others)

Guest researchers who intend to stay in the country for more than one year need a work permit and, consequently, also a residence permit, regardless of length of stay.

5.1.8 Artists

For a stay not exceeding three months, a short-term visa may be required. If staying longer than three months, a work permit is needed. However, an actor belonging to a foreign film team and who does not have a Finnish contractor is not required to have a work permit.

¹⁶⁹ In this context the agreement between Finland and the Slovak Republic concerning the exchange of trainees (21 October 1998) should also be mentioned. The trainee cannot be older than 30 years of age and the traineeship should not last longer than 18 months.

5.1.9 Journalists

For a stay not exceeding three months, a short-term visa may be necessary and for a stay exceeding this period, only a residence permit is necessary. A work permit is not needed.

5.1.10 Clergy

For a stay not exceeding three months, a short-term visa may be necessary. If staying longer than three months, a work permit is needed, in addition to the residence permit.

5.1.11 Athletes

Athletes and sports instructors who, for instance, participate in Finnish teams need residence and work permits, even if staying for less than three months.

5.2. Conditions

When applying from abroad, a residence permit may be granted, if:

- the applicant is of Finnish descent or has some other tie to Finland (family tie);
- the alien fulfils the necessary requirements for being issued a work permit or the financial status is otherwise secured;
- there is a pressing humanitarian reason in support of granting a permit;
- there is some other special reason in support of granting a permit and the financial status is secured; or
- the applicant is of Finnish descent and comes from the former Soviet Union (Ingrian returnee)¹⁷⁰

The following should be made available when applying for a residence permit:

- valid passport or another valid travel document;
- 2 passport photographs;
- an account of the applicant's financial situation; and
- other documents that the applicant finds necessary to support his/her application.

¹⁷⁰ An applicant is an Ingrian returnee (*Inkeriläinen*), if s/he, his/her parents or two of the grandparents are of Finnish descent. The applicant must be able to show documentary evidence of Finnish descent. If no such evidence exists but the applicant has some other evident tie to Finland, a permit may be granted. The local police is generally the issuing authority. The following documents are required:

-a completed residence permit application

-a passport/travel document

-2 passport photographs

-an extract from the register of occupants or a house manager's certificate, if the applicant finds this document useful to prove his/her Finnish decent

-an original birth certificate, if necessary

-original birth certificates of the children, if necessary

-an original marriage certificate, if necessary

-a former Soviet Union passport for domestic travel, if necessary

-an immigration certificate or a certificate showing that the person does not have a permanent residence in Russia any more, if necessary

-the original birth certificate of the parent who is Finnish by nationality, if necessary (given in the year of birth, a duplicate is accepted in exceptional circumstances),

-the internal passport,

-an original marriage certificate, and

-a certificate given by the National Archives of Finland showing the Finnish origin of the applicant's parents who have stayed in Finland, if necessary for the applicant (may also be asked officially)

When applying for a work permit, the following are needed:

- a completed residence and work permit application
- a valid passport or another valid travel document
- an employment contract (the form can be collected from an employment agency)
- the favourable opinion of the Employment Office on the use of foreign labour

An EU/EEA citizen can be granted a residence permit in Finland if s/he will not have to resort to Finnish social security during his/her stay. The following is needed when applying for an EEA residence card:

- a completed residence permit application
- a completed EEA card application (application forms can be collected from the local police);
- a valid passport or another valid travel document (that is, for EEA citizens, an identity card approved as a valid travel document);
- 2 passport photographs (preferably black and white);
- a medical and police clearance certificate, if necessary¹⁷¹;
- an account on how the person will finance the stay in the country.

5.2.1 Students

The applicant must present a letter of admission issued by a recognised institution and prove the existence of the necessary financial means, i.e. either own means or a scholarship. A bank deposit of FIM 30,000 (=5,050 EURO) must be made in the applicant's own name (and it must be renewed yearly). Alternatively, the student must demonstrate that s/he has the above-mentioned sum available for transfer to his/her account for study purposes. There are no restrictions on how to use the money. If the educational institution provides the student with board and lodging in addition to free tuition, the amount to be deposited can be reduced at the authorities' discretion. A student taking part in an exchange programme between a Finnish and a foreign university, which is also financing the stay, is exempt from the requirement to make the deposit.

EU/EEA citizens also have to submit the letter of admission issued by the educational institute in question together with proof that they are able to finance their stay. Students may present the proof in which ever way they choose. Students from the Nordic countries are not required to prove their financial capacity.

5.2.2 Au pairs

The au pair should be 18-30 years old and unmarried. The au pair cannot be a relative of the family where s/he is going to stay. The job is light household work (for instance, child caring) and the au pair should not work more than 5 hours per day. The au pair should have one free day per week. In addition to board and lodging the au pair receives net 1,500 FIM (=252 EURO) per month. The au pair should be treated as a family member. There are no specific language requirements.

¹⁷¹ If, for instance, the authorities have reason to suspect possible abuse.

5.3. Procedure

Applications for visas, as well as residence and work permits are submitted in person to a Finnish diplomatic or consular representation. Applications should be made in Finnish or Swedish, but applications in English, German and French as well as some other languages are generally also accepted. The decisions are published in Finnish or Swedish. Concerning the categories of applicants of relevance for the present study, the Directorate of Immigration¹⁷² has delegated the decision-making capacity to the embassies. The responsible official at the embassy must in certain cases consult the Directorate of Immigration, for instance, concerning possible abuse of the immigration rules. (Directives have been issued concerning this matter.)

An alien may, in exceptional cases, apply for a residence permit when already in Finland.¹⁷³ The necessary forms are obtained from, and the application is submitted to, the local police. An alien who has been issued a residence permit for at least one year must report to the Registry Office of the place of residence. The fee for the initial residence permit is FIM 800 (=135 EURO). It is always collected upon submission of the application and regardless of the outcome.

If a work permit is needed, the applicant must file the application with the relevant diplomatic or consular representation. Before an application for a work permit can be filed, the employer/contractor or the applicant has to submit a 'Request for an Opinion on the Use of Foreign Labour'¹⁷⁴ to the local Employment Office or, in the case of musicians and artists, to the employment office in Helsinki. The embassy will issue the permit only after having received a statement concerning this request. The employment authorities consider work permit applications case by case. A fee of FIM 400 (=67 EURO) is collected.

According to the Aliens Act, an alien may appeal the decision on residence and work permits¹⁷⁵ to the administrative courts. In certain cases the decisions of the administrative courts may be appealed to the Supreme Administrative Court.

An EU/EEA citizen has to submit his/her application for residence permit to the local police authorities. The applicant is issued a card with his/her photograph. The charge for the residence permit was in 1999 FIM 130 (=21 EURO). When the residence permit is granted, the permit holder must report to the population register at his place of residence.

5.3.1 Students

Finnish diplomatic missions abroad charge FIM 400 (=67 EURO) for the first residence permit. If the student has been granted a visa to take part in an entrance examination in Finland, s/he is not required to return to apply for a residence permit. In such circumstances,

¹⁷² Independent from the Ministry of Interior in its decision-making, although administratively a part of the Ministry of Interior.

¹⁷³ If:

the applicant is a former Finnish citizen;

the father or mother of the applicant is or has been a Finnish citizen from birth;

the wife/husband or common-law spouse of the applicant lives in Finland and s/he has lived together with the applicant for approximately two years before arriving in Finland;

denial of a residence permit would clearly be unreasonable.

¹⁷⁴ Forms are available from all employment offices.

¹⁷⁵ Visa decisions made by passport control authorities or the police, however, are not subject to appeal, nor are decisions revoking a visa or a residence permit before the alien's entry into the country.

the residence permit can be granted in Finland and the application should be submitted to the local police.

5.4. Renewal

A temporary residence permit has to be renewed once a year. Renewals and permanent residence permits are generally granted by the local police. The fee is FIM 500 (=84 EURO) per renewal. In some cases, the Directorate of Immigration can be the decision-making authority, but the application must always be submitted to the police. The fee for the renewal of a work permit is FIM 200 (=33 EURO).

An EEA-card has to be renewed every five years. If the authorities have reason to suspect abuse, the EU/EEA applicant must present a medical certificate on his/her health.

5.4.1 Students

The following must be attached to the application:

- an account of study progress (minimum amount is 15 credits during the first study year and 20 credits in subsequent study years);
- a bank statement showing that the student has a sum of at least FIM 30,000 (=5,050 EURO) available per semester (scholarship or a bank deposit);
- if board and lodging are provided by the educational institute, in addition to free education, a deposit of only FIM15,000 (=2,525 EURO) is required.

The fee for renewal of a resident permit for study purposes is 130 FIM (=21 EURO).

5.5. Change of purpose of admission

A change of purpose is allowed, provided that the applicant meets the conditions for the new purpose.

In principle, a permanent residence permit ('A' status) may be issued when a foreigner holding a temporary residence permit has resided permanently and continuously in Finland for two years.¹⁷⁶ The holder of a permanent residence permit does not need a separate work permit and may freely choose and change the place of residence, or leave the country and enter it again. The permanent residence permit is issued by the local police. A completed residence permit application, a valid passport or any other valid travel document and a passport photograph are needed for the application. A fee of FIM 500 (=84 EURO) is charged. However, if the nature of the purpose of the stay is temporary, as for the categories of relevance to the present study, a permanent residence permit is refused, with the exception of vocational trainees.

¹⁷⁶ A.1 Residence permit issued on the basis of Finnish origin or another tie (such as family tie) to Finland;
A.2 Residence permit issued on the basis of a need of skilled labour estimated to be of a long duration;
A.3 The person has been granted asylum (Aliens' Act, section 30), issued a residence permit due to his need of protection (Aliens' Act, section 31) or a residence permit within the refugee quota or on other serious humanitarian grounds (Aliens' Act, section 18, paragraph 1, subparagraph 4);
A.4 Persons other than those referred to above whose stay in the country is of a permanent nature;
A.5 A family member of a person belonging to category A or a Finnish citizen. The Finnish Alien's Decree (142/1994), Annex I

5.5.1 Students

Once the studies are concluded or finished, non-EU/EEA citizens must leave Finland unless other grounds for granting a new residence permit are presented.

5.5.2 Vocational trainees

Vocational trainees (and employees) who have stayed in the country continuously with a status B.1 permit for two years shall be transferred to category A.2 in case the vocational practice or work continues further.

5.6. Rights and status of third country nationals in comparison to EU/EEA nationals

According to the Alien's Act, a foreigner should not become a burden to the health and welfare system of the country. However, the right to health and welfare services is guaranteed if the third country national has a residence in Finland under the Municipality Act. In practice, this means that if a person entering the country with a B-status has his/her domicile in Finland, s/he cannot be denied health and welfare services if s/he would need them.

Foreign citizens (third country nationals) are allowed to vote in the municipal elections if they have been resident in the municipality for two years. Citizens of the EU, Norway and Iceland are allowed to vote in the municipal elections.

5.7. Family reunification

Eligible family members are spouses and unmarried children who are less than 18 year old or under the care of the person residing in Finland.¹⁷⁷ Guaranteed means of support are necessary and family reunification may be granted if no objections relating to public order, safety or other weighty reasons against issuing a permit have been raised. A family member of a third country national with a B-status permit (temporary stay) is also issued a fixed-term residence permit (B.4-status), valid for the same period as the permit of the main permit holder, provided that guaranteed means of support are assured. If the permit of the main permit holder is renewed, the permit of the family member may also be renewed. A family member can be issued a work permit for a specific job.¹⁷⁸

The family member can submit an application for a residence permit at the Finnish diplomatic representation, or the process can be initiated in Finland by the main permit holder who submits an application to the local police. The decision on the initial residence permit issued on the grounds of family relations is always made by the Directorate of Immigration.

The following is needed for the application:

- an account of the applicant's identity and family relations, which must be proven by documents (marriage certificate, child's birth certificate);
- the family members must be heard;

¹⁷⁷ People who continuously share a household and cohabit in a relationship resembling marriage shall be deemed comparable to spouses. A requirement for this comparison shall be that they have cohabited for a minimum of two years. If they have a common child the two year time limit does not apply. If the person residing in Finland is a minor child, his guardian shall be deemed a family member.

Section 18 b of the Aliens Act

¹⁷⁸ These cases are not subject to employment policy considerations (a Finnish national who could do the job instead of the third country national).

- an account of the applicant's financial situation, as required by law;
- if the person is dependent on the care provided by the person residing in Finland, a certificate to this effect given by an authority of the applicant's home country or country of permanent residence must be attached to the application;
- passport or identity card;
- photograph;
- other documents the applicant finds necessary.

Finnish diplomatic missions charge a fee of FIM 400 (=67 EURO) for the residence permit for each family member, including children under 18. The decisions are always taken by the Directorate of Immigration.

Eligible family members of EU/EEA-citizens are spouses, spouse's parents who are dependent on the applicant's care, as well as children who are under 21 years of age, or dependent on the care of the parents. The provisions of the European Social Charter govern the family members of citizens of the States that have acceded to the Charter. The family members of an EU/EEA citizen, even if they are third country citizens, have the right to work in Finland without a work permit.

5.7.1. Students

A family member of a student may be issued a residence permit if the studies will continue for many years. Without well-established grounds, a permit is not issued for the first or last year of the studies. The required guaranteed means of support are 30,000 FIM (=5,050 EURO) per year for the spouse and 15,000 FIM (=2,525 EURO) per year for each child.

The family members of EU/EEA students are also entitled to stay in Finland for the study period. When applying for EEA residence cards for family members, the student has to submit an admission certificate issued by the educational institute and proof of financial capacity to finance the stay of family members in the country. The fee for the resident permit for family members is FIM 130 (=21 EURO).

5.8. Fraud

A residence permit may be revoked if an alien deliberately misleads the authorities concerning his identity, gives other false information affecting the residence permit, or conceals matters which might have had a bearing on the decision.¹⁷⁹

5.9. Removal

A permit may be revoked if guaranteed means of support or original purpose of residence do not exist. Whenever an alien's deportation is under consideration, all relevant matters and circumstances must be assessed in their entirety. The following points are normally borne in mind: the duration of the stay in the country, any child-parent relationship, family ties and other ties to Finland.

Decisions on deportation from Finland are made by the Directorate of Immigration upon proposals by the police.¹⁸⁰ The police are required to state the grounds for the deportation, and

¹⁷⁹ Section 21 of the Aliens Act

propose the length of a possible entry prohibition. The alien's preliminary opinion about the deportation should also be submitted. The Directorate of Immigration may take a decision on deportation without receiving a police proposal in cases where the national security or Finland's relationship with a foreign state is endangered.

When deportation is being considered, the alien concerned and the Ombudsman for Aliens must always be given an opportunity to be heard. A decision on deportation may be appealed to the County Administrative Court,¹⁸¹ and the decision of this court can in certain cases be appealed to the Supreme Administrative Court. Because of the appeal system, the whole process of removal takes at least one year, frequently much longer.

Restrictions on free movement and residence of EU/EEA citizens can be restricted on grounds of public policy, public security and public health.

5.10. Legal developments

The Finnish Aliens Act (378/1991) entered into force on 1 March 1991. A reform of the Finnish Aliens Act and Aliens Decree will begin during the year 2000 and it is expected to be completed within two years.

Finland became a member of the EU on 1 January 1995. As Finland adopted the provisions on free movement when it joined the EEA in the beginning of 1994, the EU membership did not cause any changes in the existing practice relating to free movement.

5.11. Statistics

Table: 5.2 Total number of issued short-term visas as well as residence and work permits in 1999, in relation to the total number of rejected applications.

Short-term visas	Work and residence permits	Rejected applications	Total
335,028	15,986	6,582	357,596

Source: Ministry of Foreign Affairs

5.12. Conclusions

Admission for work related purposes is handled rather restrictively, whereas admission of students is less restrictively handled. Finland neither favours nor restricts the admission of foreign students. Internationalisation is generally seen as a positive phenomenon and because of this the number of foreign students show a strong increase. Therefore, Finland sees a need to elaborate a policy for the admission of foreign students. The general immigration policy of Finland is to favour admission of persons of Finnish descent, for instance, *Ingrian* returnees or those has some other tie to Finland (family tie).

The nature of the purpose of stay for all categories of relevance to the present study is considered to be temporary and a permanent residence permit will be refused, with the exception of vocational trainees who will be issued a permanent residence permit after two years. In general, a change of purpose of stay is allowed, if the applicant meets the conditions for the new purpose. In the case of students for example, once the studies are concluded or

¹⁸⁰ Section 42 of the Aliens Act

¹⁸¹ Section 57 of the Aliens Act.

finished, non EU/EEA citizens must leave Finland unless other grounds for granting a new residence permit are presented.

Family reunification is in principle allowed, if means of support for the family members are guaranteed. In the case of students, the family member of the student will get a residence permit if the studies will continue for many years. But, without well-established grounds, a permit is not issued for the first or last years of studies. Most categories of applicants who are admitted for work purposes need a work permit, for instance, vocational trainees, au pairs, guest researchers, artists, clergy and athletes, whereas unpaid trainees, EU-trainees, exchange trainees and journalists do not need a work permit. Students are permitted to work full-time during holidays or part-time during the semester, without a work permit.

6. FRANCE

6.1. General admission regulations

An applicant who intends to stay up to three months needs a short-term visa (*“visa de court séjour”*), if not a citizen of a visa free country. The purpose of stay can be tourism, study, or family or professional reasons.

Applicants of third countries, including students, trainees, artists, guest researchers or persons with private means, who want to stay in France for more than three months, need a long-term visa (*“visa de long séjour”*) to enter the country and s/he later needs to apply for a residence permit (*“titre de séjour”*).

Applicants having received a visa for a stay exceeding three months, but less than six months, including an endorsement “temporary exempt from residence permit” (*“dispense temporaire de carte de séjour”*), do not have to apply for a residence permit.

Categories	Up to 3 months	More than 3 months
Students	Short-term visa	Long-term visa Temporary residence permit
Unpaid trainees	Short-term visa	Long-term visa Temporary residence permit
Vocational trainees	Short-term visa	Long-term visa Temporary residence permit Provisional work permit
EU trainees	Short-term visa	Long-term visa Temporary residence permit
Information trainees (learns about the functioning of a company)	Short-term visa	Long-term visa Temporary residence permit
Au pairs	Short-term visa	Long-term visa Temporary residence permit Provisional work permit
Guest researchers	Short-term visa	Long-term visa Temporary residence permit
Artists	Short-term visa	Long-term visa Temporary residence permit
Journalists	Short-term visa	Long-term visa Temporary residence permit
Clergy	Short-term visa	Long-term visa Temporary residence permit
Pensioners and persons with private means	Short-term visa	Long-term visa Temporary residence permit

6.1.1. Students

In the following cases it is not necessary to present a long-term visa:

- students who were granted a visa for a period exceeding three months but less or equal to six months including the endorsement “residence permit to be applied for upon arrival in France”, or;
- students who were granted a visa for a period less or equal to three months including the endorsement “student for entrance examination”.

If the student then passes the entrance examination, s/he may directly apply for a residence permit without having to leave the country and present a long-term visa.

The temporary residence permit for students is being granted for one year to an alien who intends to study in a public or private school.

To work on a half-time basis students need to apply for a provisional work permit, which they normally receive almost automatically. Nationals from Togo, Gabon and Algeria do not have to apply for such a permit. The provisional work permit does not have the same status as a residence permit with the category “employee”. There are no quotas or age limits for students.

Students coming from a European Union Member State do not have to apply for a visa, but have to apply for a temporary residence including the endorsement “Student-European Union”. This permit is granted for one year and renewable throughout the duration of the studies.

6.1.2. Unpaid trainees

The temporary residence permit for students valid for one year is also being granted to unpaid trainees.

Trainees coming from a European Union Member State do not have to apply for a visa, but have to apply for a temporary residence permit, including the endorsement “Student-European Union”. This permit is granted for one year and renewable throughout the duration of the traineeship.

6.1.3. Vocational trainees

Vocational trainees stay in France during a limited period of time, normally between 3 and 12 months, but, not for longer than 18 months. The aim is to undertake remunerated training besides theoretical learning, or, to carry out either vocational training or language studies within an exchange framework between a foreign and a French company/institution. Students may be allowed to take up a traineeship during or after the completion of their studies.

Vocational trainees and students taking up an traineeship need a temporary residence permit, which is valid for six months, and a provisional work permit. The provisional work permit is initially granted for six months, but it can be renewed. The maximum duration of stay is eighteen months.

Trainees coming from a European Union Member State do not have to apply for a visa, but have to apply for a temporary residence permit endorsed “Student-European Union”. This permit is granted for one year and renewable throughout the duration of the traineeship.

6.1.4. EU trainees

The temporary residence permit for students valid for one year is also being granted to trainees taking part in EU study programmes. A work permit is not needed.

Trainees coming from a European Union Member State do not have to apply for a visa, but have to apply for a temporary residence including the endorsement “Student-European Union”. This permit is granted for one year and renewable throughout the duration of the traineeship.

6.1.5. Information trainees

“Information trainees” stay in France in general for a short period of time in order to learn about the activities of a company. Information trainees need a temporary residence permit, but not a work permit.

Trainees coming from a European Union Member State do not have to apply for a visa, but have to apply for a temporary residence permit endorsed “Student-European Union”. This permit is granted for one year and renewable throughout the duration of the traineeship.

6.1.6. Au pairs

An “au pair” stays together with a family to improve his/her knowledge in French and does light household work. They are usually compensated for their responsibilities. An “au pair” should be between 18 to 35 years of age.

Au pairs need a temporary residence permit, which is valid for six months, and a provisional work permit. The provisional work permit is initially granted for six months, but it can be renewed. The maximum duration of stay is eighteen months.

6.1.7. Guest researchers

A residence permit of the category “scientific” is granted to third country citizens who come to France to carry out scientific research or teach at a university, provided that s/he has been admitted to the scientific research centre or university in question. A work permit is not needed.

Guest researchers from European Union Member States will be granted either a residence permit for “students”, “all professional activities” or “non active” depending on their situation.

6.1.8. Artists

A residence permit within the category “artistic or cultural profession” may be granted to aliens holding a work contract or similar, concluded for the duration of at least three months, but not more than one year, with a company or establishment whose main activities lie in the area of artistic activities. The residence permit within the category “artistic or cultural profession” is equivalent to a work permit, which authorises the holder to exercise an artistic profession during the duration stated in the contract.

Artists from European Union Member States will be granted either a residence permit for “students”, “all professional activities” or “non active” depending on their situation.

6.1.9. Persons with private means

Persons with private means need to apply for a temporary residence permit, valid for one year. It is granted to aliens who either do not work or exercise a specific professional activity, which would require a work permit.

6.2. Conditions

For a short-term visa, the applicant has to explain the reason of his/her stay in France and prove that s/he has got sufficient means to cover the costs of living in France.

In the application for a long-term visa (“*visa de long séjour*”) the aim and conditions of the stay in France have to be justified.

The granting of the residence permit is subject to the condition that the applicant does not present a danger to public safety. The applicant has to present the following documents when applying for the residence permit in France:

- a visa for a period exceeding three months;
- a medical record;
- health insurance;
- three photographs; and
- all necessary documents to prove that the application for a residence permit under a certain category is justified, as explained below.

Applicants from European Union Member States need to present the following documents in order to receive a residence permit:

- a valid passport or national identity card;
- a proof of accommodation
- a declaration stating the s/he has got a social security
- a proof of possession of sufficient funds to cover living expenses;
- a proof of registration in a university or school (in the case of students)

6.2.1. Students, unpaid trainees and EU trainees

Applicants have to prove that they are able to cover their living expenses in France (70% of the monthly allowance granted to students by the French Government) and they need to have a health insurance. Students who study in France on a scholarship from their own government are accepted without further requirements concerning the amount of the scholarship.

When applying for a visa, the applicant is required to sign a paper stating that after expiration of the visa, the applicant will return to his/her country of origin. However, this signature does not have legal status and the applicant is not obliged to give any guarantee that s/he actually will go back, nor does s/he have to prove the existence of a working contract in his/her country of origin.

6.2.2. Vocational trainees

The trainee has to present the traineeship offer. When applying for a visa, trainees are asked to sign a paper stating that they will return to their countries of origin upon expiry of the visa granted.

6.2.3. Information trainees

If the “information trainee” does not receive money for his/her research s/he has to give proof of sufficient means to cover the costs of living. When applying for a visa, information trainees too are asked to sign a paper stating that they will return to their countries of origin upon expiry of the visa.

6.2.4. Au pairs

When applying for the visa, au pairs are also asked to sign a paper stating that they will return to their countries of origin upon expiry of the visa. They have to have a minimum knowledge of French and they have to follow a language course during their stay in France.

6.2.5. Guest researchers

An “admission protocol” (*protocole d'accueil*) issued by the institution which intends to accept the applicant, has to be submitted to the French embassy when a guest researcher applies for a long-term visa. This institution has to be on a list of authorised establishments. For this kind of residence permit it is not necessary to present proof of sufficient means to cover the costs of living.

6.2.6. Artists

The contract for the artistic activity must to be produced when applying for a long-term visa. The artist has to present this contract on the artistic activity either to the service for immigrant workers or the service for cultural affairs. Proof concerning the existence of sufficient means to cover the costs of living is not necessary. The applicant does not have to sign a legal obligation to leave French territory after the completion of the contract.

6.2.7. Journalists and clergy

The applicants have to prove the existence of sufficient means to cover the costs of living. Concerning clergy, if the religious community accepts the responsibility for the applicant, the authorities cannot insist on this requirement.

6.2.8. Persons with private means

Aliens who apply for a residence permit with the category “visitor” must have a health insurance and sufficient financial means to cover the cost of living. They are not allowed to engage in any professional activity that requires an official authorisation.

6.3. Procedure

An application for either a short-term (“*visa de court séjour*”) or a long-term visa (“*visa de long séjour*”) has to be filed at the French embassy in the country of origin. A short-term visa (“*visa de court séjour*”) costs 164-328 FRF (25,002-50,003 EURO). A one month visa costs 164 FRF (25,002 EURO), a three month visa costs 197 FRF (30,032 EURO), and a multiple entry visa 328 FRF (50,003 EURO). A long-term visa (“*visa de long séjour*”) costs 650 FRF (99,092 EURO).

When arriving in France the applicant has to apply for a residence permit at the *préfecture* of the municipality of residence. The *préfect* has the authority to investigate the application. The applications for visa and residence permits have to be submitted in French and the processing of the applications takes anything from a few days to a few weeks.

The issuing of a residence permit in France is completely free of charge. Until the residence permit is issued, the alien receives a provisional residence document (*récépissé*), which is valid for three months.

In addition, the following applies to the listed categories below:

6.3.1. Vocational trainees and au pairs

At the same time as the applicant files his/her visa application at the French embassy in the country of origin, the employer has to file an application for a provisional work permit with the municipal authorities in charge of aliens issues. Once this permit is granted, the French Embassy will issue a long-term visa. When applying for the residence permit, all the necessary documents for the traineeship including the provisional work permit have to be produced.

The company or institution which employs the trainee has to pay a fee to the *Office des Migrations Internationales (OMI)*, which is a semi-public office. The residence permit itself is granted free of charge.

6.4. Renewal

The temporary residence permit has to be renewed within one year. In cases where the administration refuses to renew the residence permit, the alien is informed accordingly, and has the right of appeal. If the decision goes against renewal of the residence permit, the alien has to leave the French territory within thirty days. The decision not to renew a residence permit may be subject to an appeal with either the authorities or the court. If the alien does not leave within the set time limit, his/her stay becomes illegal, and generally the competent *préfecture* will decide to deport him/her.

6.4.1. Students

The temporary residence permit for students is renewed every year as long as the applicant can prove progress in his/her studies. (In principle, two failed university courses are accepted.) The particular situation of the student may be taken into consideration, such as illness. A complete change of orientation is accepted only on a case by case basis. The student also need to have enough financial means to cover the costs of living.

6.4.2. Trainees

The renewal is subject to whether sufficient means to cover the living costs are available. The trainee normally has to leave national territory after completion of his/her internship.

6.4.3. Information trainees

With regard to “information trainees”, the maximum length of stay has not been regulated.

6.4.4. Guest researchers

The temporary residence permit for the category “scientist” can be renewed as long as the continuation of scientific research activities is proven.

6.4.5. Artists

The temporary residence permit for the category “artistic or cultural profession” can be renewed for the period of time stated in the contract.

6.4.6. Persons with private means

The temporary residence permit for the category “visitor” is being granted for one year and it can be renewed as long as the applicant can prove the existence of sufficient means to cover his/her costs of living.

6.5. Change of purpose of admission

If an alien has already been living in France with a temporary residence permit that allows him/her to stay in France for a specific reason, s/he has the option of submitting an application for a new residence permit for a different purpose of stay. Thus, a third country citizen may change the purpose of stay, without having to leave the country and apply for a new visa. The application for a residence permit issued for a different purpose of stay should be filed at the *préfecture* of the applicants place of residence.

6.5.1. Students and persons with private means

If a foreign student wants to change the purpose of stay in France after completion of his/her studies, s/he may apply for a residence permit for employees by presenting a job offer. The applicant will only be granted the new residence permit if s/he is also granted a work permit. A work permit can be denied if the situation on the labour market is unfavourable.

If the applicant has already been living in France regularly with a residence permit for students or visitor and wants to change the purpose of stay, s/he may apply for a residence permit in the category “artistic or cultural profession”.

6.6. Rights and status of third country nationals in comparison to EU and EEA nationals

6.6.1. Students

As soon as students are integrated in the social security system, they benefit from a health insurance.

6.6.2. Guest researchers, guest researchers and artists

The third country citizen may be incorporated in the social security system and may be allowed to benefit from a health insurance.

6.7. Family reunification

The main permit holder may request to be joined by his/her spouse under the programme of family reunification. The applicant has to prove both sufficient means to cover the costs of living of the family members and the existence of adequate accommodation. The spouse will be granted a temporary residence permit, provided s/he entered the country with a valid visa and does not present a danger to public safety. The spouse (family member) who is accepted under the category of family reunification receives the same residence permit as the main permit holder. The permit has to be renewed yearly. Children who are minors in the custody of the applicant may enter French territory for the purpose of family reunification, with a valid visa. They do not have to apply for a residence permit until they are adults.

6.7.1. Students

A foreign student, who has been living regularly in France for at least one year may apply for family reunification. If the foreign spouse is also a student the procedure for family reunification is not applicable. Such persons have to follow the regular procedures for students.

6.7.2. Trainees and au pairs

This issue of family reunification is not applicable here due to the limited duration of stay in the cases of trainees and au pairs.

6.7.3. Artists

An artist may request to be joined by his/her spouse under the programme of family reunification after one year of regular stay in France. If the spouse wants to come to France before the completion of one year, s/he cannot do so under the programme for family reunification, but has to apply for a separate residence permit which fulfils the respective criteria.

6.7.4. Persons with private means

The main permit holder may request to be joined by his/her spouse under the programme of family reunification after one year of regular stay in France. If the spouse wants to come to France before the completion of one year, the same rules apply as for 6.7.3

6.8. Fraud

Fraud may lead to the withdrawal of the residence permit.

6.9. Removal

It is possible to withdraw the residence permit if the authorities suspect that the alien represents a severe danger to public safety. The alien will consequently be removed.

6.9.1. Students

A residence permit can be withdrawn if the applicant does not receive his/her degree within the specified period of time, or if the applicant has changed subjects without having received a degree.

6.9.2. Trainees and au pairs

The residence permit for trainees and au pairs can only be withdrawn after eighteen months or in cases where the person presents a danger to public safety.

6.10. Legal developments

Main laws and legal regulation concerning the admission and residence of aliens:

- Ordonnance n° 45-2658 du 2 novembre 1945 relative aux conditions d'entrée et de séjour des étrangers en France : texte modifié en dernier lieu par la loi du 11 mai 1998
- Décret n° 46-1574 du 30 juin 1946 réglementant les conditions d'entrée et de séjour des étrangers en France : texte modifié en dernier lieu par le décret n° 99-352 du 5 mai 1999

- Décret n° 99-566 du 6 juillet 1999 relatif au regroupement familial
- Décret n° 99-1 du 4 janvier 1999 relatif à la motivation des refus de visas opposés aux étudiants étrangers, pris en application du 1° de l'article 5 de l'ordonnance n° 45-2658 du 2 novembre 1945
- Décret n° 98-864 du 23 septembre 1998 modifiant le décret n° 94-211 du 11 mars 1994 réglementant les conditions d'entrée et de séjour des ressortissants des Etats membres de la Communauté européenne bénéficiant de la libre circulation des personnes

Instructions issued by the Ministry of Interior :

- Circulaire du 12 mai 1998 relative à l'application de la loi du 11 mai 1998
- Circulaire du 1er décembre 1999 relative à l'application du décret du 5 mai 1999
- Circulaire du 16 juin 1999 relative aux conditions de séjour des ressortissants des Etats membres de l'Union européenne et des Etats parties à l'E.E.E.

Le Conseil Constitutionnel decided on 13 August 1993 (case law decision no 93-325) that Art. 23 of the *loi relative à la maîtrise de l'immigration et aux conditions d'entrée, d'accueil et de séjour des étrangers en France* was contrary to the Constitution. Since, if the previous marriage of a student was annulled and the former spouse was already in France, family reunion was possible only after two years after the dissolution of the first marriage, according to Art. 23.

6.11. Statistics

Table 6.2: Temporary residence permits issued to students, trainees and persons with private means (third country nationals) in 1998.

Category	1998
Admitted students (flow number)	31,500 (30% of all temporary residence permits)
Total number of students (stock number)	62,000
Admitted trainees and persons with private means (flow number)	13,840 (13% of all temporary residence permits)
Total number of trainees and persons with private means (stock number)	23,400

Source: Ministry of Interior

6.12. Conclusions

Third country citizens need a long-term visa (*visa de long séjour*) to enter France. Later the applicant has to apply for a residence permit (*titre de séjour*). When applying for a short-term visa, the applicant has to justify the aim and conditions for his/her stay in France. Admission of the categories of persons reviewed in the present study seem to be favoured. In particular students from former colonies are favoured. In 1998, 31,500 third country students were admitted to France (30% of all issued temporary residence permits) and 13,840 trainees and persons with private means (13% of issued temporary residence permits). Unpaid trainees, EU-trainees, information trainees, guest researchers and artists do not need a work permit. Whereas, vocational trainees and au pairs need a provisional work permit. To work on a half-time basis, students need to apply for a provisional work permit, which they normally receive almost automatically. Nationals of Togo, Gabon and Algeria do not have to apply for such a permit. Change of purpose of admission is in principle allowed. If, for instance, a foreign student wants to change the purpose of stay in France after completion of his/her studies, s/he may apply for a residence permit for employees by presenting a job offer. The new residence permit will be granted, if the applicant is also granted a work permit.

The maximum duration of stay for au pairs and vocational trainees is limited to 18 months. Other categories can have their temporary residence permits renewed as long as they continue to meet all necessary criteria. Aliens who have lived legally for at least one year in France may apply for family reunification. This is however not applicable to au pairs and trainees due to the limited duration of stay.

7. GERMANY

7.1. General admission regulations

To be admitted to German territory, third country nationals need a valid short-term visa or residence authorisation (*Aufenthaltsgenehmigung*). The Aliens Act differentiates between four kinds of residence authorisations¹⁸²:

- Residence permit (*Aufenthaltserlaubnis*), allowing residence without restriction for a certain purpose¹⁸³
- Permanent residence permit (*Aufenthaltsberechtigung*), improving the status enjoyed under a residence permit in as much as it is neither limited in temporary nor territorial respect, or placed under any conditions or restrictions¹⁸⁴
- Residence concession (*Aufenthaltsbewilligung*), allowing residence in Germany limited to a certain purpose¹⁸⁵
- Residence title for exceptional circumstances (*Aufenthaltsbefugnis*)¹⁸⁶

Please note that in the present context, only residence permit and residence concession are of relevance.

The Draft General Administrative Provisions to the Aliens Act,¹⁸⁷ supposed to be adopted in the near future, is intended to codify the existing legal practice and limit the discretionary power of the authorities.

The number of admissions are not limited by any admission quotas or ceilings.

EU citizens and EEA nationals have the right to admission for three months on the basis of a valid travel document.¹⁸⁸ For a stay exceeding three months, EU citizens need a residence permit (*Aufenthaltserlaubnis-EG*).¹⁸⁹ The residence permit is granted for a maximum period of five years.

¹⁸² Section 5 of the Aliens Act 1990. The translations of the *termini technici* used for the residence titles are contained in the official translation of the Asylum Procedure Act as distributed by Inter Nationes, Bonn (government agency) except for the term 'permanent residence permit'.

¹⁸³ Section 15 *ibid.*

¹⁸⁴ Section 27 *ibid.*

¹⁸⁵ Section 28 *ibid.*

¹⁸⁶ Section 30 and 32a

¹⁸⁷ Entwurf einer Allgemeinen Verwaltungsvorschrift zum Ausländergesetz

¹⁸⁸ Section 8 of the Federal Statute on Entry and Residence of nationals of the Member States of the European Community

¹⁸⁹ Aufenthaltsgesetz/EWG

If the student then passes the entrance examination, s/he may directly apply for a residence permit without having to leave the country and present a long-term visa.

The temporary residence permit for students is being granted for one year to an alien who intends to study in a public or private school.

To work on a half-time basis students need to apply for a provisional work permit, which they normally receive almost automatically. Nationals from Togo, Gabon and Algeria do not have to apply for such a permit. The provisional work permit does not have the same status as a residence permit with the category “employee”. There are no quotas or age limits for students.

Students coming from a European Union Member State do not have to apply for a visa, but have to apply for a temporary residence including the endorsement “Student-European Union”. This permit is granted for one year and renewable throughout the duration of the studies.

6.1.2. Unpaid trainees

The temporary residence permit for students valid for one year is also being granted to unpaid trainees.

Trainees coming from a European Union Member State do not have to apply for a visa, but have to apply for a temporary residence permit, including the endorsement “Student-European Union”. This permit is granted for one year and renewable throughout the duration of the traineeship.

6.1.3. Vocational trainees

Vocational trainees stay in France during a limited period of time, normally between 3 and 12 months, but, not for longer than 18 months. The aim is to undertake remunerated training besides theoretical learning, or, to carry out either vocational training or language studies within an exchange framework between a foreign and a French company/institution. Students may be allowed to take up a traineeship during or after the completion of their studies.

Vocational trainees and students taking up an traineeship need a temporary residence permit, which is valid for six months, and a provisional work permit. The provisional work permit is initially granted for six months, but it can be renewed. The maximum duration of stay is eighteen months.

Trainees coming from a European Union Member State do not have to apply for a visa, but have to apply for a temporary residence permit endorsed “Student-European Union”. This permit is granted for one year and renewable throughout the duration of the traineeship.

6.1.4. EU trainees

The temporary residence permit for students valid for one year is also being granted to trainees taking part in EU study programmes. A work permit is not needed.

Trainees coming from a European Union Member State do not have to apply for a visa, but have to apply for a temporary residence including the endorsement “Student-European Union”. This permit is granted for one year and renewable throughout the duration of the traineeship.

6.1.5. Information trainees

“Information trainees” stay in France in general for a short period of time in order to learn about the activities of a company. Information trainees need a temporary residence permit, but not a work permit.

Trainees coming from a European Union Member State do not have to apply for a visa, but have to apply for a temporary residence permit endorsed “Student-European Union”. This permit is granted for one year and renewable throughout the duration of the traineeship.

6.1.6. Au pairs

An “au pair” stays together with a family to improve his/her knowledge in French and does light household work. They are usually compensated for their responsibilities. An “au pair” should be between 18 to 35 years of age.

Au pairs need a temporary residence permit, which is valid for six months, and a provisional work permit. The provisional work permit is initially granted for six months, but it can be renewed. The maximum duration of stay is eighteen months.

6.1.7. Guest researchers

A residence permit of the category “scientific” is granted to third country citizens who come to France to carry out scientific research or teach at a university, provided that s/he has been admitted to the scientific research centre or university in question. A work permit is not needed.

Guest researchers from European Union Member States will be granted either a residence permit for “students”, “all professional activities” or “non active” depending on their situation.

6.1.8. Artists

A residence permit within the category “artistic or cultural profession” may be granted to aliens holding a work contract or similar, concluded for the duration of at least three months, but not more than one year, with a company or establishment whose main activities lie in the area of artistic activities. The residence permit within the category “artistic or cultural profession” is equivalent to a work permit, which authorises the holder to exercise an artistic profession during the duration stated in the contract.

Artists from European Union Member States will be granted either a residence permit for “students”, “all professional activities” or “non active” depending on their situation.

6.1.9. Persons with private means

Persons with private means need to apply for a temporary residence permit, valid for one year. It is granted to aliens who either do not work or exercise a specific professional activity, which would require a work permit.

6.2. Conditions

For a short-term visa, the applicant has to explain the reason of his/her stay in France and prove that s/he has got sufficient means to cover the costs of living in France.

In the application for a long-term visa (“*visa de long séjour*”) the aim and conditions of the stay in France have to be justified.

The granting of the residence permit is subject to the condition that the applicant does not present a danger to public safety. The applicant has to present the following documents when applying for the residence permit in France:

- a visa for a period exceeding three months;
- a medical record;
- health insurance;
- three photographs; and
- all necessary documents to prove that the application for a residence permit under a certain category is justified, as explained below.

Applicants from European Union Member States need to present the following documents in order to receive a residence permit:

- a valid passport or national identity card;
- a proof of accommodation
- a declaration stating the s/he has got a social security
- a proof of possession of sufficient funds to cover living expenses;
- a proof of registration in a university or school (in the case of students)

6.2.1. Students, unpaid trainees and EU trainees

Applicants have to prove that they are able to cover their living expenses in France (70% of the monthly allowance granted to students by the French Government) and they need to have a health insurance. Students who study in France on a scholarship from their own government are accepted without further requirements concerning the amount of the scholarship.

When applying for a visa, the applicant is required to sign a paper stating that after expiration of the visa, the applicant will return to his/her country of origin. However, this signature does not have legal status and the applicant is not obliged to give any guarantee that s/he actually will go back, nor does s/he have to prove the existence of a working contract in his/her country of origin.

6.2.2. Vocational trainees

The trainee has to present the traineeship offer. When applying for a visa, trainees are asked to sign a paper stating that they will return to their countries of origin upon expiry of the visa granted.

6.2.3. Information trainees

If the “information trainee” does not receive money for his/her research s/he has to give proof of sufficient means to cover the costs of living. When applying for a visa, information trainees too are asked to sign a paper stating that they will return to their countries of origin upon expiry of the visa.

6.2.4. Au pairs

When applying for the visa, au pairs are also asked to sign a paper stating that they will return to their countries of origin upon expiry of the visa. They have to have a minimum knowledge of French and they have to follow a language course during their stay in France.

6.2.5. Guest researchers

An “admission protocol” (*protocole d'accueil*) issued by the institution which intends to accept the applicant, has to be submitted to the French embassy when a guest researcher applies for a long-term visa. This institution has to be on a list of authorised establishments. For this kind of residence permit it is not necessary to present proof of sufficient means to cover the costs of living.

6.2.6. Artists

The contract for the artistic activity must to be produced when applying for a long-term visa. The artist has to present this contract on the artistic activity either to the service for immigrant workers or the service for cultural affairs. Proof concerning the existence of sufficient means to cover the costs of living is not necessary. The applicant does not have to sign a legal obligation to leave French territory after the completion of the contract.

6.2.7. Journalists and clergy

The applicants have to prove the existence of sufficient means to cover the costs of living. Concerning clergy, if the religious community accepts the responsibility for the applicant, the authorities cannot insist on this requirement.

6.2.8. Persons with private means

Aliens who apply for a residence permit with the category “visitor” must have a health insurance and sufficient financial means to cover the cost of living. They are not allowed to engage in any professional activity that requires an official authorisation.

6.3. Procedure

An application for either a short-term (*“visa de court séjour”*) or a long-term visa (*“visa de long séjour”*) has to be filed at the French embassy in the country of origin. A short-term visa (*“visa de court séjour”*) costs 164-328 FRF (25,002-50,003 EURO). A one month visa costs 164 FRF (25,002 EURO), a three month visa costs 197 FRF (30,032 EURO), and a multiple entry visa 328 FRF (50,003 EURO). A long-term visa (*“visa de long séjour”*) costs 650 FRF (99,092 EURO).

When arriving in France the applicant has to apply for a residence permit at the *préfecture* of the municipality of residence. The *préfet* has the authority to investigate the application. The applications for visa and residence permits have to be submitted in French and the processing of the applications takes anything from a few days to a few weeks.

The issuing of a residence permit in France is completely free of charge. Until the residence permit is issued, the alien receives a provisional residence document (*récépissé*), which is valid for three months.

In addition, the following applies to the listed categories below:

6.3.1. Vocational trainees and au pairs

At the same time as the applicant files his/her visa application at the French embassy in the country of origin, the employer has to file an application for a provisional work permit with the municipal authorities in charge of aliens issues. Once this permit is granted, the French Embassy will issue a long-term visa. When applying for the residence permit, all the necessary documents for the traineeship including the provisional work permit have to be produced.

The company or institution which employs the trainee has to pay a fee to the *Office des Migrations Internationales (OMI)*, which is a semi-public office. The residence permit itself is granted free of charge.

6.4. Renewal

The temporary residence permit has to be renewed within one year. In cases where the administration refuses to renew the residence permit, the alien is informed accordingly, and has the right of appeal. If the decision goes against renewal of the residence permit, the alien has to leave the French territory within thirty days. The decision not to renew a residence permit may be subject to an appeal with either the authorities or the court. If the alien does not leave within the set time limit, his/her stay becomes illegal, and generally the competent *préfecture* will decide to deport him/her.

6.4.1. Students

The temporary residence permit for students is renewed every year as long as the applicant can prove progress in his/her studies. (In principle, two failed university courses are accepted.) The particular situation of the student may be taken into consideration, such as illness. A complete change of orientation is accepted only on a case by case basis. The student also need to have enough financial means to cover the costs of living.

6.4.2. Trainees

The renewal is subject to whether sufficient means to cover the living costs are available. The trainee normally has to leave national territory after completion of his/her internship.

6.4.3. Information trainees

With regard to “information trainees”, the maximum length of stay has not been regulated.

6.4.4. Guest researchers

The temporary residence permit for the category “scientist” can be renewed as long as the continuation of scientific research activities is proven.

6.4.5. Artists

The temporary residence permit for the category “artistic or cultural profession” can be renewed for the period of time stated in the contract.

6.4.6. Persons with private means

The temporary residence permit for the category “visitor” is being granted for one year and it can be renewed as long as the applicant can prove the existence of sufficient means to cover his/her costs of living.

6.5. Change of purpose of admission

If an alien has already been living in France with a temporary residence permit that allows him/her to stay in France for a specific reason, s/he has the option of submitting an application for a new residence permit for a different purpose of stay. Thus, a third country citizen may change the purpose of stay, without having to leave the country and apply for a new visa. The application for a residence permit issued for a different purpose of stay should be filed at the *préfecture* of the applicants place of residence.

6.5.1. Students and persons with private means

If a foreign student wants to change the purpose of stay in France after completion of his/her studies, s/he may apply for a residence permit for employees by presenting a job offer. The applicant will only be granted the new residence permit if s/he is also granted a work permit. A work permit can be denied if the situation on the labour market is unfavourable.

If the applicant has already been living in France regularly with a residence permit for students or visitor and wants to change the purpose of stay, s/he may apply for a residence permit in the category “artistic or cultural profession”.

6.6. Rights and status of third country nationals in comparison to EU and EEA nationals

6.6.1. Students

As soon as students are integrated in the social security system, they benefit from a health insurance.

6.6.2. Guest researchers, guest researchers and artists

The third country citizen may be incorporated in the social security system and may be allowed to benefit from a health insurance.

6.7. Family reunification

The main permit holder may request to be joined by his/her spouse under the programme of family reunification. The applicant has to prove both sufficient means to cover the costs of living of the family members and the existence of adequate accommodation. The spouse will be granted a temporary residence permit, provided s/he entered the country with a valid visa and does not present a danger to public safety. The spouse (family member) who is accepted under the category of family reunification receives the same residence permit as the main permit holder. The permit has to be renewed yearly. Children who are minors in the custody of the applicant may enter French territory for the purpose of family reunification, with a valid visa. They do not have to apply for a residence permit until they are adults.

6.7.1. Students

A foreign student, who has been living regularly in France for at least one year may apply for family reunification. If the foreign spouse is also a student the procedure for family reunification is not applicable. Such persons have to follow the regular procedures for students.

6.7.2. Trainees and au pairs

This issue of family reunification is not applicable here due to the limited duration of stay in the cases of trainees and au pairs.

6.7.3. Artists

An artist may request to be joined by his/her spouse under the programme of family reunification after one year of regular stay in France. If the spouse wants to come to France before the completion of one year, s/he cannot do so under the programme for family reunification, but has to apply for a separate residence permit which fulfils the respective criteria.

6.7.4. Persons with private means

The main permit holder may request to be joined by his/her spouse under the programme of family reunification after one year of regular stay in France. If the spouse wants to come to France before the completion of one year, the same rules apply as for 6.7.3

6.8. Fraud

Fraud may lead to the withdrawal of the residence permit.

6.9. Removal

It is possible to withdraw the residence permit if the authorities suspect that the alien represents a severe danger to public safety. The alien will consequently be removed.

6.9.1. Students

A residence permit can be withdrawn if the applicant does not receive his/her degree within the specified period of time, or if the applicant has changed subjects without having received a degree.

6.9.2. Trainees and au pairs

The residence permit for trainees and au pairs can only be withdrawn after eighteen months or in cases where the person presents a danger to public safety.

6.10. Legal developments

Main laws and legal regulation concerning the admission and residence of aliens:

- Ordonnance n° 45-2658 du 2 novembre 1945 relative aux conditions d'entrée et de séjour des étrangers en France : texte modifié en dernier lieu par la loi du 11 mai 1998
- Décret n° 46-1574 du 30 juin 1946 réglementant les conditions d'entrée et de séjour des étrangers en France : texte modifié en dernier lieu par le décret n° 99-352 du 5 mai 1999

- Décret n° 99-566 du 6 juillet 1999 relatif au regroupement familial
- Décret n° 99-1 du 4 janvier 1999 relatif à la motivation des refus de visas opposés aux étudiants étrangers, pris en application du 1° de l'article 5 de l'ordonnance n° 45-2658 du 2 novembre 1945
- Décret n° 98-864 du 23 septembre 1998 modifiant le décret n° 94-211 du 11 mars 1994 réglementant les conditions d'entrée et de séjour des ressortissants des Etats membres de la Communauté européenne bénéficiant de la libre circulation des personnes

Instructions issued by the Ministry of Interior :

- Circulaire du 12 mai 1998 relative à l'application de la loi du 11 mai 1998
- Circulaire du 1er décembre 1999 relative à l'application du décret du 5 mai 1999
- Circulaire du 16 juin 1999 relative aux conditions de séjour des ressortissants des Etats membres de l'Union européenne et des Etats parties à l'E.E.E.

Le Conseil Constitutionnel decided on 13 August 1993 (case law decision no 93-325) that Art. 23 of the *loi relative à la maîtrise de l'immigration et aux conditions d'entrée, d'accueil et de séjour des étrangers en France* was contrary to the Constitution. Since, if the previous marriage of a student was annulled and the former spouse was already in France, family reunion was possible only after two years after the dissolution of the first marriage, according to Art. 23.

6.11. Statistics

Table 6.2: Temporary residence permits issued to students, trainees and persons with private means (third country nationals) in 1998.

Category	1998
Admitted students (flow number)	31,500 (30% of all temporary residence permits)
Total number of students (stock number)	62,000
Admitted trainees and persons with private means (flow number)	13,840 (13% of all temporary residence permits)
Total number of trainees and persons with private means (stock number)	23,400

Source: Ministry of Interior

6.12. Conclusions

Third country citizens need a long-term visa (*visa de long séjour*) to enter France. Later the applicant has to apply for a residence permit (*titre de séjour*). When applying for a short-term visa, the applicant has to justify the aim and conditions for his/her stay in France. Admission

of the categories of persons reviewed in the present study seem to be favoured. In particular students from former colonies are favoured. In 1998, 31,500 third country students were admitted to France (30% of all issued temporary residence permits) and 13,840 trainees and persons with private means (13% of issued temporary residence permits). Unpaid trainees, EU-trainees, information trainees, guest researchers and artists do not need a work permit. Whereas, vocational trainees and au pairs need a provisional work permit. To work on a half-time basis, students need to apply for a provisional work permit, which they normally receive almost automatically. Nationals of Togo, Gabon and Algeria do not have to apply for such a permit. Change of purpose of admission is in principle allowed. If, for instance, a foreign student wants to change the purpose of stay in France after completion of his/her studies, s/he may apply for a residence permit for employees by presenting a job offer. The new residence permit will be granted, if the applicant is also granted a work permit.

The maximum duration of stay for au pairs and vocational trainees is limited to 18 months. Other categories can have their temporary residence permits renewed as long as they continue to meet all necessary criteria. Aliens who have lived legally for at least one year in France may apply for family reunification. This is however not applicable to au pairs and trainees due to the limited duration of stay.

7. GERMANY

7.1. General admission regulations

To be admitted to German territory, third country nationals need a valid short-term visa or residence authorisation (*Aufenthaltsgenehmigung*). The Aliens Act differentiates between four kinds of residence authorisations¹⁹⁰:

- Residence permit (*Aufenthaltserlaubnis*), allowing residence without restriction for a certain purpose¹⁹¹
- Permanent residence permit (*Aufenthaltsberechtigung*), improving the status enjoyed under a residence permit in as much as it is neither limited in temporary nor territorial respect, or placed under any conditions or restrictions¹⁹²
- Residence concession (*Aufenthaltsbewilligung*), allowing residence in Germany limited to a certain purpose¹⁹³
- Residence title for exceptional circumstances (*Aufenthaltsbefugnis*)¹⁹⁴

Please note that in the present context, only residence permit and residence concession are of relevance.

The Draft General Administrative Provisions to the Aliens Act,¹⁹⁵ supposed to be adopted in the near future, is intended to codify the existing legal practice and limit the discretionary power of the authorities.

The number of admissions are not limited by any admission quotas or ceilings.

EU citizens and EEA nationals have the right to admission for three months on the basis of a valid travel document.¹⁹⁶ For a stay exceeding three months, EU citizens need a residence permit (*Aufenthaltserlaubnis-EG*).¹⁹⁷ The residence permit is granted for a maximum period of five years.

¹⁹⁰ Section 5 of the Aliens Act 1990. The translations of the *termini technici* used for the residence titles are contained in the official translation of the Asylum Procedure Act as distributed by Inter Nationes, Bonn (government agency) except for the term 'permanent residence permit'.

¹⁹¹ Section 15 *ibid.*

¹⁹² Section 27 *ibid.*

¹⁹³ Section 28 *ibid.*

¹⁹⁴ Section 30 and 32a

¹⁹⁵ Entwurf einer Allgemeinen Verwaltungsvorschrift zum Ausländergesetz

¹⁹⁶ Section 8 of the Federal Statute on Entry and Residence of nationals of the Member States of the European Community

¹⁹⁷ Aufenthaltsgesetz/EWG

Table 7.1: overview of required permits for admission and residence

Categories	Up to 3 months	More than 3 months
Students	Short-term visa (if required)	Residence concession
Unpaid trainees	Residence concession Work permit	Residence concession Work permit
Vocational trainees	Residence concession Work permit	Residence concession Work permit
EU trainees	Short-term visa (if required)	Residence concession
Exchange trainees	Short-term visa (if required)	Residence concession
Au pair	Residence concession Work permit	Residence concession Work permit
Guest researchers (academic lecturers, researchers, certain teachers) ¹⁹⁸	Residence permit	Residence permit
Other guest researchers	Residence permit	Residence permit Work permit
Artists	Residence permit	Residence permit Work permit
Journalists (employed by foreign media companies)	Residence concession	Residence permit
Clergy	Residence concession Work permit	Residence permit Work permit
Pensioners and persons with private means	Short-term visa (if required)	Residence permit

7.1.1. Students

A visa is required if the study period in Germany does not exceed 3 months, and if the student is not national of a visa-free country.

Third-country nationals wishing to enter the country as students,¹⁹⁹ and intending to stay longer than three months need a valid passport which contains, in the form of a visa, a residence concession expressly stating the subject or subjects studied.²⁰⁰ According to the Draft General Administrative Provisions to the Aliens Act the diplomatic representations shall issue the first residence concession for educational purposes for the following periods.²⁰¹

¹⁹⁸-academic lecturers and research assistants based in universities;

-research assistants of public research institutions;

-research assistants of similar institutions, which receive all or most of their funds from the public treasury;

-researchers in private research institutions provided that it is in the public interest to appoint the researcher in question for reason of his/her outstanding expertise;

-teachers of public or private schools approved as a substitute for state schools

¹⁹⁹ Undergraduates, postgraduates, master programmes, doctorate studies, and habilitation (university lecturing qualification)

²⁰⁰ Number 28(5) 2 (4) of the Draft General Administrative Provisions to the Aliens Act

²⁰¹ Number 28 (5) 2 (2) 1 of the Draft General Administrative Provisions to the Aliens Act

- for a period up to one year if the Aliens Office (in the *Land* in question) expressly consents; or
- for the period covered by a German public stipend or by the government in the students home country.

A residence concession may be granted for the purpose of learning German through intensive training. The training should consist of daily classes of a total of at least 18 hours per week. They should be aimed at reaching fluency in German. Neither evening language classes nor weekend classes meet this criterion. According to the General Administrative Provisions to the Aliens Act, the visa must state that it has been granted for the purpose of participation in language training in a specified city.²⁰²

No work permit for students is required in the following cases, provided that the employment does not exceed an annual total period of three months:

- temporary employment (students of universities and technical colleges based in Germany)
- holiday employment of students at universities and technical colleges, arranged by the Federal Labour Office (*Bundesanstalt für Arbeit*)²⁰³

Temporary employment during holidays which exceeds this period and part-time employment may only be permitted if the employment in question does not result in a delay of studies. For the student in question to ensure his/her living, employment may be permitted in some cases. Provided that the alien has so far studied assiduously, and the respective university or school of applied science estimates that the student will successfully complete his/her studies. In these cases a work permit is needed. Students taking part in preparatory language classes are not allowed to work.²⁰⁴

Applicants for university studies or studies at a school of applied science may be granted a residence concession for the purpose of formally applying. The visa must expressly state that it is not a 'usual' short-term visa (maximum period: three months).²⁰⁵

7.1.2. Unpaid trainees

German law does not differentiate between paid and unpaid traineeship.²⁰⁶ For a period of stay not exceeding three months, a residence concession for short-term employment and also a work permit are required. For periods of stay exceeding three months, a residence concession is required.

7.1.3. Vocational trainees

The same requirement as for unpaid trainees apply. For a stay exceeding three months, a residence concession may be granted if the applicant belongs to one of the following groups:

²⁰² Number 28(5)(5)(1) *ibid.*

²⁰³ Section 9(9) of the Regulation on Work Authorisation (*Arbeitsgenehmigungsverordnung*)

²⁰⁴ Section 28(5)3 *ibid.*

²⁰⁵ Number 28(5)1(2) of the Draft General Administrative Provisions to the Aliens Act

²⁰⁶ Unpaid traineeship qualifies as employment if it is common to provide remuneration for the work in question, Section 12(1) of the Regulation Implementing the Aliens Act

- Aliens who have passed German or foreign university or school of applied sciences and who shall take part in on-the-job training at a university, scientific institute or other recognised institution.
- Key personnel of foreign governments who receive a public stipend. The validity is limited to the period of the stipend.
- Aliens who are accepted to take part in a recognised training scheme to reach a formally higher level of qualification, and hold a school degree giving them access to a university or school of applied sciences. It should be in the public interest (development interest in particular) that the applicant receives the training and it should be common that it is undertaken at the international level.
- Aliens employed by a German enterprise abroad, who shall receive on the job training in Germany (maximum period: one year).
- Aliens employed by a joint venture, where one of the partner companies is German and which has been established on the basis of an international agreement (maximum period: one year)
- Aliens who shall receive on-the-job training in Germany in the context of the implementation of an export or license treaty (maximum period: one year)
- Aliens who have passed a German university or school of applied sciences and shall receive related practical training for the purpose of deepening their knowledge
- Aliens who shall receive on-the-job training in a German enterprise or co-operation project as key personnel, provided that such training is envisaged in an international agreement or in an agreement concluded by associations defending private sector interest²⁰⁷ (maximum period in all cases mentioned: two years)²⁰⁸
- Since 1989, a number of bilateral agreements covering mainly the employment of trainees for the purposes of improving professional and language skills have been signed between Germany and mostly CEEC. Such bilateral agreements exist between Germany and: Poland, Romania, Bulgaria, Turkey, Bosnia-Herzegovina, FYROM, Hungary, Croatia, Slovakia, Czech Republic, Slovenia and Latvia.²⁰⁹ The traineeships are limited to 18 months.

7.1.4. EU-trainees

For a stay not exceeding three months, EU-trainees require neither a residence concession nor a work permit. For a period of stay exceeding three months a residence concession is needed, but not a work permit, since the temporary traineeship is part of a programme which is financially supported by the EU.²¹⁰

7.1.5. Exchange trainees

For a stay not exceeding three months, only a travel visa is required. For a stay exceeding three months a residence concession is needed. No work permit is required if the traineeship does not exceed six months and it is directly connected with the subject studied. It also needs to form part of an exchange program of student organisations or similar organisations to which the Central Employment Agency (*Zentralstelle für Arbeitsvermittlung – ZAV*) has given its necessary consent.²¹¹

²⁰⁷ Industrie- und Handelskammer, Verbände der Wirtschaft, etc.

²⁰⁸ Section 2(1)(2) and (4) of the Regulation of Stays for Work Purposes (*Arbeitsaufenthalteverordnung*)

²⁰⁹ Ministry of Interior

²¹⁰ Section 9(17) of the Regulation on Work Authorisation (*Arbeitsgenehmigungsverordnung*)

²¹¹ Section 9(15) *ibid*

7.1.6. Au pairs

For a stay not exceeding three months, a residence concession for the purpose of short-term employment and a work permit are required. For a stay exceeding three months a residence concession and a work permit are required.²¹²

7.1.7. Guest researchers

For a period of stay not exceeding three months, a short-term residence permit is required. If scientists keep their domicile abroad and stay in Germany for a period up to three months for the purpose of giving a speech or similar performance of particular scientific significance no work permit is required.²¹³

For a period exceeding three months, a residence permit is required. The following groups do not need a work permit:

- academic lecturers and research assistants based in universities;
- research assistants in public research institutions;
- research assistants in similar institutions which receive all or most of their funds from the public treasury;
- researchers of private research institutions provided that it is in the public interest to appoint the researcher in question for reasons of his/her outstanding expertise (highly qualified persons in the sciences, research, technology and the arts);
- teachers in public or private schools approved as a substitute for state schools.²¹⁴

Other academics to be appointed to a job in research and teaching for reasons of their knowledge and skills need a work permit.²¹⁵ Teachers in the mother tongue of immigrant children and university lecturers need a work permit.²¹⁶

7.1.8. Artists

For a period of stay not exceeding three months, a short-term residence permit is required. A work permit is not required.²¹⁷ For a period of stay exceeding three months, artists and their staff need a residence permit²¹⁸ and a work permit.

7.1.9. Journalist

A residence concession for the purpose of short term employment is required for a period not exceeding three months. For a period of stay exceeding three months, a residence permit is required. Journalists who work for a foreign-based employer and have been approved for this specific purpose by the Press and Information Office of the Federal Government need not a work permit in either case.²¹⁹

7.1.10. Clergy

Members of the clergy who have passed an examination of a recognised educational establishment and are qualified to teach religious classes at schools or to hold services, or who

²¹² Section 2(2)(4) *ibid.*

²¹³ Section 9(6) of the Regulation on Work permits (*Arbeitsgenehmigungsverordnung*)

²¹⁴ Section 9(8) *ibid.*

²¹⁵ Section 5(1) of the Regulation on Stays for Work Purposes

²¹⁶ Section 4(2) and (3) *ibid.*

²¹⁷ Section 9(6) of the Regulation on Work permits

²¹⁸ Section 5(9) of the Regulation on Stays for Work Purposes

²¹⁹ Section 9(11) of the Regulation on Work permits

shall work as ministers of immigrant communities are eligible for the following permits: for a period of stay not exceeding three months, a residence concession for short-term employment and a work permit are required. For a period of stay exceeding three months a residence permit and a work permit are required.²²⁰

7.1.11. Pensioners and persons with private means

A stay not exceeding three months is subject to visa regulations for tourist purposes. If the period of stay exceeds three months, a residence permit is necessary.

7.1.12. Others not gainfully employed

- Participants of the voluntary social year or the voluntary ecological year, etc.: a stay not exceeding three months is subject to visa regulations for tourist purposes. For a period of stay exceeding three months, a residence concession is necessary. A work permit is not necessary.²²¹
- Family aid:
a residence concession may be granted for the purpose of temporary family aid.²²² Care of minors while both parents are engaged in an occupation does not qualify as family aid. Only parents and children of the sponsor are eligible for temporary family aid.

7.2. Conditions

Applicants are not obliged to prove any language skills. The applicant does not have to forward any guarantees or provisions for the return home after the purpose of the stay is concluded (e.g. proof of employment in the home country). There are also no requirements with regard to accommodation in Germany. A formal invitation or personal links to residents are principally neither required, nor helpful.

Generally, the residence permit shall be refused if:

- There is reason for deportation; or
- The alien is not able to cover his/her living expenses including sufficient health and accident insurance, on the basis of private means, maintenance payments received by family members or third persons, stipends, allowances for retraining or vocational training, etc.
- If the presence of the alien would impede or endanger the interests of the Federal Republic for other reasons.

If the alien is a danger to public health, the residence concession shall be refused, although health checks are not required. Generally the residence concession shall be refused for aliens having committed criminal acts.²²³

²²⁰ Section 5(6) of the Regulation on Stays for Work Purposes

²²¹ Section 9(16) of the Regulation on Work permits

²²² Number 28(6) of the Draft General Administrative Provisions to the Aliens Act

²²³ Section 7(2) and Section 45 et seq. of the Aliens Act

7.2.1. Students

The applicant needs to produce:

- a certificate stating that the applicant has been listed for enrolment, or;
- a certificate stating that the applicant must appear in person at the issuing institution *in persona*, and that the application for admission to the educational institution in question is likely to be accepted; or a certificate stating that a proper application has been filed.²²⁴

The financial means of the student must correspond to the standard rates as specified in the Federal Law on the Promotion of Education (*Bundesausbildungsförderungsgesetz*), at present 900 DM(=460 EURO= per month. The total sum to be presented must cover the costs of living for one full year. A written confirmation from the parents, relatives or other persons need to be forwarded, stating that they will take responsibility for the expenses. This document has to be translated into German and witnessed officially by a notary or an official authority. If not, a bank guarantee has to be provided as security, except if a study grant or stipend is provided by a German organisation.

According to the General Administrative Provisions to the Aliens Act, a residence concession for the purpose of learning the German language shall be granted if:

- the applicant provides proof of sufficient means to ensure his/her living; or
- s/he meets the relevant criteria to enrol as a student and the language training leads to either the German language test for access to academic education for foreign applicants (*Deutsche Sprachprüfung für den Hochschulzugang ausländischer Studienbewerber*) or to the central high school test (*Zentrale Oberstufenprüfung*) offered by the *Goethe Institute*.²²⁵

If the embassy personnel are in doubt of the intentions of the applicant, they may require a certificate concerning the language skills. In July 1998, the age limit of 30 years for students from developing countries was removed.

7.2.2. Au pairs

There are no age limits for au pairs staying for less than three months. If the au pair intends to stay for more than three months, s/he cannot be older than 25 years.²²⁶

7.2.3. Participants of the voluntary social year or the voluntary ecological year, etc.

No age limits apply to participants staying for less than three months, if staying for more than three months, the applicants are required to be 17-25 years of age.²²⁷

7.3. Procedure

Uniform procedural rules apply to all categories and as a matter of principle, applications for the necessary visa or residence permit must be made at a German diplomatic or consular missions abroad.²²⁸ If such mission does not exist in the alien's home country or it is not able to issue a visa, the Aliens Office in Berlin is the issuing authority, unless the Ministry of

²²⁴ Number 28(5)2(1) of the Draft General Administrative Provisions to the Aliens Act

²²⁵ Number 28(5)(5)(1) *ibid.*

²²⁶ Number 2(2)(4) *ibid.*

²²⁷ Section 9(16) of the Regulation on Work permits

²²⁸ Section 3(3) of the Aliens Act

Foreign Affairs has accorded the competency to issue visas to another diplomatic or consular mission.²²⁹

If the intended period of stay exceeds three months,²³⁰ the Alien's Office in the *Land* where the alien plans to stay must give its consent. Nevertheless, the competent German diplomatic or consular mission reserves the right to refuse a residence permit, if according to its assessment of the case, the requirements for granting a residence permit are not met.²³¹

The requirement that applications for a residence permit must be made in the respective home countries has been waived in relation to the following nationals:

- Citizens of the U.S.A may apply for a residence permit within three months after entry into Germany;
- Citizens of Honduras, Monaco, and San Marino may apply for a residence permit within three months after entry into Germany provided that they do not want to take up gainful employment.²³²

The applicant needs to present all required documents to establish the purpose of the stay. The authorities establish the validity of the concession (in practice, maximum two years) or the permit on the basis of forwarded documents and information.²³³ The authorities have to consider all relevant private and public interests. As a matter of principle, private interests cannot take precedence over public interests.²³⁴

An application does not have to be submitted in the German language, and the Aliens Office in Berlin has the capacity to produce translations. If necessary, applications are sent outside the Aliens Office for translation.

The fees are laid down in the regulation concerning Administrative Fees in Relation to the Aliens Act. This regulation specifies the following relevant fees:

- Residence concession (*Aufenthaltsbewilligung*): 50 DM(=26 EURO) for a period of maximum three months, and 80 DM(=41 EURO) for a period exceeding three months.
- Residence permit (*Aufenthaltsurlaubnis*): 100 DM(=51 EURO) if granted for a limited period, and 120 DM(=61 EURO) if granted for an unlimited period.
- national visa for a stay up to three months, when no consent of the Aliens Office is required: 40 DM(=21 EURO), and for stays exceeding three months: 50 DM(=26 EURO)
- national visa where consent of the Aliens Office is required: 50 DM(=26 EURO)
- Aliens who receive funding by means of public stipends are not charged fees for a visa and residence permit. Fees can be reduced or waived on a discretionary basis in cases of aliens who do not earn an income in Germany and pursue any kind of training or where reduction or waiver serve any relevant public interest (in particular: cultural, foreign policy, or development policy interests).²³⁵

²²⁹ Section 10 of the Regulation Implementing the Aliens Act. The jurisdiction of the Aliens Office's in Berlin is in such cases based on the fact that the Ministry of Foreign Affairs has its seat in Berlin.

²³⁰ or the alien wishes to take up gainful employment

²³¹ Section 11(1) and (2) of the Regulation Implementing the Aliens Act

²³² Section 9(1),(3) and (6) of the Regulation Implementing the Aliens Act

²³³ Section 28 of the Aliens Act

²³⁴ For instance, the private interest to fill certain vacancies has minor importance than the public interests related to the control of permanent immigration.

²³⁵ Ausländergebührenverordnung

Applications for studies (or employment) are dealt with as a matter of priority compared to applications submitted by pensioners.

EU citizens and EEA nationals may apply for a residence permit-EC at the Aliens Office in the Land where they reside, within three months after entry into Germany.²³⁶ No fees are charged, and, as a matter of principle applications must be made in German.²³⁷

7.3.1. Guest researchers

The diplomatic representation has the right to issue a residence permit, without the consent of the Alien's Office, if the guest researcher's stay has been arranged by a German science institution and s/he receives a public stipends for that purpose, or stays in Germany at the invitation of a university.²³⁸

7.3.2. Journalists

The Alien's Office has the right to determine the validity period of the residence concession on a discretionary basis.

7.4. Renewal

Renewal of residence authorisations can be granted if the aim pursued during the stay in Germany has not been reached and if it is likely to be reached within a reasonable period of time. A renewal can be granted for a maximum period of two years. The Aliens Office of the *Land* in question, is charged with the task of determining the period on a discretionary basis, applying the same criteria as those used when determining the initial period for residence authorisation.²³⁹ A renewal of residence authorisation may not result in the granting of a permanent residence permit, with the exception of teachers (see below).

The above mentioned conditions do not apply to the citizens of the countries listed in the table below, who may extend their resident permits for another three months, provided that they do not want to take up gainful employment.²⁴⁰

²³⁶ Section 9(1) and (6) of the Regulation Implementing the Aliens Act

²³⁷ Section 23(1) of the Administrative Procedure Act

²³⁸ Section 11(2) of the Regulation Implementing the Alien's Act

²³⁹ Section 13(1) and 28(2) of the Aliens Act

²⁴⁰ Mentioned in Annex I to the Regulation Implementing the Aliens Act.

Table 7.2: States whose citizens may extend their resident permits for another three months.

Andorra	Argentine	Belgium	Bolivia	Brazil
Chile	Costa Rica	Denmark	Ecuador	El Salvador
Finland	Guatemala	Greece	Honduras	Ireland
Iceland	Italy	Japan	Jamaica	Canada
Kenya	Columbia	(South) Korea	Croatia	Luxembourg
Malawi	Malaysia	Malta	Mexico	Monaco
Norway	Austria	Panama	Paraguay	Peru
Peru	Poland	San Marino	Sweden	Singapore
Slovak Republic	Slovenia	Czech Republic	Hungary	Uruguay
Venezuela	Cyprus	Switzerland and Liechtenstein	United Kingdom: Great Britain and Northern Ireland, and Channel Islands and Isle of Man	Australia including Cocos Islands, Norfolk Islands, Christmas Island
New Zealand including Cook Islands, Niue, Tokelau	France including French Guyana, French Polynesia, Guadeloupe, Martinique, New Caledonia, Reunion, St. Pierre and Miquelon	Netherlands including Netherlands Antilles Portugal including Macao	Spain including territories under Spanish sovereignty in Northern Africa (Ceuta, Melilla)	United States of America including American Virgin Islands, American Samoa, Guam, Puerto Rico

The fee for the renewal of a residence concession (*Aufenthaltsbewilligung*) for another three months is 25 DM(=13 EURO), and the fee for a renewal exceeding three months is 40 DM(=21 EURO). Aliens who receive funding by means of public stipends are not charged any fees for the renewal of the residence permit.

7.4.1. Students

The residence concession for students shall generally be renewed for another two years provided that:

- the student has sufficient means for his/her living, and;
- it is established that the studies s/he pursued (excluding, however, periods spent for language training and traineeships) do not exceed the average study period for more than three semesters.²⁴¹

The respective university or school of applied science is obliged to provide the necessary information concerning the average length of study on request by the authorities. Where sufficient means to cover the living costs exist only for a shorter period than the period applied for, the residence concession shall be renewed for that shorter period. Since July 1998, the maximum duration of stay is 15 years, including PhD studies.

7.4.2. Vocational trainees

With regard to vocational training, residence concessions granted may be renewed, regardless of whether such renewal exceeds any maximum periods mentioned in section 7.1.3 above, if:

- relevant international agreements include provision to this extent, or;

²⁴¹ Number 28(5)2(3) of the Draft General Administrative Provisions to the Aliens Act

- statutory law has fixed a longer period for the training in question than generally envisaged in the legal regulations on residence authorisation, or;
- the applicant in question requires a longer training period than envisaged in the legal regulations on residence authorisation.²⁴²

7.4.3. Guest researchers

The residence permit of teachers may be renewed and a permanent residence permit granted, provided that the *Land* plans to appoint the teacher in question permanently and that the respective ministry of education has determined that doing so is in the public interest. Renewal is precluded for a period of three years following the end of the stay of a mother tongue teacher for immigrants or a university lecturer for a foreign language.²⁴³

7.5. Change of purpose of admission

A residence permit is not restricted to a certain purpose and the question does consequently not arise.

A holder of a residence concession cannot in principle not change the purpose of stay, unless the stay has not exceeded one year.²⁴⁴ In addition, only exceptional cases or requirements under international agreements justify such a change of purpose.²⁴⁵ For instance, failure to meet the requirements for a desired traineeship or course of study does not justify a change of purpose. Moreover, a change of purpose may not be granted if the applicant has entered Germany on the basis of a visa or residence authorisation not exceeding three months (regardless of whether another three month extension was granted, or not).

A change from residence concession to residence permit, which also involve a change of purpose, is in principle not allowed. However, if the applicant has obtained a statutory claim for a residence permit (i.e. by way of marriage with a German, EU citizen, EEA national, or permanent resident alien) a change of purpose is, of course, allowed.

7.5.1. Students

In principle a change of the subject(s) studied results in a change of purpose of stay.²⁴⁶ However, changes of subject(s) within the same discipline made within 18 months after enrolment are allowed.²⁴⁷ In other cases a change of purpose may be granted if the change of subject is permitted under educational law and provided that the total surplus period of studies will not exceed 18 months. A certificate of the university or school of applied science is mandatory requirement for the change of purpose. In the remaining cases a change of purpose may only be granted if the applicant can be expected to complete his/her studies within a total period of ten years of staying in Germany. If long-time employment on a part-time basis is permitted, this should not result in a change of purpose of stay.

However, in some cases a change from a residence concession for students to a residence concession for work purposes, traineeship or employment as a scientifically qualified person may be granted.

²⁴² Section 2(1)2 (1-3 and 4) and Section 2(5) of the Regulation on Stays for Work Purposes

²⁴³ Section 4(2-6) *ibid.*

²⁴⁴ Section 28(3) of the Aliens Act

²⁴⁵ Number 28(3)1(1,2) of the Draft General Administrative Provisions to the Aliens Act

²⁴⁶ Number (28)5(2)4(1) *ibid.*

²⁴⁷ The examples given in the Draft General Administrative Provisions to the Aliens Act are changes from German language to Roman languages or substitution of Italian for French within the Roman languages.

7.5.2. Vocational training

Another exception to the general rule that a change in purpose is not allowed, relate to on-the-job training that may contribute to the applicant's integration into the labour market of his/her home country.²⁴⁸ The Aliens Office of the *Land* shall in this case request a plan for the intended on-the-job training. The intended training shall generally not exceed a period of two years. Where on-the-job training is required for recognition in a certain profession,²⁴⁹ a residence concession may be renewed beyond the two year period.

7.5.3. Guest researchers

A change of purpose is allowed if the granting of the residence permit is in the public interest (highly qualified persons in the sciences, research, technology and the arts).²⁵⁰ The public interest requirement is met if a university or science institution expresses that it supports the application and produces a certificate to this effect, or the applicant is a citizen of one of the following countries.

Table 7.3: Nationals who are highly qualified in the sciences, research, technology and the arts and who are employed in the public interest.²⁵¹

Andorra	Liechtenstein	Switzerland
Australia	Malta	United States of America
Canada	Monaco	Cyprus
Iceland	New Zealand	
Israel	Norway	
Japan	San Marino	

As already mentioned, also mother tongue teachers for immigrants may also be granted a permanent residence permit, provided that the Land plans to appoint the teacher in question permanently and that the respective ministry of education has decided that doing so is in the public interest.²⁵²

7.6. Rights and status

An alien's right to association has been limited in the interest of public security and safety.²⁵³ Additionally, aliens' rights to participate in public political debates may be limited or removed in the interest of public order.²⁵⁴

Aliens must provide their own health insurance, otherwise their residence authorisation may be revoked. The constitution includes an Article on the freedom to choose one's occupation, but aliens do not fall within the scope of this provision.²⁵⁵

²⁴⁸ Section 1 and Section 2(4) 1 and 5 of the Regulation on Stays for Work Purposes

²⁴⁹ Particular reference is made in Number 28(5)4(4) of the Draft General Administrative Provisions to the Aliens Act to the cases mentioned in Directive 89/478/EEC

²⁵⁰ Number 28(3)2(2) of the Draft General Administrative Provisions to the Aliens Act

²⁵¹ Section 9 of the Regulation Stays for Work Purposes

²⁵² Section 4(2) and (6) of the Regulation on Stays for Work Purposes

²⁵³ Section 14 of the Associations Act (*Vereinsgesetz*)

²⁵⁴ Section 37 of the Aliens Act

²⁵⁵ Section12(1) of the Basic Law

Third country nationals and nationals of EEA countries, are not entitled to vote in or stand for elections at any level, according to German constitutional law.²⁵⁶ This provision limits the extension of local voting rights to EU citizens.²⁵⁷

7.7. Family reunification

The general rule is that family reunification is permitted only if the main permit holder possesses a residence permit or a permanent residence permit. A holder of a residence concession cannot be joined by his/her family members. The following family members are eligible for unification:

- Spouses;²⁵⁸
- Minor and unmarried children under the age of 16²⁵⁹ where both parents hold a residence concession unless the parents' marriage has been dissolved.²⁶⁰
- Children born in Germany are granted a residence concession in an *ex officio* procedure²⁶¹

Family reunification may be granted if:

- The sponsor holds a residence permit or permanent residence permit, and;
- Sufficient accommodation exists.²⁶²
- The living expenses of the family member(s) can be covered by the sponsor on the basis of his/her income or assets or other personal means (including assets and means of the sponsored family member(s); excluding any public grants). This requirement may be waived in extreme hardship cases.²⁶³

Family reunification may be denied if reasons for removal exist.

The residence concessions or permits for family members are granted on a discretionary basis. They are granted for the same period as the sponsor's concession and shall be granted subject to the same limitations and conditions.

However, it must be borne in mind that in principle family members of third country citizens are barred from the labour market for a period of four years after family reunification with a person holding a residence permit of temporarily limited validity, or a residence concession.²⁶⁴ As a matter of principle family members may not change the purpose of admission (e.g. to residence independent of the original permit holder, or work while remaining family to the original permit holder).

²⁵⁶ Follows *a contrario* from Article 28(1) of the Basic Law

²⁵⁷ Germany has not acceded the Council of Europe *Convention on the Participation of Foreigners in the Public Life at Local Level* of 5 February 1992 (ETS No.144).

²⁵⁸ Section 29(1) of the Aliens Act. Non-marital and homosexual relationships do not qualify.

²⁵⁹ Concerning children born out of wedlock or children of divorced parents, only parents personally caring for the child in question qualify as sponsors and are eligible for family reunification (*Personensorgerecht*).

²⁶⁰ Section 29(2) and Section 20(2)(3) and (4) of the Aliens Act. Exceptions can be made where children between the age of 16 and 18 have German language proficiency or when, taking into account their education and living conditions, they can be expected to become integrated into the German society

²⁶¹ Section 29(2) and Section 21(1) of the Aliens Act

²⁶² The following living space must be provided: 12 square meters per person over six years of age; 10 square meters per person up to six years of age, and; additionally kitchen, bathroom and toilet (can be shared with another family unit). If the family lives in a flat of their own (no shared rooms) the necessary living space can be calculated including kitchen, bathroom and toilet. Section 17(4).3 of the Draft General Administrative Provisions to the Aliens Act

²⁶³ Section 17(2) of the Aliens Act

²⁶⁴ Section 3(1) of the Regulation on Work permit.

7.7.1. Students and guest researchers

With regard to family reunification, students, persons doing *Habilitation* and guest researchers are subject to the same types of conditions. Family reunification shall generally be granted if the main permit holder is enrolled and has the means to support him/herself and the family members, without becoming dependent on welfare provided that:

- the main permit holder receives a stipend;
- the main permit holder is a postgraduate student (German or foreign degree);
- the student is the national of a state included in table 7.3 above.

In other cases it must be established that denial of family reunification will result in extreme hardship for the student in question.

Family members who have themselves completed studies in Germany may be granted a change of purpose provided that:

- the student spouse can be expected to complete his/her studies within a reasonable period of time, and;
- the return of the family to the home country can be presumed guaranteed. (Standard cases are cases where the student's spouse receives a stipend.)²⁶⁵

7.8. Fraud

If the alien makes use of false or incomplete statements in order to get a residence authorisation for himself/herself or somebody else, s/he will be prosecuted.²⁶⁶ The offence is punishable with imprisonment for up to three years or a fine, and in particularly serious cases, with imprisonment from six months up to five years. The main consequence of fraud is that the residence authorisation may be withdrawn.²⁶⁷

7.9. Removal

A residence authorisation may be withdrawn if the alien:

- is a disturbance to public order or interferes with other important interest of the State;
- has committed a crime;
- commits acts of violence when taking part in political activities;
- violates the law on drugs;
- does not have accommodation; or
- in spite of being under the obligation to support him/herself and/or the family members with own financial means, receives social assistance.

Other grounds compelling the alien to leave the country are that s/he:

- entered the country illegally;
- did not, after the expiry of his/her residence authorisation, apply for its renewal, or;
- did not apply for the first grant of a residence authorisation within the time for application prescribed by law.²⁶⁸

²⁶⁵see Number 29(4)4 of the Draft General Administrative Provisions to the Aliens Act

²⁶⁶ Section 92(1) and (2) of the Aliens Act

²⁶⁷ Section 48 of the Administrative Procedure Act

²⁶⁸ 42(1) of the Aliens Act

7.10. Legal developments

The Aliens Act was first adopted in 1965. Already since the fifties many aliens have been recruited as guest workers in Germany. As a reaction to the increasing immigration, in 1973 a stop to the recruitment of non-EC workers was imposed. In 1990 the Aliens Act was fundamentally reformed. This revision was intended, on the one hand, to control immigration and, on the other hand, to support the integration of aliens with a long-term residence in Germany. A differentiated and rather complex system of residence authorisations was adopted. The discretionary power of the Aliens Office was limited in order to improve legal certainty.

The legal position of EU citizens who enjoy freedom of movement is regulated in the Federal Statute on Entry and Residence of Nationals of the Member States of the European Economic Community,²⁶⁹ which was first adopted in 1969 and largely revised in 1980. The statute was in 1997 supplemented by the Regulation on Freedom of Movement,²⁷⁰ which deal with citizens not gainfully employed.

The most important court decisions on immigration issues may be the following:

- Federal Constitutional Court of 18 July 1979:²⁷¹

The Court stressed that the expulsion of an alien whose spouse is German is admissible only on condition that the alien has committed a particularly serious crime.

- Federal Constitutional Court of 12 May 1987:²⁷²

The Court stressed that Article 6 of the Basic Law does not grant a right of family reunification. However, the Aliens Office is obliged to take into consideration the existence of marriage and family relationships when deciding on the granting or refusal of a residence authorisation.

The new legislation on citizenship entered into force on the 1 January 2000 giving established immigrants the right to acquire citizenship. Apart from the expected entry into force of the Draft General Administrative Provisions to the Aliens Act, which will limit the discretionary power, there are no changes projected or expected for the near future.

7.11. Statistics

7.11.1. Students

Statistics regarding the issuing of residence concession for students, trainees and au pairs by a diplomatic representation of the Federal Republic of Germany in the student's country of origin is available only for the year 1998 and 1999.

²⁶⁹ Aufenthaltsgesetz/EWG

²⁷⁰ FreizügigkeitsVO/EG

²⁷¹ BVerfGE 51, 386 et seq.

²⁷² BVerfGE 76, 1 et seq.

Table 7.4: Issued residence concessions for students, applicants for studies, au pairs and trainees

	1998	1999
Students	13,155	17,474
Applicants for studies	-	6,052
Au pairs	11,907	15,167
Trainees	3, 791	4,661

Source: Federal Ministry of the Interior

7.12. Conclusions

The general immigration policy and legislation has been revised over the course of the last decade with the purpose, on the one hand, to control immigration and, on the other hand, to support the integration of aliens with a long-term residence in Germany. A differentiated and rather complex system of residence authorisations is at present the result of this legal development. But the immigration policy in Germany is currently under transformation. Because of shortages in highly qualified branches (IT), the present trend is to place emphasis on attracting appropriate skills and adopting a more liberal approach towards immigrants who have economic potential.

The admission of third country nationals for purposes of concern to this study is regulated in detail, although the authorities still decide on some issues on a discretionary basis. The expected entry into force of the General Administrative Provisions to the Aliens Act is intended to limit the discretionary power of the authorities and to improve legal certainty. Generally, residence for the purposes of relevance for the present study is favoured. In 1999, 23,526 students and students attending entrance examinations were admitted, 15,167 au pairs and 4,661 trainees. Germany has signed a number of bilateral agreements covering mainly the employment of trainees with mostly CEEC. Citizens of large number of third countries can extend their residence permits for another three months, without having to comply with the general conditions for renewal.

At present, normally most of the categories of concern to this study admitted for work related purposes – with some exceptions – require a work permit to carry out their activities. Notably, exceptions concern EU-trainees and certain groups of exchange trainees. A work permit is also not required for some groups of guest researchers, such as academic lecturers, research assistants and also not for students in the case of temporary employment. Family reunification is generally permitted for holders of residence permits, whereas a holder of a residence concession can in principle not be joined by his/her family.

In principle, holders of residence concessions cannot change the purpose of stay. However, changes of a residence concession from study to work purposes may be granted for traineeship or employment as a scientifically qualified person. Following the present trend to attract appropriate skills, it is likely that a change of purpose - from educational to employment – will be made easier in the future.

8. GREECE

8.1. General Admission Regulations

All foreigners, including EU/EEA citizens, who want to permanently (that is, for more than 3 months) reside in Greece must obtain a residence permit. Third country nationals, who want to reside in Greece for a longer period (more than 3 months but less than 6 months) need the approval of the consulate prior to their entry into Greece except for nationals of those countries, who have bilateral visa-free agreements with Greece.²⁷³

Table 8.1. Overview of required permits for admission and residence

Categories	Up to 3 months	Up to 6 months	Over 6 months
Students (higher education only)	Student Consulate Approval and Residence permit	Student Consulate Approval and Residence permit	Student Consulate Approval and Residence permit
Vocational training	Student Consulate Approval and Residence permit	Student Consulate Approval and Residence permit	Student Consulate Approval and Residence permit
Guest researchers (Professors, foreign language assistants, etc)	Consulate Approval, Work Permit and Residence permit	Consulate Approval, Work Permit and Residence permit	Consulate Approval, Work Permit and Residence permit
Pensioners	For tourism: Consulate approval (if required) and residence permit	For tourism: Consulate approval (if required) and residence permit	Not applicable
Persons with similar means	For tourism: Consulate approval (if required) and residence permit	For tourism: Consulate approval (if required) and residence permit	Not applicable
Artists	For cultural events up to 1 month with Consulate approval & residence permit	Consulate approval for work and residence permit. In orchestras (classical music) without pre-approval and without work permit	Consulate approval for work and residence permit. In orchestras (classical music) without pre-approval and without work permit
Clergy	Consulate approval for work and residence permit	Consulate approval for work and residence permit	Consulate approval for work and residence permit
Journalists	Consulate approval (if required) and residence permit	Consulate approval for work and residence permit	Consulate approval for work and residence permit

Residence permits granted to EU/EEA citizens also provide the right to employment following the provision of an employment statement from the employer approved by the representative Employment Inspection service. This document must state the duration and type of occupation of the employee in question.

²⁷³ For example the United States and about 50 other countries

8.1.1. Students

Students from third countries need a special residence permit for the purpose of studying. In order to be allowed to enter Greece and apply for this residence permit students need the approval of the Greek consulate in their home country, which will also issue them a visa to enter Greece (This will be a Schengen visa for stays of up to 3 months, otherwise a national visa). This is true for all students in higher education, for students on scholarships, in student exchange programmes, as well as for boarding students and research students. The residence permit is issued for a duration of one year and can be renewed (see below). Residence permits granted to students (scholarship students or others) belonging to non-EU/EEA member states do not entitle the holder to carry out employment.

Students from EEA countries only need a residence permit, which also grants them the right to employment. This residence permit is valid for five years and can be renewed.

8.1.2. Trainees

Trainees are not accepted in Greece unless the training is for specific study purposes, in which case the above cited regulations for students apply. In all other cases trainees need a work permit and fall under the general regulations for foreign employment.

8.1.3. Au pair

There are no specific regulations for persons wishing to work as “au pair” in Greece. In practice, such persons could obtain a visa and residence permit for study purposes and would not be required to possess a work permit, if they do not carry out any paid employment (apart from pocket money).

8.1.4. Guest researchers

Guest researchers need to obtain a Consulate Approval for both work and residence permits prior to their arrival in Greece. There are no quota regulations for the issue of work permits to guest researchers.

8.1.5. Pensioners and persons with private means

Upon arrival to Greece they have to apply for a residence permit. Stays for private purposes of more than 6 months are not foreseen in Greek immigration law. Persons, who want to reside for more than 6 months in Greece for private purposes have to leave the country and obtain a renewed consulate approval (if required, see above) and, upon re-entry to Greece, have to apply for a new residence permit for private purposes. Residence permits granted for private purposes (pensioners and others) of third country citizens do not entitle the holder to carry out any employment.

8.1.6. Artists

Artists, who want to carry out artistic activities in Greece in connection with a cultural event for less than a month, only need to obtain a consulate approval prior to entry into Greece and a residence permit after entry. They do not need a work permit provided that these activities last less than one month and artists who want to enter Greece for less than 15 days for cultural events can obtain a visa at the airport without prior consulate approval).²⁷⁴ Artists, who enter Greece for the purpose of playing classical music in Orchestras do not need approval of the

²⁷⁴ If their countries of nationality have visa agreements with Greece, they do not need a visa.

consulate prior to entry, irrespective of their length of stay. They also do not need a work permit.

In all other cases, artists need to obtain a consulate approval for work and residence permits prior to entry and upon entry need to obtain both a work permit and a residence permit. There are no quota restrictions for either work or residence permits for artists. The category of “self-employed artists” does not exist in Greek immigration law.

8.1.7. Journalists

Foreign journalists need to obtain a residence permit, but they do not need a work permit. Journalists from third countries need to obtain consulate approval prior to entry to Greece, except for nationals of those countries, who have visa-free agreements with Greece . There are no quota restrictions for journalists.

8.1.8. Clergy

Members of the clergy from third countries need to obtain a residence permit and a work permit. The work permit does not entitle them to carry out any other work than the clerical activity approved. Clergy from third countries need to obtain consulate approval prior to entry to Greece, except for nationals of those countries, who have visa-free agreements with Greece.. There are no quota restrictions for clergy.

8.2. Conditions

Third country citizens and EU/EEA nationals applying for a residence permit must:

- Possesses sufficient means to cover living expenses (and studies or training, in the case of students or trainees). EU/EEA citizens must show that they possess financial means equivalent to at least the minimum salary in Greece, which is currently 45,000 GRD (EURO 137) per month. Third Country Nationals must show that they possess a minimum of 5,000 GRD (EURO 15.2) per day.
- Possesses health care insurance covering hospital and medical expenses.
- In practice, third country nationals seeking stays of up to three months are required to present a travel ticket ensuring their return to their country of origin.
- Foreigners must secure a place of stay. They must present a certified copy of their tenancy contract or a document certifying residency within a student residence or stay in a hotel or, alternatively, a document certifying stay with a tenant.
- Foreigners must not be registered in the national database or the SCHENGEN information system and not be considered a threat to the public order and safety of the country.
- Foreigners are obliged, in all cases, to present a national hospital certificate or a certificate from the relevant health service to certify that the person in question does not suffer from infectious diseases or disabilities, in particular:

Illnesses that could endanger public health

1. Illnesses that require quarantine included in the International Sanitary Regulation n.2, 25th March 1951 of the World Health Organisation
2. Inflammation of the respiratory system - Tuberculosis (active or non-advancing condition)
3. Syphilis
4. Other contagious pestilential or parasitic illnesses in cases where they constitute the object of protective measures with respect to the local inhabitants in the country of entry

- A. Illnesses and disabilities that can endanger public health or security:
 - 1. Drug addiction
 - 2. Severe psycho-pneumatic disorders, obvious psychotic condition showing symptoms of hyperactivity, hallucinations or distress.

8.2.1. Students

In order to obtain the approval of the Consulate prior to arrival in Greece, students need to show a letter of admission of the university at which they intend to study as well as an approval of the Ministry of Education in Greece (which they can obtain by way of a written request to the Ministry).

To obtain a residence permit, students must also show that they possess sufficient financial means to cover their stay (currently at least 45,000 GRD (EURO 137) per month for EU/EEA citizens and a minimum of 5,000 GRD (EURO 15.2) per day for Third Country Nationals). In addition they must possess a valid health insurance covering hospital and medical expenses. In the case of students, the university is obliged to cover their health insurance.

If studentship is preceded by a preparatory year of Greek language tuition, the foreigner in question is also required to provide a certificate from the School of Modern Greek from the University of Athens or from the School of Modern Greek from the University of Thessaloniki.

8.2.2. Guest researchers

Guest researchers need to obtain an approval from their local Greek consulate for both a work permit and a residence permit prior to their arrival in Greece. The general conditions for obtaining a residence permit stated above apply. The Institute, where the researcher carries out his activities is obliged to cover his/her health insurance for hospital and medical expenses.

8.3. Procedure

Prior to their arrival in Greece, foreigners are obliged to present themselves to the Greek consulate authorities abroad and to request the relevant consulate approval. Upon the arrival, residence or work permit applications must be submitted to the Alien's Department or the Police Station dealing with matters concerning foreigners within the area in which the interested party is resident. Applicants for a residence permit must show that they fulfil all the requirements by presenting the necessary documentation (consulate approval, certification of health insurance, receipt of bank deposit, etc.). The local Police services are then responsible for the review and conveyance of decisions regarding all applications.

The applications need to comply with a standard format. A valid travel document is required. Applications may be completed in: Greek, English or French. The time required to process an application for a residence or work permit depends on the application. It may take up to two (2) months.

The total cost for a residence permit is 44,000 GRD (EURO 134). An additional 44,000 GRD (EURO 134) are charged for a work permit concerning foreigners of all non-EU countries. For EU citizens, as well as their family members, irrespective of citizenship, the cost is equal to that of a personal identification card for Greek nationals (approximately 100 GRD; EURO 0.3).

8.4. Renewal

Fifteen days prior to the expiry of the residence permit, the application for a renewal should be filed with the Alien's Department or the local Police. Valid travel documents, the existing residence– and if applicable work – permit as well as any other required documentation (certificate of university or language school, proof of accommodation, health insurance and financial means) must all be enclosed with the renewal application.

The duration of the renewed residence and work permits is equal to that of those originally provided. After a 5-year residence for employment, both residence and work permit renewals are issued for two years and for an indefinite duration after 15 years.

8.4.1. Students

Upon application for renewal students must obtain a renewed letter of approval from the Ministry of Education certifying the existence of sufficient financial means for continued residence, continued health insurance and accommodation as well as good progress of their studies. A change of College, of department, of Institute of Professional Qualification (IEK), or change in IEK specialisation is permitted only once and only during the year of language tuition or the first year of professional development at the IEK at which they are originally registered, according to existing regulations.

Throughout the duration of the studies, students are obliged to provide certification from the relevant educational institution, in which at least one of the following should be mentioned: registration or course selection, exam participation, diligence, progress and capability. Post-graduate students are specifically required to present degree certificates approved by DIKATSA (Inter-University Centre of approval of foreign student degrees).

8.4.2. Artists and clergy

The work permit is valid for a limited period of time and relates to a specific employer, occupation and place of work.. violation of any of these terms without prior approval of the minister of employment or a related power of attorney results in the withdrawal of the work permit. approval is granted according to the pre-requisites as defined in article 21 n.1975/91.

8.5. Rights and status of third country nationals in comparison to EU/EEA nationals

EU citizens seeking employment in Greece, whether self-employed or not, enter Greece without documentation. They are granted a residence permit for 5 years that also grants them a right to a 5-year work permit with a renewal option.

On the other hand, non-EU citizens enter Greece with the relevant Consulate approval and are granted renewable one-year residence – and, if applicable, work permits – for the first five years. After five years, permits are renewable every two years and for an indefinite duration after 15 years.

For third country nationals, the residence permits of students, pensioners and family members do not entitle the holders to work.

Insurance and health care systems applicable to foreigners are exactly the same as those offered to Greek citizens.

The right to congregation is the same for both foreigners and Greek nationals.

8.6. Family reunification (spouse, children, siblings, parents)

Eligible family members with the right to enter and stay in Greece are the spouse, children under 21 years of age for EU citizens and under 18 years of age for third country citizens. Also, the parents of the foreigner that are dependent on him/her or used to live with him/her in the home country are eligible.

Duration, renewal or withdrawal terms of residence permits relating to family members of a third country national are exactly the same as those applicable to the main permit holder. Family members of a non-EU citizen working in Greece have the right of entry and unlimited stay from the initial entry of that citizen (this concerns athletes, trainees, journalists, personnel of foreign language schools, etc.). On the other hand, family members of third country citizens of all other categories under discussion here do not have the right to permanently join that citizen.

Family members of an EU citizen (spouse, children, parents), irrespective of citizenship, are granted residence permits of equal duration as that of the EU citizen.

Family members of the foreigner may be granted individual residence rights upon their reaching adulthood, subsequent to the decision of the Minister of Public Order, given that they can provide for their living and residence expenses.

8.7. Fraud

In case fraud is discovered after entry to Greece, any granted residence or work permit is recalled and withheld. Subsequently, the foreigner is expelled.

8.8. Removal

The residence/work permit is recalled in cases when it is proven to have been granted without the necessary pre-requisites or when the conditions of the initial approval are no longer met.

EU/EEA citizens can be expelled by court order or according to the conditions in article 11 of PD 525/83.²⁷⁵

²⁷⁵ Entry and stay of foreigners in Greece are subject to the guidelines set by the European Council, according to article number 64/221 of 25/02/1964, 73/148 of 21/05/1973, 73/34 of 17/12/1974 and 74/35 of 17/12/1974.

A foreigner could be expelled by decision of the Chief of Greek Police if:

- a) The foreigner is sentenced to imprisonment while no order of expulsion has been issued by the responsible legal court.
- b) Law 1975/91 “with regard to foreigners” is violated.
- c) His/her presence in Greek territory is considered a threat to public order, safety or health.
- d) The foreigner presents himself/herself to the Greek authorities with different citizenship every time.

8.9. Legal Developments

The law on foreigners 4310/1929 “with regard to settling and mobility of foreigners in Greece, police inspection, passports, expulsions and deportation” was abolished and replaced in 1991 by law 1975/91 “Entry-Exit, residency, employment, foreigner expulsion, identification procedure of foreign refugees and other decrees”, which is still in force. In 1996, the law 2452/96 replaced articles 24 and 25 of Law 1975/91, with regard to the identification procedure, residency and employment of refugees.

In addition, in 1999, law 2713/99 added to the original (1975/91) an article, according to which the Minister of Public Order may, under specific circumstances and according to specific procedures, grant a residence permit to the foreigner, for whom the conditions of the remaining decrees of Law 1975/91 are not applicable. Such is the case when humanitarian or public interest reasons obstruct the return of the foreigner to the country of origin.

Under Law 1975/91, a number of Common Ministerial decisions have been issued. The most important are:

- a) Article number 4803/13/8^a of 29/06/1992 referring to the terms and procedures for granting, renewal, withdrawal of foreigners’ work permits, as well as financial guarantees for repatriation expenses of the foreigners in question.
- b) Article number 4803/13/9^a of 28/05/1992 defining the exemption of foreigners from the obligation of complying with the pre-approval procedure or the issuing of a work permit.
- c) Article number 4803/13/4-νδ of 07/07/1998 outlining the conditions of the stay of the foreigners, for studentship in higher education institutions and for education in public and private Institutes of Professional Qualification (IEK).
- d) Article number 4803/13/4-μβ of 07/07/1998 outlining the obligations of individuals providing accommodation to foreigners – reports of arrival/departure

In addition, the presidential decree numbered 5/98 defines the conditions and procedure for family reunification as well as residence and work of family members.

Finally, Presidential decrees 525/83, 499/87, 278/92 and 351/98 defines the preconditions and the procedure of entry and residence of EU citizens, in accordance with the regulations and guidelines of the European Council.

Several important legal court decisions have been issued, from time to time, which outlined the implementation of certain Articles. For example:

Article number 485/99, the decision of the State Council, according to which late submission of an application for residence permit of the foreign wife of a permanent Greek citizen, does not constitute a valid basis for rejection of the application.

- a) Article number 157/99, the decision of the State Council by which the appeal of a foreign woman against the rejection of her residence permit application, on the grounds that this rejection is illegal in the case of mothers of underage Greek nationals according to Article 28 para.2 of Law 1975/91, stating that the residence permit is granted provided this Law's preconditions are met, was accepted.

Historical events, which influenced the currently enforced law in Greece include:

- a) The changes that took place in the countries of Eastern Europe some of which are neighbouring countries to Greece.
- b) The Gulf War and Iraq's subsequent embargo.
- c) Civil war conflicts or unstable political situations in many Asian and African countries.

The Ministry of Internal Public Administration and Decentralisation, in co-operation with other responsible Ministries, drafts legislation for the immigration policy in Greece, having as main objectives the control of immigration flows, immigrant employment relating to seasonal work, their integration in Greek society with secure rights especially of those resident Greece for many years.

The immigration policy in question is felt to be both cohesive and effective. It aims to ensure the protection of the legal rights of Greek and EU citizens. Moreover, it is based on the respect for the individual and should monitor the proper and beneficial usage of legal immigrant resources.

8.10. Statistics

The Ministry of Public Order has informed us that there is no statistical data available for any of the categories relevant to this study available (number of permits issued, renewals, family reunification, fraud, removal).

The only indicative data that could be given concern the number of students from third countries, which were estimated by the Ministry of Public Order to amount to roughly 8,000 over the past five years (1995-1999). It is also estimated that the number of removals for the categories of relevance to the present study is very low.

8.11. Conclusion

The general impression is that the admission of third country nationals belonging to the categories of concern to this study is not particularly favoured. There are rather detailed regulations for the admission of students, whereas there is no legal basis for the admission of trainees and au pairs. Consequently, trainees are admitted only if the traineeship serves a study purpose and similarly au pairs from third countries are admitted on a discretionary basis only as students. Likewise, the admission of pensioners and persons with private means for residence of more than six months is not foreseen in Greek immigration law. On the other hand, the admission and residence of students is strictly regulated and there are detailed criteria for the renewal of residence permits for students. In addition, family reunion with students from third countries is not permitted. Family members of the other categories relevant to this study, may be granted a residence permit, provided they have enough means to cover their living and residence expenses.

9. IRELAND

9.1. General admission regulations

The main structural legislative instruments in this area are the Aliens Act, 1935, and the Aliens Order, 1946. Some amendments were made to the Aliens Act, 1935 and the Refugee Act, 1996, in the Immigration Act, 1999. However, work is underway on a new Immigration and Residence Bill which will replace the existing structures with a more modern codified system. Pending the introduction of this legislation, much of the information given reflects the non-statutory and administrative approach in place and, therefore, in some cases, only general principles are set out.

Admission criteria distinguish between visa required and non-visa required nationals. British Nationals are exempt from all immigration controls in Ireland. There are no pre-entry clearance arrangements for non-visa required nationals. Any person from this group who seeks to remain in the State for over 90 days must see the Immigration Registration Officer for the area in which they reside. Permission consists of a registration certificate into which the appropriate permission stamp is placed.

Table 9.1 Overview of required permits for admission and residence of visa-required nationals.

Categories	Up to 3 months	Up to 12 months	Over 12 months
Students (university or college)	'C' Study visa (if only studying up to 3 months) 'D' study visa (if studying for over 3months)	Student Permit (Stamp No.2)	Student Permit (Stamp No.2). In some exceptions a Work permit may be issued if the course of study has finished.
Au pair	Entry visa	Visitor Permit (Stamp No.3)	Visitor Permit (Stamp No.3)
Professional (vocational) training	Entry visa Training visa	Visitor Permit (Stamp No.3)	Visitor Permit (Stamp No.3)
Students (high school)	Entry visa Study visa	Student Permit (Stamp No.2)	Student Permit (Stamp No.2)
Persons with private means e.g. pensioners	Entry visa	Visitor Permit (Stamp No.3)	Visitor Permit (Stamp No.3)
Priests/clergy	Entry visa	Visitor Permit (Stamp No.3)	Visitor Permit (Stamp No.3)
Guest researchers	Entry visa	Visitor Permit (Stamp No.3)	Visitor Permit (Stamp No.3)
Sportsmen/women	Entry visa	Visitor Permit (Stamp No.3)	Visitor Permit (Stamp No.3)

Visa-required nationals are issued entry visas if entry conditions are satisfied. The granting of a visa does not grant permission to enter Ireland. Immigration Officers have the authority to grant or deny admission. This will be dependent on whether the person has satisfied the Immigration Officer that he/she is a genuine visitor, has sufficient funds and does not intend to violate immigration or other laws and regulations. If allowed to enter, after 90 days the person must see the Immigration Registration Officer for the area in which they reside.

Permission to remain after this time consists of a registration certificate into which the appropriate permission stamp is placed.

9.1.1. Students

A person intending to embark on a course of study for a duration of over 3 months must apply for a 'D' study visa. If the person intends to study for less than this period they should apply for a 'C' study visa.

Student Permits are reflected in a stamp (described as stamp No. 2) on their registration certificate (known as the 'green book') stating that the person is 'permitted to remain in Ireland to pursue a course of study and on condition that the holder does not enter employment, does not engage in any business or profession and does not remain later than (date)'.

The duration of the permit is linked to the duration of the course of studies, up to a maximum of 12 months. Extensions are obtained annually or as the person enrolls on further study. Persons engaged in a course of study which involved a working assignment, including professional training such as accountants, solicitors etc. would be granted a student permit until such time as they ceased their professional training and qualified as full practitioners.

There are no quotas for student permits.

9.1.2. Others not gainfully employed

Applicants such as persons with private means, like pensioners, priests, clergy and guest researchers, must apply for a visitor permit should they wish to stay over 3 months.

Visitor permits are reflected in a stamp (described as stamp No.3) on their registration certificate (known as the 'green book') stating that the person is 'permitted to remain in Ireland on condition that the holder does not enter employment, does not engage in any business or profession and does not remain later than (date)'. Generally the visitor permit is granted up to 12 months and may be extended.

There are no quotas for visitor permits and no statistics on numbers granted.

9.2. Conditions

Regulations do not specify minimum means of subsistence. The basic emergency welfare payment to a single adult with no dependants is IR L 73 per week. If a person has no accommodation they will also receive a supplement towards rent. Accordingly this amount, plus accommodation would be the absolute minimum means which a single person with one dependants could have so as not to require public funds.

9.2.1. Students

To apply for a student visa of type 'D' or 'C' the applicant must provide the following:

- evidence of enrolment in a full time course of study at a bona fide educational institution
- evidence that any fees have been paid in full (an applicant is not expected to pay more than £5,000 prior to visa approval)
- evidence of sufficient funds to support themselves without recourse to public (State) funds
- private medical insurance.

Applicants may also be called upon, at the discretion of the visa officer dealing with the application, to provide details of family members, the applicant's character and any employment details in country of origin. The applicant may also be asked to provide details of their profile, which should match the course of studies proposed. This may consist of details of history of study, including information regarding any checks/interviews of the candidate carried out by the school or its agents.

Permission to remain requires:

- a letter of registration from college/school verifying the duration/nature of the course or examination;
- evidence that the fees have been paid;
- evidence of sufficient funds to maintain them selves for the period of the proposed stay.

Students are required to sign an undertaking as part of the visa application stating that:

- they will not enter any type of employment while in the State;
- they will ensure that they do not breach the visa requirements of the State.

9.2.2. Others not gainfully employed

General requirements are that the person has:

- sufficient funds to support themselves without recourse to public funds;
- proof of medical insurance;
- any other evidence to support the bona fides of their application;

For example, a minister of religion would require some certification from the religious community in the State, a trainee would require some evidence of a training programme and a writer or artist may have to submit a curriculum vitae or evidence of any accomplishments.

Nationals of EEA countries must apply for a residence permit after 3 months, provided that they can support themselves without State assistance and fall into one of the following categories:

- a) they are providing a service in the State;
- b) they are an employed or self-employed person in the State;
- c) they are a student in the State;
- d) they are a retired person in the State;
- e) they are otherwise economically non-active.

Residence permits issued to people in category (b), (d) or (e) are valid for 5 years.

Dependants of persons in the above categories may also apply for residence permits or, if they are a non-EEA dependant or spouse of an EEA national, must register and obtain permission to remain. Permission to remain is granted for the same duration as the validity of the residence permit of the EEA national on whom they are dependant.

9.3. Procedure

A visa application is made through the Department of Foreign Affairs or one of the Irish Embassies/Consulates abroad. While most applications are decided quickly, others, such as those from people who want to work or study may be referred to the Department of Justice, Equality and Law Reform in Dublin. In all cases, applicants should apply at least 3 weeks before departure to Ireland (5 weeks if application is by post).

Applicants married to EU citizens are exempt from fees.

All persons arriving from outside the Common Travel Area (with the UK), whether visa required or not, must receive leave to land upon arrival. An immigration officer may refuse a person leave to land in accordance with the provisions of the Aliens (Amendment) Order (No.2), 1999. Persons arriving from the Common Travel Area are subject to the same checks but on an ad hoc rather than a systematic basis.

Any person who intends residing for more than 3 months must register with the Immigration Registration Office for the area in which they reside and seek permission to remain.

All non-EEA nationals are required to register with the following exceptions:

- a person under 16 years of age;
- a person born in Ireland;
- a woman who is married to or is the widow of an Irish national;
- a person born in the United Kingdom;
- a person not resident in the State who has been in the State for a period of not more than three months since the date of his/her last arrival in the State;
- a seaman not resident in the State whose ship remains at port in the State and who does not land in the State for discharge.

9.3.1. Students

Applications for permission to remain as a student will be assessed and granted by the Immigration Registration Office while the applicant waits (in a public office environment).

9.3.2. Others not gainfully employed

Some straightforward visitor cases will also be processed by the Immigration Registration Office, particularly if the visitor is seeking a relatively short stay. Other cases will be referred to the Department of Justice, Equality and Law Reform, which will adjudicate upon applications for longer term stays, including retired persons, persons of independent means, certain types of artists/writers etc. This can take weeks or months before a final decision is made depending upon the complexity of the case.

9.4. Renewal

Typically permission to remain will be renewed on a year to year basis unless the original permission was made conditional on a limited stay only. Ongoing renewal may be possible in most categories of visit provided the applicant continues to meet the original requirements.

9.5. Change of purpose of admission

While there are very few restrictions on change of status for non-visa required nationals, there are restrictions on change of status from student/visitor to employment/self-employment for visa required nationals. Such a change in status is not ordinarily possible. The main exception is in the case of a student pursuing a multi-annual course of study in the State who, upon completion of that course, is offered employment in a directly related field and is able to obtain a work permit for that employment. Exceptions are also currently made where the person is taking up employment in one of a small number of defined critical skill shortage areas.

Generally, a person wishing to undertake any activity in Ireland, other than that for which his/her visa was granted, must leave the State and reapply for a new visa.

9.6. Rights and Status of third country nationals in comparison to EU and EEA nationals

Third country nationals:

- are not entitled to work or operate a business without the relevant permit;
- may not access third level or vocational training on the same fee basis as an EU national.

Permission to remain is conditional on them not being a burden on public funds.

However, physical residence in the state entitles them to emergency welfare assistance and housing if their means so required, on the same basis as a destitute Irish/EU national.

Irish constitutional protections in such basic rights as individual liberty, right of assembly etc. apply equally to non-citizens and citizens.

There are no special restrictions on the access of non-EU nationals to the Courts.

Conditions for voting are based on age, citizenship and residence. Non-EU citizens may vote at local election level only. Other EU citizens may vote at European and local elections. British citizens may vote at Dail (national parliament), local and European elections.

9.7. Family reunification

Family reunification entitlement is not set out by immigration law outside that of recognised refugees.

Application for reunification with a family by a visa required national would generally not be approved until the person had been legally residing in the state for 12 months and had the expectation of residing for at least a similar period of time. As with non-visa required nationals, the applicant will be entitled to be joined/ accompanied by his immediate family members provided he can support them without reliance on public funds. 'Reliance on public funds' is determined according to whether they would be entitled to social welfare assistance, including publicly funded housing taking into account the persons income, number of dependants and so on. While there are no definitions of family members covered, in general this applies to spouses and minor children. Applications from non-married partners, including same sex as well as non-nuclear family members, can be considered on a case-by-case basis.

Although the family member's permission is generally linked to that of the original entrant, it is possible for the dependants to develop an independent status particularly where humanitarian issues arise. Generally, the family would be expected to depart when the visitor returned home.

9.8. Fraud

There are no special provisions regarding fraud in the area of immigration regulation. If it is discovered that permission to remain has been obtained through fraud, the applicant's status would be reviewed and could be withdrawn or cancelled leading to prosecution and/or them being asked to leave the State.

9.9. Removal

In considering whether to make an order the Minister must advise the person in question of the reason for his proposed course of action and afforded the person 15 days to make submissions as to why they should not be deported.

The procedures governing deportation are set out in the Immigration Act, 1999:

Section 3(1) states: Subject to the provisions of section 5 (prohibition of *refoulement*) of the Refugee Act, 1996, and subsequent provisions of this section, the Minister may by order require any non-national specified in the order to leave the State within such a period as may be specified in the order and to remain thereafter out of the State.

Section 3(2) specifies to whom such an order may be made in respect of-

- a) a person who has served or is serving a term of imprisonment imposed on him or her by a court in the State;
- b) a person whose deportation has been recommended by a court in the State before which such a person was indicted for or charged with any crime or offence;
- c) a person whose deportation has been required to leave the State under Regulation 14 of the European Communities (Aliens) Regulations, 1977 (S.I. No. 393 of 1977);
- d) a person to whom Regulation 19 of the European Communities (Right of Residence for Non-Economically Active Persons) Regulations, 1997 (S.I. No. 57 of 1997) applies;
- e) a person whose application for asylum has been transferred to a convention country for examination pursuant to section 22 of the Refugee Act, 1996;
- f) a person whose application for asylum has been refused by the Minister;
- g) a person to whom leave to land has been refused;
- h) a person who, in the opinion of the Minister, has contravened a restriction or condition imposed on him or her in respect of landing or entering into or leave to stay in the State;
- i) a person whose deportation would, in the opinion of the Minister, be conducive to the common good.

Section 3(6) states: In determining whether to make a deportation order in relation to a person, the Minister shall have to regard to-

- a) the age of the person;
- b) the duration of residence in the State of the person;
- c) the family and domestic circumstances of the person;
- d) the nature of the persons connection with the State, if any;
- e) the employment (and self-employment) record of the person;
- f) the employment (and self-employment) prospects of the person;
- g) the character and conduct of the person both within and outside the State (including criminal convictions);
- h) humanitarian considerations;
- i) any representations duly made on behalf of the person;
- j) the common good;
- k) considerations of national security and public policy, so far as they appear or are known to the Minister.

Deportations, other than deportations under the Dublin Convention or deportations of failed asylum seekers in 1997, 1998 and 1999 were 4, 24 and 1 respectively. A small number of these removals would have involved persons whose visitor permission had expired and had nonetheless remained in the State.

9.10. Legal developments

The Principal Legislation is the 1935 Aliens Act. Of the Orders made thereunder, the most important which is the 1946 Aliens Order. European Treaty rights of residence and free movement instruments are transposed in the European Communities (Aliens) Regulations, 1977 (which deals with workers and service providers) and the European Communities (Rights of Residence for Non-Economically Active Persons), 1997.

It proposed that the Aliens Act and its secondary body of legislation as well as the administrative practices which have been developed are to be entirely replaced by a modern, codified system of immigration law. The heads of a new Immigration and Residence Bill are currently in preparation but it is not expected to be published until the end of the year. This will represent the first fundamental review of the State's principal legislative measure in the immigration area. It is envisaged that the new legislation will provide the structure for a more comprehensive set of regulations than currently exists. Institutional changes may also be a feature of this legislation as the Minister is currently considering the possibility of establishing a separate immigration agency under the aegis of his Department to manage day to day provision of these services.

The Immigration Act, 1999 was introduced following a decision of the Irish courts in the *Laurentiu* case. The decision related to the powers provided for in section 5(1)(e) of the Aliens Act, 1935. Section 5(1)(e) provides that the Minister for Justice may make orders relating to the deportation of aliens from the State. Article 13(1) of the 1946 Aliens Order was made under these powers and this set out the procedures relating to deportation. Essentially the High Court found and the Supreme Court upheld that the 1935 act was excessively broad in its delegation of the powers of the Dail (the legislature) to the Minister by not setting out the policies and principles which govern his making of such orders. Accordingly it was in conflict with Article 15(1) of the Irish constitution which provides that the Dail is the sole legislative body. The new Immigration Act resolves this problem by providing, in primary legislation, which has been enacted by the Oireachtas, the policies, principles and procedures relating to the deportation of non-nationals from the State.

The area of admission and rights of third country nationals now comes within Title IV of the Treaty and, as such, initiatives taken under article 62 in particular are likely to feature prominently in European developments in this field in the coming years. The Commission has already proposed a directive dealing with family reunification rights. Title IV of the Treaty does not apply to Ireland under its protocol to the Amsterdam Treaty, but Ireland can choose to 'opt in' to initiatives. Decisions will be taken as to whether Ireland should opt into particular Title IV initiatives on a case by case basis having a particular regard to the importance of maintaining the Common Travel Area with the UK.

9.11. Statistics

The systems currently in place do not enable the collection of statistics on the number of persons granted permission according to any particular category of stay. Statistics are not available on family reunion for non-refugee cases.

9.12. Conclusion

The main structural legislation currently in place is the Aliens Act (1935) and the Aliens Order (1946) as amended. Work is underway on a new Immigration and Residence Bill that will replace these with a more modern and codified system.

The Irish authorities are favourably disposed towards the admission of non-EEA nationals for the purpose of study or vocational training. There is a long tradition of foreign students pursuing further education in Ireland. In addition, there are economic benefits as both the public and private educational institutions attract students on a fee-paying basis.

At present, most third country nationals require a visa to enter Ireland. Applications are made through the Department of Foreign Affairs or one of the Irish embassies/consulates abroad. Students must apply for a study visa, the type depending on the length of stay. All other categories apply for a visitor's visa with the exception of professional trainees who may apply for a training visa. Fees depend on whether the application is for single or multiple entry. Work permits are not required by any category for visa-required nationals, as a condition of stay is that no gainful employment is taken. There are no quotas for students or visitors. Persons who intend to stay for longer than 90 days must register with the Immigration Registration Officer for the area in which they reside. This is a condition for both visa required and non-visa required nationals. Permission to remain consists of a registration certificate into which an appropriate residence permit stamp is placed. The residence permits fall into two basic categories. Students and Professional trainees must apply for a Student Permit (known as Stamp No.2). Persons with private means, priests/clergy, guest researchers and sportsmen/women must apply for a Visitor Permit (known as Stamp No.3). These permits are free and valid for one year after which renewal is dependent on the entry conditions for each category of person continuing to be met. Only if the original permission was made conditional on a limited stay will renewal be refused.

Important exceptions to the general rule that a change of status is not allowed are made. One exception is in the case of a student pursuing a multi-annual course of study, who upon completion of that course, is offered employment in a directly related field and is able to obtain a work permit for that employment. Exceptions are also currently made where the person is taking up employment in one of a small number of defined critical skill shortage areas.

Family reunification is possible for all categories and generally not approved until the person has been legally residing in the State for one year and expects to continue residing for a similar period. While family members are generally defined as spouses and children, applications from non-married partners including same sex may be considered on an individual case basis.

10. ITALY

10.1. General admission regulations

In order to be admitted to Italian territory, third country nationals need a valid passport and entry visa. When in Italy, aliens belonging to the categories of relevance for the present study are obliged to apply for a residence permit. The residence permit will be issued for the same periode as the visa stamped in the passport was issued. Normally, aliens residing in the country for a period longer than five years can apply for a residence card (*carta di soggiorno*)²⁷⁶.

Visas can be divided into three broad categories:

- *Uniform Schengen Visas (USC)*:. They may be: 1) for airport transit (type A); 2) for transit up to 5 days and allowing its holder to pass from one Third State to another Third State (type B); 3) for short visits or travel up to 90 days, valid for one or more entries (type C).
- *Limited Territorial Validity Visas (LTV)*: Such visas are likewise valid for airport transit (type A); transit (type B); short visits or travel (type C).
- *Visa for Long or National Visits (NV)*:. These visas are valid only for visits exceeding 90 days (type D) in accordance with each visa type, with one or more entries, only in the territory of the Contracting Party that has issued the visa and for possible transit, for no more than 5 days, through the territory of other Schengen States.

Table 10.1. Overview of required permits for admission and residence in Italy

Category	Up to 3 months	More than 3 months
Students (Higher education only)	Short visit (Visa C)	Fixed – term long visit ²⁷⁷ (Visa D) Residence permit
Unpaid trainees	Short visit (Visa C)	Fixed – term long visit (Visa D) Residence permit
Exchange Trainee ²⁷⁸	Short visa (Visa C)	Fixed - term long visit (Visa D) Residence permit
Vocational Trainees	Short visit (Visa C)	Fixed – term long visit (Visa D) Residence permit
Au pair	Short visit (Visa C)	Fixed – term long visit (Visa D) Residence permit
Guest researchers	Short visit (Visa C)	Fixed – term long visit (Visa D) Residence permit
Artists	Short visit (Visa C)	Fixed – term long visa (Visa D) Residence permit
Clergy	Short visit (Visa C)	Fixed – term long visit (Visa D) Residence permit

²⁷⁶ The residence card has undetermined validity, it allows to aliens to enter the Italian territory without holding a visa, to participate in local public activities i.e. right to vote. Holders of the residence card are subject to administrative removal from the country only if they are considered a threat to security or public order.

²⁷⁷ Up to a maximum of 365 days.

²⁷⁸ Exchange trainee: The trainee's work is part of a trainee exchange programme. These are programmes of associations such as AIESEC, AMSA, ELSA, IAAS and IAESTE.

10.1.1. Students

Each year the Ministry of Foreigners Affairs, together with the Ministry of University and Scientific Research, fix a quota (*contingente*) related to the amount of third country national students who can be admitted to Italian universities.

The law foresees that third country national students who obtained a high school certificate in Italian schools abroad (*Diploma di Maturita'*) as well as students who are awarded scholarships from their governments, for the entire length of their studies, do not fall under the above mentioned quotas.

Students who are granted a visa for study reasons can be engaged for dependent working activities (without having to change the purpose of their visa) for a maximum of 20 weekly hours (or a total maximum of 1040 hours per year).

10.1.2. Exchange trainees, vocational trainees and unpaid trainees

In the Italian law there are no particular provisions which differentiate between these categories, and so here is one common basic principle for all of them. Applicants from third countries wanting to enter the territory for the above mentioned purposes, if not being paid for their activities, will be granted a visa for study purposes.

In cases where the activity is remunerated they will be granted a visa for work purposes. It is relevant to note that in this last case, the number of admission is not limited by any admission quotas or ceilings (which is normally case for work related purposes).

According to the Italian legislation, a contract drawn up between the employer and the trainee is characterised not only by paid work (as for dependent employment), but also by the trainee's desire to learn and by the obligation of the employer to impart the necessary instruction to enable the trainee to obtain a professional qualification.

10.1.3. Au pair

Applicants from third countries need a student visa. As au pair activities are not considered as a work, a work permit is not required. The initial permit is not issued for longer than one year, nevertheless it can be prolonged for a maximum of two years.

The number of admissions is not limited by any admission quotas or ceilings.

10.1.4. Guest researchers

Researchers who intend to carry out research or other cultural activities of an occasional or permanent nature are granted a study visa, this visa can be for a short visit (up to 90 days) or fixed-term long visit (up to a maximum of 365 days).

If the research activity is remunerated then the alien will be granted an entry visa for work purposes, provided he or she satisfies the necessary conditions.

For researchers who are clearly eminent persons in their field or directly and favourably known to the Italian Mission, the visa application shall be processed following a streamlined procedure appropriate to the person's reputation or to the significance of the cultural or scientific activity to be carried out.

The number of admissions is not limited by any admission quotas or ceilings.

10.1.5. Artists

In order to enter the Italian territory artists are granted either a self-employment visa or visa for employment, regardless of the length of their stay i.e. for a short (up to 90 days) or fixed-term long visit (up to a maximum of 365 days) or open-term long visit.

A visa as dependent worker will be only granted once the Special Office for Employment of Workers in the Entertainment Industry has issued its work permit before the applicant's arrival.

Only in the case of famous or highly qualified professional artists, and for artists or groups employed by well-known theatrical companies, RAI, private televisions or public organisations, it is sufficient to produce a copy of the contract or of the notification stating that the contract has been drawn up.

The number of admissions are not limited by any admission quotas or ceilings.

10.1.6. Clergy

Religious workers (by which is meant people who have already received ordination or priesthood or have taken holy vows) are granted a worship visa for a short visit (up to 90 days) if they intend to take part in pilgrimages or religious events, and, for a fixed-term long visit (up to a maximum of 365 days) if religious workers intend to carry out religious or pastoral activities or activities of an ecclesiastical nature.

10.2. Procedure

The procedure governing the granting of the relevant documents to third country nationals is regulated in the new Aliens Act (1998)²⁷⁹ and in the following Decree of the President of the Republic No.394 of 31 August 1999. As a matter of principle, applications for the necessary visa must be requested at the diplomatic or consular Italian missions in the applicants' country of origin. If the length of the stay does not exceed three months, the Italian authorities have accorded the competency to issue a visa (on the basis of agreements), to consular or diplomatic missions of other States.

Together with the visa, third country nationals receive a written communication where all the rights and duties relating to the entrance and the stay in the Italian territory are explained. This document is normally translated into a language understandable by the applicant.

All aliens who have legally entered Italy, regardless of whether they are exempt from or subject to the visa requirements, are obliged to declare themselves to the Police Authorities of the province where they are staying, within 8 working days of their entry into the national territory²⁸⁰. At the same time they must request a residence permit (*permesso di soggiorno*), which is the only document legitimising their stay in Italian territory. The length of the residence permit varies according to the time-frame foreseen by the visa and the different applicants' categories.

²⁷⁹ Decreto Legislativo n.286 of 25 July 1998.

²⁸⁰ This is valid also for third country nationals who entered Italy with a permit issued by another EU country entitling them to access the territory.

Visa applications submitted to a Mission must be made in writing, on the appropriate form in single copy filled out in all its parts, signed by the alien and accompanied by a passport-size photograph. Aliens applying for visas might be asked to visit the mission in person in order to be interviewed on the reasons and circumstances of the visit. Additional documentation (depending on the type of visa applied for) is required: e.g., the purpose of the visit, means of support during the trip and the visit, accommodation arrangements.

Consular fees charged for visas are fixed in the country equivalent of Italian Liras as follows:

Types of visa	Tariffs in Liras
Very short visit (type C USV or LTV up to 30 days)	50.000 (26 EURO) 60.000 (31 EURO)
Short visit (type C USV or LTV up to 90 days)	
1 entry	60.000 (31 EURO)
multiple entries	70.000 (36 EURO)
Multiple entries (USV or LTV)	
Validity 1 year	100.000 (52 EURO)
Validity 2 years	160.000 (84 EURO)
Validity 3 years	220.000 (115 EURO)
Validity 5 years	340.000 (178 EURO)
Long visit (type D NV exceeding 90 days)	60.000 (31 EURO)
Issued at the border	Double tariffs

10.2.1. Students

Third country nationals wanting to study at Italian Universities can only apply submitting their application at the Italian consular or diplomatic missions in their country of origin. In exceptional cases it is possible to submit the application to the diplomatic mission of another third country, in this case the head of the mission has the power to accept or refuse the candidature. Applicants need to present all relevant documents that the competent authorities require in order to prove whether they meet the conditions mentioned below. All the documents have to be translated into Italian (at the expense of the applicants) and the translation has to be validated by the competent local Italian authorities. Candidates can not apply for more than one course of studies, and their application should include a clear indication of the University where they intend to study.

Only those applicants who are admitted to the pre-accession test are entitled to apply for a study visa (they will be granted a visa type D – national – for a minimum length of 90 days in order to go through the necessary enrolment procedure at universities). An exam to test the knowledge in the Italian language is compulsory in order to access any University. All those not passing this test can not proceed with any further enrolment test. Nevertheless, those students that can provide a substitutive certificate are exonerated from the language test²⁸¹.

10.2.2. Vocational trainees and apprenticeships

The consular Mission shall proceed with the application only if submitted by the trainee along with a specific permit²⁸² issued to the employer in the name of the alien by the competent

²⁸¹ This is valid for students who have studied in Italian schools abroad or who possess the Diploma of Italian Language and Culture issued by the University for foreigners in Siena and the University for foreigners in Perugia.

²⁸² This authorisation is issued only for the length of apprenticeship declared by the employer, it has a time limit of two years.

Provincial Labour Department – Labour Policies Service, and accompanied by a provisional authorisation from the competent police authorities.

10.2.3. Researchers

In order to get an entry visa researchers from third countries who intend to carry on their activity without any remuneration should follow the same procedure foreseen for students.

Researchers whose activity will be remunerated have to apply for a work permit. The application for the authorisation can be made either directly by the candidate (in this case the applicant has to include in his/her documentation a copy of the contract establishing the work relationship in the Italian territory) or by the employer in the case of recruitment as a dependent worker.

10.2.4. Clergy

Applicants seeking entry to a noviciate, religious studies or training, will benefit from a facilitated procedure to process study visas on the condition that:

- the applicant is bound for the Holy See or its main institutions, universities or pontifical colleges carrying out activities of religious training;
- the visa application is the object of a specific recommendation to the Mission by means of a *Note Verbale* from the local Apostolic Nunciature or from Vatican authorities themselves;
- the applicant produces for the mission a statement from the religious institution to which s/he is destined proving his/her acceptance at the institute and indicating the duration of the period of noviciate, study or training and the conditions of boarding and accommodation, and whether the expenses incurred will be borne by the institute or by the applicant. In the latter case the applicant shall be required to produce an adequate economic guarantee of his/her means of support during his/her stay in Italy.

10.3. Conditions

In order to enter applicants have to provide the following documents attesting:

- reason and condition of their stay;
- financial means for their stay and, if not employed, also for their return ticket.

Aliens will not be granted any entry visa if they cannot provide these documents and if they are considered to be a threaten to public order or security of the State.

10.3.1. Students

Third country nationals shall be obliged to exhibit adequate guarantees, complete with documents regarding:

- course or cultural activity s/he intends to attend;
- her/his means of support (an application for a scholarship awarded by the Italian Government is not enough as a guarantee of financial means);
- consular declaration attesting the right to receive health care in Italy, in compliance with agreements in force with her/his country, or alternatively adequate insurance coverage for health care expenses, medical treatment and emergencies.

In addition, if they want to enrol at University, they must have an academic record (recognised by the Italian Ministry of University and Technological Research) which qualifies them to enter university²⁸³. Those applicants coming from countries where a qualifying exam (*prova di idoneità*) is required in order to apply for university enrolment, have to provide the certification which confirms their eligibility.²⁸⁴

10.3.2. Au pair

To qualify as au pair, the applicant has to fulfil the following conditions, s/he:

- cannot be under 17 or over 30²⁸⁵ years old;
- has to present a medical certificate, issued not more than three months before leaving the country of origin;
- has to be granted some free time to follow courses in order to improve her/his skills in the chosen language;
- has the right to one day off per week, including at least one Sunday a month, to enhance her/his participation in religious functions; and
- can not work for more than five hours a day.

10.3.3. Artists

Normally, the issuing of a visa for self-employed artistic work, is subject to the condition of having a specific work contract for a given artistic and cultural event or for a series of such events.

10.4. Renewal

In general, third country nationals applying for the renewal of their residence permit must submit their request to the local police authorities at least 30 days before its expiration. If applicants meet the requested conditions (such as proof of financial means when needed, and of employment as applicable) its renewal will be granted within a period of 20 days after having submitted the documentation.

²⁸³ Basic requirement for the acceptance of an academic record is a minimum of 12 years study course.

Specific rules are adopted as regards American and British records. Attendance at a American High School title is valid only if followed by a two years of College and a qualifying certificate to attend a third year. British records must include a minimum of six certificates in different subjects, out of which three must be at advanced level (A level) and in subjects related to the University course the student is applying for.

²⁸⁴ E.g. Vestibular in Brasil.

²⁸⁵ L. 304/73

10.4.1. Students

Once applicants have passed the selection procedure and enrolled at a university, they can ask for an extension of their visa. Generally, visas and residence permits issued for study purposes can be renewed only if the applicants pass a certain number of exams (2 exams per academic year). In addition they have to prove their financial sustainability for at least 6 months (for the academic year 1999/2000 the amount has been fixed for a monthly minimum of Italian Liras 1.000.000 = 526 EURO). These visas and residence permits can not be renewed for a period exceeding 3 years after the duration of the university course. Only for post-graduate or specialisation courses can the residence permit be renewed for the entire length of the studies.

10.4.2. Researchers

If researchers from third countries have a visa issued for study purposes the renewal of the visa follows the same procedure provided for students.

In case where researchers are remunerated and therefore have a visa issued for work purposes the visa can not be renewed. Furthermore, in cases where there is an interruption of the work contract on the basis of which the visa has been issued, the same visa can not be used to initiate a new work contract.

10.5. Change of purpose of admission

As a general rule, the residence permits issued to aliens entering the territory with a visa for work purposes and for family reunification are not restricted to certain purposes. The legislation, in fact, entitled them to use the same permit also for additional purposes.

10.5.1. Students

Third country nationals who have entered with a visa for the purpose of study are allowed to change (before its expiration date) the purpose of their residence permit into a residence permit for working reasons. This change of purpose can only be granted within the yearly fixed ceilings of visas issued for working purposes and with the necessary documents certifying a work contract.

10.5.2. Artists and guest researchers

In the specific case of artists and researchers working as dependent employees, no entitlement to change either their field of activity or their employment qualification is catered for by the law.

10.6. Rights and status of third country nationals

In general, aliens residing legally in Italy are granted, equally with Italian citizens, the same civil rights and are entitled to participate in public life.

Compulsory enrolment in the national health service (*Servizio Sanitario Nazionale*), which gives equal rights with national citizens, is required for the following categories:
aliens residing in Italy who are enrolled in the employment lists or who have a regular working relationship; and
aliens legally residing and/or who applied for renewal of the residence permit for work purposes and family reunification.

Family members of the above mentioned categories have also the right to health assistance.

Voluntary enrolment in the national health service is provided by the law for the following categories:

- aliens having entered Italy with a visa for study reasons; and
- aliens having entered as au pair²⁸⁶.
- These last two categories have to give an annual financial contribution to the health service. They are requested to present the documentation certifying their voluntary enrolment when picking up their residence permit.

All third country nationals not enrolled in the national health service are granted the following rights and kind of assistance:

- first aid;
- assistance to pregnant women;
- protection of minors' health;
- vaccinations; and
- diagnosis and treatment of infectious diseases.

10.7. Family reunification

In general, the right to family reunification is recognised only for those third country nationals who have a residence permit for a minimum of 1 year granted for study, dependent work, autonomous work or religious purposes.

The following family members are eligible for family reunification:

- spouse (not legally separated);
- minors (even if born from a previous marriage or out of wedlock);
- parents (economically dependent on the third country national already living in Italian territory); and
- relatives (until the third grade i.e. nieces if not able to work according to the Italian legislation).

The third country national applying for family reunification has to meet the following conditions: sufficient accommodation and annual income (not less than the amount of the annual social assistance for one family member, the double of the annual social assistance for two family members etc...)

The application for the family reunification has to be submitted to the local police authorities. After 90 days the applicant's family member(s) will be granted an entry visa from the Italian Diplomatic missions.

A residence permit for family reasons is granted only to third country nationals who:

- have entered Italy with a visa for family reunification;
- have been living in Italy for at least 1 year and have married an Italian or an EU citizen; or
- are parents of Italian minors living in Italy.

The residence permit for family reasons gives the right to social assistance, enrolment for study and vocational training courses and to work.

²⁸⁶ On the basis of an EU agreement among Member States, if the au pair is an EU citizen, s/he is entitled to free health assistance providing the E111 model.

The length of the residence permit is the same as that of the third country national who has asked for family reunification, and they can be renewed at the same time.

In case of separation the spouse can remain with a residence permit for family reunification, but is also entitled to change the purpose of his/her residence permit into a permit for work or study reasons.

10.8. Fraud and removal

The Aliens Act make any special provisions which apply to these particular groups.

Generally removal occurs if the alien:

- is a disturbance to public order and security of the State;
- has entered the country illegally;
- did not apply for the first grant of a residence permit within the time prescribed by the law; or
- did not, after the expiry of his/her residence permit apply for its renewal

Once the order for removal from the territory has been received, the alien has to leave within 15 days following all the instructions delivered by the authorities. In cases where the alien entered the territory illegally his/her removal is effected by the police escorting him/her to the border.

All sort of communication relating to the departure from the country are transmitted to the alien in a language s/he can understand. The alien has the right to appeal within five days against the decision for removal.

10.9. Legal developments

The new Aliens²⁸⁷ Act No.40 of 6 March 1998 replaces the legislation adopted in 1990 (the so called *Legge Martelli*). This fundamentally revised Act focuses on three main objectives: regulation of entry on the basis of annual quotas fixed by the government with Decree on Migration Flows (*Decreto Flussi Migratori*); intensification of action to combat illegal entry into the Italian territory and to increase the support for the integration process of aliens with a long-term residence in Italy.

On the basis of the new Act plus previous legislation in force, a new Decree Law No.286 was issued on the 25 of July 1998 (*Testo Unico*). In addition, a Decree of the President of the Republic, No. 394 of 31 August 1999, was emanated in order to regulate the procedures relating to the application of the new legislation.

At the moment another Decree Law related, amongst other things, to the issuing of entry visa, is under discussion between the Ministry of Foreign Affairs, the Ministry of Interior and the Ministry of Labour. This new Decree will presumably bring into the legislation further developments as regards the entry and the stay in the territory of some of the categories dealt with in the present study

²⁸⁷ Under the Law the term alien is not applicable to EU citizens, this Law is, in fact, only meant to regulate Third Country Nationals' entry and stay in the Italian territory.

10.10. Statistics

Table 10.2. Numbers of residence concessions at 31 December of the years indicated.

	1995	1996	1997	1998	1999
Athletes	n.a.	n.a.	101	723	n.a.
Clergy	57,400	54,937	58,372	54,465	40,584
Pensioners	44,000	43,100	45,900	n.a.	n.a.
Students	61,800	45,650	56,759	29,878	22,097
Trainees	n.a.	n.a.	91	153	n.a.

Source: Ministry of Interior (except for Pensioners in OECD Sopemi Report 1999 and for all 1999 data from Caritas)

10.11. Conclusions

The Italian legislation makes a clear distinction between third country nationals entering the territory for study purposes i.e. students, au pair, clergy, unpaid researchers, unpaid trainees and those entering Italy for remunerated activities. Amongst the latter, aliens can access the territory only if they have a work permit, and this is the case for artists, researchers and trainees. The granting of the work permit is generally tied to a prior approval by the competent Provincial Labour Department – Labour Policies Services. It is relevant to note that the admission of all these categories is not limited by annual fixed quotas.

Although the procedures are very detailed for some of the categories of concern to this study i.e. students, there are still no legal base for regulating the admission of other groups i.e. pensioners and/or people with private means and, maximum duration of stay is for almost all categories not regulated.

All residence permits state the purpose of the stay and the permit cannot be used for a different purpose until its renewal or, if allowed, the purpose for the admission is changed. Third country nationals who have entered with a visa for the purpose of study are allowed to change (before its expiration date) the purpose of their residence permit into a residence permit for working reasons. This change of purpose can only be granted within the yearly fixed ceilings of visas issued for working purposes and with the necessary documents certifying a work contract. From a general immigration policy perspective it is interesting that a change of purpose is possible for students. This might also at least partly explain why quotas for students have been introduced.

The rules for family reunification are of a flexible nature, whereby people entering with this kind of visa are entitled to work and/or study. In general, the right to family reunification is recognised only for those third country nationals who have a residence permit for a minimum of 1 year granted for study, dependent work, autonomous work or religious purposes.

11. LUXEMBOURG

11.1. General admission regulations

Table 11.1 Overview of required permits for admission and residence

Categories	Up to 3 months	More than 3 months
Students(higher education only)	Short-term visa	Residence permit
Unpaid trainees	Short-term visa Work permit	Residence permit Work permit
EU-Trainees ²⁸⁸	Short-term visa Work permit	Residence permit Work permit
Exchange Trainees ²⁸⁹	Short-term visa Work permit	Residence permit Work permit
Professional trainees (vocational trainees)	Short-term visa Work permit	Residence permit Work permit
Au pair	Short-term visa Work permit	Residence permit Work permit
Guest researchers ²⁹⁰	Short-term visa Work permit	Residence permit Work permit
Pensioners	Short-term visa	Residence permit
Artists ²⁹¹	Short-term visa Work permit	Residence permit Work permit
Clergy ²⁹²	Short-term visa Work permit	Residence permit Work permit
Journalists ²⁹³	Short-term visa Work permit	Residence permit Work permit
Persons with private means	Short-term visa	Residence permit

Third country nationals need a short-term visa for a temporary stay, which does not exceed three months. Residence permits²⁹⁴ are issued to third country nationals entering Luxembourg who intend to stay in the country more than three months. Third country nationals residing in the country longer than two or three years may normally apply for foreigners identification cards²⁹⁵ valid for five years. The numbers of these types of permits are not limited by any quotas or ceilings.

²⁸⁸ EU trainee: The trainee's work is part of an EU education or research programme. The most important education programmes are LEONARDO and SOCRATES, which include the subprograms ERASMUS, COMENIUS, LINGUA, etc.; YOUTH FOR EUROPE and TEMPUS should also be mentioned.

²⁸⁹ Exchange trainee: The trainee's work is part of a trainee exchange programme. These are programmes of associations such as AIESEC, AMSA, ELSA, IAAS and IAESTE.

²⁹⁰ Including: guest teachers, foreign language assistants, other instructors; if the guest researcher has received a grant, s/he does not need a work permit.

²⁹¹ if they are in self-employment, they do not need a work permit

²⁹² if they enter the country celebrating one occasional event, they do not need a work permit

²⁹³ if they are in self-employment, they do not need a work permit

²⁹⁴ autorisation de séjour

²⁹⁵ carte d'identité d'étranger

Citizens of the EU/EEA enjoy freedom of movement within the EU/EEA.

11.1.1. Students

Third country nationals need a residence permit for the purpose of studying²⁹⁶, if the period of study exceeds three months. Students are considered to reside temporarily in Luxembourg and the residence permit is granted only for a temporary stay. The law does not allow students to use the legal status of the residence permit granted for the purpose of studying as a means of entering Luxembourg with the intent of staying indefinitely. Once student finish their studies they have to leave Luxembourg and return to their home country of origin or to the country in which they are legally resident.

The residence permit for the purpose of studying is granted for twelve months and can be renewed (see below). Third country students are not entitled to carry out employment.

11.1.2. Unpaid trainees, vocational trainees, EU-trainees, exchange trainees

For a period of stay not exceeding three months, a short-term visa is required. For a period of stay exceeding three months, a residence permit (renewable) is necessary. A work permit is also required.

11.1.3. Au pair

For a stay not exceeding three months, only a short-term visa is required for third country nationals. For a stay exceeding three months a residence permit is needed. A work permit is also required. The permits give the right to stay in Luxembourg in order to work only as au-pair and are limited to such activities²⁹⁷. The first permits are valid for a maximum of one year and could be renewed for maximum two years.

11.1.4. Guest researchers

For a period of stay not exceeding three months, a short-term visa is required for third country nationals. For a period of stay exceeding three months, a residence permit is required (renewable). A work permit is also required, except in cases where the guest researcher has received a grant.

11.1.5. Artists

For a stay not exceeding three months, only a short-term visa is required for third country nationals. For a stay exceeding three months they need a residence permit (renewable). A work permit is also required, if they are in dependent employment (for example musicians in orchestras need a work permit, independent painters do not). A work permit is not required, if they stay in Luxembourg less than one month and as self-employed artists.

²⁹⁶ autorisation de séjour provisoire pour étudiants

²⁹⁷ Art. 3(2) of the Law dated 06.04.1990 with which the Council of Europe „European Agreement On „Au Pair“ Placement“ dated 24.11.1969 has been ratified by Luxembourg.

11.1.6. Journalists

A stay not exceeding three months is subject to the general regulations for short-term visas. If the length of stay exceeds three months, a residence permit is required (renewable). A work permit is required if they are in dependent employment, for example working for the permanent office of a foreign media company. If they enter Luxembourg to cover only one event and are self-employed, they do not need a work permit.

11.1.7. Clergy

A stay not exceeding three months is subject to the general regulations for short-term visas. If they are entering Luxembourg to celebrate only a mass or other religious event, they do not need a work permit. If the length of stay exceeds three months, a residence permit is required. A work permit is required, if the foreigner is engaged and paid by a religious community (e.g. Polish catholic community or Muslim refugee community).

11.1.8. Pensioners and persons with private means

A stay not exceeding three months is subject to the general regulations for short-term visas. If the length of stay exceeds three months, a residence permit is required. Upon first arrival, the person obtains a residence permit valid up to one year and which is renewable.

11.2. Conditions

All non-EU foreigners intending to stay in Luxembourg more than three months are required to undergo a health check after the third day of their entry into the country. Furthermore, they must prove that they have health insurance covering all risks in Luxembourg. Sufficient means of existence are also an obligation. If s/he does not have sufficient means for covering his/her travel and living expenses the travel visa or the residence permit may be refused²⁹⁸. If the foreigner is a danger to public health, public security or public order, the travel visa or residence permit may also be refused²⁹⁹.

11.2.1. Students

To obtain the first residence permit, students need to produce the following:

- copy of a valid travel document
- pre-entry form to the school³⁰⁰
- certificate of health insurance
- proof of adequate housing (for example a signed lease; students residing in the *Centre Universitaire de Luxembourg* have to produce a certificate stating that they have been admitted to stay in its dormitory)
- bank guarantee of 100,000 LUF (EURO 2, 479) valid for one year (this is a guarantee that the bank would pay up to the stated amount in compensation for the costs incurred, in case the student has to be removed from the country)

²⁹⁸ Art. 2 of the Law of the Entrance and Residence, of Medical Control and of Employment of Foreign Nationals dated 28.03.1972, modified by the Laws dated 16.04.1975, 29.07.1977, 17.06.1994, 18.08.1995; *Loi du 28 mars 1972 concernant l'entrée et le séjour des étrangers; le contrôle médical des étrangers; l'emploi de la main d'oeuvre étrangère, modifiée par: Loi du 16 avril 1975, Loi du 29 juillet 1977, Loi du 8 avril 1993, Loi du 17 juin 1994, Loi du 18 août 1995*. This condition was added with the Law dated 18.08.1995

²⁹⁹ Art. 2 *ibid*.

³⁰⁰ certificat de (pré-) inscription à l'établissement scolaire

- proof of sufficient financial means or a letter of guarantee specifying the person who is financially responsible for the student during his/her stay

11.2.2. Unpaid trainees

To obtain a residence permit, they have to prove that they have sufficient financial means.

11.2.3. EU-trainees, exchange trainees

The work permit is granted under the condition that the trainee will return to his/her home country after the end of the training.

11.2.4. Au pairs

To obtain the permits the applicant must be 17-30 years of age. In some cases the au pairs placing authority – the Labour Market Administration (*l'Administration de l'Emploi*) – may allow exceptions from the age limit of 30 years. Applicants as au pairs must be in possession of a health check certificate not older than three months, before starting to work as au pairs.

11.2.5. Artists and journalists

To obtain a residence permit, they have to prove, that they have sufficient financial means to live or that they have the potential to earn enough from their artistic activity.

11.2.6. Pensioners and persons with private means

With the application for the residence permit the person has to produce the following:

- copy of a valid travel document
- bank guarantee of 400,000 Luxembourg francs (EURO 9, 916) or alternatively proof of sufficient financial means (this should be around the minimum salary in Luxembourg or approximately 40,000 LUF = EURO 992)
- certificate of compulsory health insurance
- police clearance certificate

11.3. Procedure

As a matter of principle, applications for travel visas must be made at Luxembourg diplomatic or consular missions abroad.

Applications for residence permits should be submitted to the Ministry of Justice, which is the decision-making authority. If the residence permit is granted, the applicant receives a certificate from the Ministry of Justice, with which certificate s/he has to go to the passport office, where s/he will get the residence title stamped into her/his passport in form of a vignette. Finally s/he is required to register as a resident alien in Luxembourg at the local population bureaux³⁰¹.

In the cases where the applicant needs a work permit, a condition for obtaining the residence permit is that the application for the work permit is first submitted to the Ministry of Labour. The Ministry of Labour issues a certificate stating if the applicant will receive a work permit or not. If the work permit is granted the applicant has to submit this certificate to the Ministry of Justice together with her/his application. If the residence permit is granted, the Ministry of Justice issues another certificate, with which the applicant will receive her/his residence title

³⁰¹ l'autorité locale de la commune

(including the work permit) from the passport office (the same procedure as already stated above).

The application has to be made either in French, German or English. The length of the procedure could be up to three months. For the granting of the travel visa or the residence permit a fee of 1,500 LUF (37 EURO) should be paid by the applicant.

11.3.1. Students

The application for the residence permit has to be made by the student to the Ministry of Justice, foreigners' department³⁰², before the 15th of September of the relevant year.

Normally, the application has to be submitted from the country of origin. The application can also be made in Luxembourg or in any other EU country if the student is legally present in this country (being in possession of residence permit valid for at least three months for the EU country in question). There is a special application form that should be used by the applicant. The application has to be made either in French, German or English. No fees have to be paid by the applicant for the granting of the residence permit for the purpose of studying.

11.4. Renewal

As a matter of principle, the residence permit is renewed if the applicant continues to fulfil the conditions for the first permit. The residence permit is normally renewed for one year.

11.4.1. Students

When applying for a renewal of the residence permit for the purpose of studying, students have to enclose with the application a certificate stating progress made in their studies (one failure is admitted) and a proof that they have paid the inscription fee of the university³⁰³ as well as the same documents they submitted for the initial application.

There is no maximum length of stay applicable for students. Foreign students are allowed to change the subjects studied only once and as they are allowed to fail also only once, the maximum period of their stay will, in practice, be only four years.

11.5. Change of purpose of admission

There are no formal obstacles, except for students, to change to other types of permit but the applicant has to meet the criteria of the new type of permit.

11.6. Rights and status of third country nationals in comparison to EU and EEA nationals

Students who are third country national do not have the right to work. If they try to get a work permit during their studies, the residence permit will be withdrawn.

Third country nationals do not have the right to vote or stand for elections.

³⁰² service des étrangers

³⁰³ preuve du paiement des droits d' inscription

11.7. Family reunification

Spouses and minor children under the age of 18 are eligible for reunification. Family members receive a residence permit valid for one year which can be renewed. Family reunification is possible if the living costs and adequate housing of the family are assured.

11.7.1. Students and trainees

Students and trainees do not have the right to family reunification.

11.8. Fraud

In case of fraud, the residence permit may be withdrawn.

11.9. Removal

In general, a residence permit may be withdrawn for reasons of public order or security as well as for lack of financial means.

Except in the case of expulsion of a holder of only a residence permit, the concerned person (for instance, holders of foreigners' identification cards) has to be heard by a special independent commission³⁰⁴ before a withdrawal of the residence permit and removal.

11.10. Legal developments

The current alien's law³⁰⁵ dates from 1972 and it has been modified by laws dated 16.04.1975, 29.07.1977, 17.06.1994 and 18.08.1995. There are no changes in the law expected in the near future (2000, 2001).

11.11. Statistics

Luxembourg does not collect any statistics on any of the categories of aliens relevant to this study. The Ministry of Justice estimates, however, that there are fewer than 100 foreign students at present in Luxembourg and very few pensioners from third countries. According to the Ministry of Labour, in 1999 a total of 4,381 work permits were granted to 3,715 people from third countries. Of these, 54 were trainees and 22 artists.

11.12. Conclusion

Due to the few institutions of higher education in Luxembourg, the admission of students is from an immigration point of view not a very important issue. Admission for work-related purposes is handled very restrictively, which is also reflected in the admission policies for trainees, au pairs, guest researchers, artists, clergy and journalists, all of whom – with a few exception in some cases – need a work permit to carry out their activities. It should be underlined that obtaining a residence permit is tied to a prior granting of a work permit. Further, it is important to note that students are not allowed to take up any employment, not

³⁰⁴ preuve du paiement des droits d'inscription

³⁰⁵ Loi du 28 mars 1972 concernant l'entrée et le séjour des étrangers, le contrôle médical des étrangers; l'emploi de la main d'oeuvre étrangère, modifiée par: Loi du 16 avril 1975, Loi du 29 juillet 1977, Loi du 8 avril 1993, Loi du 17 juin 1994, Loi du 18 août 1995

even part-time work and or work during holidays or summer time. If they try to get a work permit during their studies, the residence permit will be withdrawn. To emphasise the temporary nature of the admission of some of the categories concerned in this study – for example, au pairs – short time-limits have been set on the maximum duration of stay for them (two years). In the case of EU-trainees and exchange trainees the work permit is granted under the condition that the trainee will return to his/her home country after the end of his/her training. Students are also expected to leave Luxembourg and return to their home country of origin or to the country in which they are legally resident. Another legal restriction for students and trainees is that they have no right to be joined by their family members. Students are also not allowed to change the purpose of their admission. There are no formal obstacles for the other categories relevant to this study to change to other types of permit but the applicant has to meet the criteria of the new type of permit.

12. NETHERLANDS

12.1. General admission regulations

Third country nationals intending to stay for less than three months need a short-term visa, if visa obligation exist vis-à-vis their country of nationality.

A third country national intending to stay for longer than three months needs an authorisation for temporary stay (MVV) to enter the Netherlands.³⁰⁶ S/he also needs a residence permit (*Vergunning tot Verblijf*, VTV), which is issued once arrived in the Netherlands. The residence permit for temporary stay is a so-called D-document. The permit has to be renewed every year, although in some cases this can be extended up to five years.

The MVV requirement does not apply to:

- Citizens from the EU as well as from Australia, Canada, Iceland, Japan, Liechtenstein, Monaco, New Zealand, Norway and Switzerland;
- Members of the immediate family of an EU/EEA citizen that are not EU/EEA citizens themselves;
- Asylum seekers;
- Members of the immediate family of recognised refugees;
- Someone staying on a short or long term basis who needs medical treatment;
- Aliens not residing in the Netherlands who lived in the Netherlands for five consecutive years before the age of nineteen;
- Children under twelve that grew up in the Netherlands and are still residents of the country;
- People who worked for at least seven years on a Dutch ocean vessel, or a mining construction site on Dutch territory; and
- Victims of trafficking in women.

If a work permit is necessary, the employer files the application for the third country national in question.

Although a residence permit is not obligatory for EU citizens, it can be useful for them to have one, especially when applying for social benefits. Also, some other institutions could ask for a proof of permitted residence.

The Dutch authorities do not apply any quotas with regard to any of the described categories.

³⁰⁶ In December 1998 the MVV was reintroduced after it had actually been abandoned a few years before.

Table 12.1: Overview of required permits for admission and residence

Categories	Up to 3 months	Up to 6 months	More than 6 months
Students (higher education only)	Short-term visa	Authorization for temporary stay (MVV) Residence permit	Authorization for temporary stay (MVV) Residence permit
Unpaid trainees	Short-term visa Work permit	Authorization for temporary stay (MVV) Residence permit (D-document)	Not allowed to stay more than 6 months
EU-trainees	Short-term visa Work permit	Authorization for temporary stay (MVV) Residence permit Work permit	Authorization for temporary stay (MVV) Residence permit Work permit
Exchange trainee	Short-term visa Work permit	Authorization for temporary stay (MVV) Residence permit Work permit	Authorization for temporary stay (MVV) Residence permit Work permit
Vocational trainees	Short-term visa Work permit	Authorization for temporary stay (MVV) Residence permit Work permit	Authorization for temporary stay (MVV) Residence permit Work permit
Au pair	Short-term visa	Authorization for temporary stay (MVV) Residence permit	Authorization for temporary stay (MVV) Residence permit
Guest researchers	Short-term visa Work permit	Authorization for temporary stay (MVV) Residence permit Work permit	Authorization for temporary stay (MVV) Residence permit Work permit
Pensioners	Short-term visa	-	-
Artists	Short-term visa Work permit	Authorization for temporary stay (MVV) Residence permit Work permit	Authorization for temporary stay (MVV) Residence permit Work permit
Clergy	Short-term visa Work permit	Authorization for temporary stay (MVV) Residence permit Work permit	Authorization for temporary stay (MVV) Residence permit Work permit
Journalists	Short-term visa Work permit	Authorization for temporary stay (MVV) Residence permit Work permit	Authorization for temporary stay (MVV) Residence permit Work permit
Persons with private means	Short-term visa	-	-

12.1.1. Students

In the residence permit it clearly states that the “staying purpose is study ...(course) at... (University/school for higher education) in ... (place of University/school for higher education).” In general, a foreign student must complete the course or study within six years. The maximum period may, however, be reduced or extended, depending on the programme’s total duration.

12.1.2. Unpaid trainees

Unpaid trainees are only allowed to stay for 24 weeks. The residence permit states: “Trainee, any other labour not permitted”. They also need a work permit, even if staying for less than three months.

12.1.3. EU-trainees, exchange trainees, and vocational trainees

When wanting to stay for more than three months, trainees need a MVV and a residence permit for one year. The residence permit states: “Trainee, any other labour not permitted”. They also need a work permit, even if staying for less than three months.

12.1.4. Au pair

Au pairs can stay maximum one year in the Netherlands, with a MVV and a residence permit. A work permit is not required. The main aim of their stay is to learn the Dutch language and culture, whilst living with a host family. In exchange, the family may expect the au pair to do light household work. Nevertheless, this household work, childminding duties and domestic help may not be the main purpose of the stay. An Au Pair is never allowed to be employed. In the residence permit it will state: “Au pair. Labour is not permitted.”

12.1.5. Guest researchers, artists, journalists

Guest researchers, artists, and journalists need a MVV and a residence permit to be able to stay in the Netherlands more than three months. A work permit is also required, even if staying for less than three months. The label in the residence permit will state: “Labour. Labour is permitted when the employer has a work permit”.

12.1.6. Clergy

When staying more than three month, clergy need an MVV, and an one-year residence permit, where the following limitations are mentioned: “As clergy for ... (specific religious organisation). Labour is permitted when the employer has a work permit. Any other labour is not permitted.” A work permit is also required, even if staying for less than three months.

12.1.7. Pensioners and persons with private means

These persons are not allowed to stay longer than three months, and are not allowed to work during this period. Only on very serious humanitarian grounds may exceptions be granted.

12.2. Conditions

All non-EU foreigners planning to stay in the Netherlands must undergo a tuberculosis check, except nationals of Australia, Canada, Israel, Japan, Monaco, New Zealand, Suriname, the USA and Switzerland. Furthermore, they must have a health insurance covering all risks in the Netherlands. If not employed an account of means and ways to cover living expenses is

required. A criminal record or threat to the public order, peace or national security is reason for denying entry.

12.2.1. Students

In addition to the above-mentioned conditions, students need to proof a (preliminary) registration at a university or school for higher education. It is possible to stay for a preliminary year to take supplementary courses for entrance examinations or Dutch language tests. Furthermore, the student needs to declare that the stay in the Netherlands is only for the purpose of studies and the student must leave upon finishing or interrupting the course. A prerequisite for admission for continued education or vocation training is that the Netherlands is the most appropriate country to undertake the studies or training, that the desired line of study does not exist in the students home country and that s/he will make a positive contribution to his/her home country upon return.

12.2.2. Unpaid trainees, EU-trainees and Exchange trainees

All these trainees need a declaration of the University or school that a sufficient and specific education has been followed and that the traineeship is necessary. A formal invitation and a declaration accepting the trainee, issued by the employer, are necessary. The trainee also need to present a work permit, which the employer has applied for. In addition, a declaration confirming that the stay in the Netherlands is only for the purpose of the traineeship and that the trainee must leave upon finishing or interrupting the traineeship, is necessary. The trainees have to be at least 18 years of age and no older than 45 years.

12.2.3. Vocational trainees and guest researchers

The conditions for a vocational trainee are less strict; there are for example no guarantees or provisions of return needed, and there are no age limitations. A formal invitation and a declaration accepting the trainee, issued by the employer, are necessary, in addition to a work permit. Concerning applicants holding a Phd, any additional evidence proving the academic or professional achievements are not necessary.

12.2.4. Au pair

The au pair has to be provided with board, lodging and pocket money by the host family. The latter therefore have to sign a guarantor's declaration. The host family must have an income equivalent to the General National Assistance Level for Families, plus the General National Assistance level for Single Persons.³⁰⁷ In addition, the host family must cover possible costs of the return trip. A declaration from the au pair is needed, which confirms that the stay in the Netherlands is only for the purpose of being an au pair, and that the applicant must leave upon finishing as an au pair, or leaving the host family. An au pair is not allowed to have resided in the Netherlands before with a (permanent) residence permit or as a recognised refugee with a residence permit. Au pairs are only allowed to stay in the Netherlands for one year. An au pair has to be at least 18 years, but no older than 26 years.

12.2.5. Artists

Artists have to be at least 18 years, but not more than 45 years, of age, except for those who intend to stay in the country for less than three months.³⁰⁸ There are no other limitations, although an artist must have a formal invitation from the employer and a work permit.

³⁰⁷ Minimum income necessary for maintenance of a family, as laid down in the General National Assistance Act

³⁰⁸ According to art. 9(d) of the Law on the Employment of Foreigners, a labour permit should be refused when the applicant is under 18 or over 45 years of age.

12.2.6. Journalists

Journalists may not be younger than 18 years, and not older than 45 years, of age, except when staying in the country for less than three months. In addition to a formal invitation from the employer and a work permit, no other requirements exist.

12.2.7. Clergy

The age limitations for clergy, at least 18 years, no older than 45 years, of age, do not apply if the applicant intend to stay in the country for less than three months. A declaration from the applicant, confirming that the stay in the Netherlands is only for the purpose of working for a specific religious organisations, is needed. The clergy(wo)man must leave upon finishing the work for this organisation and s/he is not permitted to work for another organisation or to perform any other type of work. S/he needs proof of adequate accommodation as well as a formal invitation from the specific religious organisation.

12.3. Procedure

The application process for residence permits for persons who want to stay in the Netherlands for more than three months starts with the submission of an application at a Dutch embassy/consulate for an authorisation for temporary stay (MVV), which will allow the alien to travel to the Netherlands. During the application procedures for MVV, it will be determined whether the applicant meets the requirements for the purpose of residence. Depending on purpose and personal circumstances, the applicant needs different documents, to meet the requirements as explained above.

Within three working days of arrival in the Netherlands, the third country national is expected to file an application for a residence permit, issued by the Aliens Police Department, at the local police authorities. A valid passport or identity document is required for an application. The documents must also have been legalised, which is done by the applicant, before entering the Netherlands, by submitting them to the competent authorities in the country where they were issued. Citizens of Ghana, Nigeria, India, Pakistan and the Dominican Republic not only have to legalise their documents, but also verify them. The verification takes place at the Dutch Embassy or Consulate in the respective country.

An alien can never, under any circumstances, apply for an MVV in the Netherlands. However, a sponsor, for example the person in whose home the foreigner will stay, or a prospective employer, may initiate the application procedures in the Netherlands. The sponsor may file the application with the Aliens Police and submit the required documents and information needed to determine whether the alien qualifies for admission to the Netherlands. Based on this information, the Aliens Police will submit a so-called *ex officio* recommendation to the Ministry of Foreign Affairs' Visa Service, which is the decision-making authority.

If the application has been approved, the embassy will send a notification to the beneficiary, on when and where to pick up the MVV. The embassy's authorisation to issue a MVV is valid for a maximum of six months. The beneficiary may not, under any circumstances, pick up the MVV in the Netherlands, the MVV can only be obtained at the Dutch embassy/consulate in the home country or country of permanent residence. If the application is rejected, the applicant may authorise the sponsor to submit an appeal to the Ministry of Foreign Affairs.

Applications can officially be made in Dutch, English, French and German.

The fee for a visa for a short-term stay is NLG 48.50 (22 EURO), if valid for one month, and NLG 64.50 (29.26 EURO), if valid for three months. The label with the residence reservations is free of charge. The fee for the MVV needed for a stay longer than three months is NLG 80 (36.30 EURO). The application form A (attached) needed to get the residence permit costs NLG 125 (56.72 EURO).

A work permit which is free of charge needs to be obtained by the employer from the Central Manpower Services Board (*CBA*), which is responsible for labour issued at the local and regional levels.³⁰⁹

12.4. Renewal

In general, a residence permit can be renewed when the purpose for stay has not changed and the conditions for obtaining the initial permit are still met. A renewed permit is in general valid for one year. Exceptions to these general rules are mentioned below.

12.4.1. Students

The permit can be renewed for a maximum of 5 times, as students in principle have six years to complete a course or study. The maximum period of residence may be reduced or extended, depending on whether the programme's duration is shorter or longer, respectively. In other cases, for example if the student has completed or interrupted the study within this period, the Aliens Police will generally revoke or refuse to renew the residence permit.

12.4.2. Unpaid trainees

The permit is issued for a maximum period of 24 weeks, and a renewal is not possible.

12.4.3. EU-trainees, Exchange trainees, Au pairs

The permit is issued for a maximum period of one year, and a renewal is not possible.

12.5. Change of purpose

In general, a third country national cannot change his/her purpose of stay. Holders of a D-document (residence permit) will have to leave the Netherlands and return to the country of origin or country of permanent residence to obtain an authorisation for temporary stay for the new purpose. They also have to sign a new declaration on the stay (students, trainees, au pairs, and clergy, etc.).

12.5.1. Students

Students who are third country nationals must also return if wanting to change his/her degree programme or school/university. EU/EEA students do not have this obligation.

12.5.2. Vocational trainees, guest researchers, artists, journalists

³⁰⁹ With regard to athletes, the employer (such as a football club) has to apply for a work permit, then the Immigration and Naturalisation Service will give its opinion, and if all demands are fulfilled, a permit allowing labour will be issued.

For this group of temporary residents, a change of permit for other purposes is possible without having to leave the Netherlands.

12.6. Rights and status of third country nationals in comparison to EU/EEA nationals

The right to work and its limitations is mentioned on the label with residence reservations or on the residence permit.

The health and welfare system is, in principle, open to any person who legally resides in the Netherlands. However, if the categories of relevance for this study receive social benefits, the conditions on which the permit was granted are no longer met and, thus, it is possible that the permit may be withdrawn.

Third country nationals have the right (active and passive) to participate in local elections after 5 years of residence in the Netherlands.

12.7. Family reunification

In general, family reunification is possible. The same rules apply for wedded spouses and registered partners (both hetero- and homosexual partners), as well as for children up to 18 years of age. The family members will get a contingent residence permit, meaning that when the residence permit of the main permit holder is withdrawn or not renewed, the legal status of the family members will also be withdrawn or not renewed. Proof of being legally married or registered as partners is needed.

Reunification with unregistered partners (girl friend, boy friend) is possible, if the main permit holder signs a guarantor's declaration. No one else may sign the guarantor's declaration. Furthermore, a document proving the non-married status is obligatory.

A sufficient income (at least equivalent to the minimum income for families as laid down in the General National Assistance Act), as well as enough living space is obligatory.

Family reunification is not possible for au pairs.

The residence permit will not be renewed or may be withdrawn in the following cases:

- a. children who, within one year, start living independently, get married or start living with a partner
- b. husband/wives who terminate a marriage through divorce or stop living together
- c. partners who stop living together

However, under certain conditions, foreign nationals whose resident permits are affected by such changes may be permitted to continue living in the Netherlands.

Also for family reunification the requirements are:

- A check for tuberculosis, except for citizens from the countries mentioned in section 12.1.
- A criminal record or threat to public order is a reason to deny residence
- Sufficient means for maintenance
- Health insurance covering all risks in the Netherlands

12.8. Fraud

In general, when it is proved that a residence permit has been given based on false information, the residence permit will be withdrawn.

12.9. Removal

In general, a residence permit can be withdrawn when:

- The alien has given fake information, which led to obtaining the residence permit.
- Sufficient means for maintenance are no longer available
- The alien becomes/can be considered a serious threat to public safety
- The alien no longer meets the conditions under which the residence permit was obtained

12.10. Legal developments

The Aliens Law dates back to 1994. A new Aliens Law has been drafted and it is presently in the Parliament and expected to enter into force on 1 of January 2001.

12.11. Statistics

The Statistical Office of the Dutch Immigration and Naturalisation Service was unfortunately not able to produce any data relating to the above mentioned categories.

12.12. Conclusions

The general immigration policy aims at limiting the possibilities for long-term stay, whereas admission for study purposes (temporary nature of stay) is more liberally handled. The need to hold an authorisation for temporary stay (MVV), when entering the Netherlands, does not apply to citizens of Australia, Canada, Iceland, Japan, Liechtenstein, Monaco, New Zealand, Norway and Switzerland. Cultural exchange programmes for studies and holiday work also exist for Australia, Canada and New Zealand. A residence permit is issued once the applicant has arrived in the Netherlands. The maximum duration of stay for au pairs and unpaid trainees has been limited. Strict rules for clergy, journalists and artists are generally aimed at preventing abuse of the system, and age limits are also strictly applied. All residence permits clearly state the purpose of stay and not acting in accordance with this will inevitably lead to withdrawal of the permit. Changes to the purpose of stay are difficult and usually a return to the country of origin is required. The rules for family reunification are mostly of a flexible nature, whereby unmarried, but registered partners are in principle treated as legal spouses. In general, family reunification is possible, except for the family members of au pairs. As a whole, for humanitarian reasons it is possible to make exceptions to several rules, which leaves some room for taking into account the specific circumstances of each applicant. There are no special policies in place for, for instance, IT students, although it should not be excluded that such may be developed in the future.

13. PORTUGAL

13.1. General admission regulations

An applicant who intends to stay more than 3 months should apply for an entry visa at the Portuguese diplomatic representation³¹⁰ in his/her country of origin or permanent residence in order to be allowed to enter Portuguese territory. There are three different types of visas granted: study visa, work visa and residence visa. Only holders of residence visas need to apply for a residence permit. The residence visa is valid for six months, and within this period the applicant has to apply for a residence permit while in Portugal. Study and work visas may be renewed on an annual basis and it is not necessary to apply for further residence permits after having entered the country with a valid study or work visa.

The study visa allows the holder to enter the national territory in order to:

- follow the study curricula in a school or teaching institute officially acknowledged;
- carry out scientific research studies to obtain an academic diploma;
- carry out a traineeship, which is supplementary to the studies concluded in own country;
- participate in traineeship programmes of companies, public utilities or teaching centres that are not considered official schools or teaching institutions.

The work visa allows the visa holder to enter Portuguese territory with the purpose of temporarily exercising a professional activity or to be lawfully employed. The maximum total period of the stay is three years. There are four different types of work visas:

- work visa I is granted to exercise a professional activity in the area of sports
- work visa II is granted to exercise a professional activity in the area arts
- work visa III is granted to exercise an independent professional activity
- work visa IV is granted to exercise a remunerated professional activity

The residence visa allows the holder to enter the national territory in order to request a residence permit.

There are no quotas or ceilings.

³¹⁰ The embassy/consulate is also the deciding authority.

Table 13.1. Overview of required permits for admission and residence

Categories	Up to 90 days	More than 90 days
Students	Valid visa indicating the purpose of stay	Student visa
Unpaid trainees	Valid visa indicating the purpose of stay	Student visa
EU Trainees	Valid visa indicating the purpose of stay	Student visa
Exchange trainee	Valid visa indicating the purpose of stay	Student visa
Vocational trainees	Valid visa indicating the purpose of stay	Student visa
Au Pair	Valid visa indicating the purpose of stay	Work visa
Guest researchers, non-remunerated	Valid visa indicating the purpose of stay	Study visa
Guest researchers, remunerated	Valid visa indicating the purpose of stay	Work visa, type III or IV
Pensioners	Valid visa indicating the purpose of stay	Residence visa Residence permit
Artists	Valid visa indicating the purpose of stay	Work visa, type II
Clergy	Valid visa indicating the purpose of stay	Residence visa Residence permit
Journalists (admission for a specific assignment)	Valid visa indicating the purpose of stay	Work visa
Journalists (admission for residence)	Valid visa indicating the purpose of stay	Residence visa Residence permit
Persons with private means	Valid visa indicating the purpose of stay ³¹¹	Residence visa Residence permit

13.1.1. Students

The maximum duration of stay is three years, except in the case of visas granted for the purpose of following a study programme in a school or teaching institution officially acknowledged by the State, or for the purpose of participating in a traineeship that is supplementary to the studies concluded in the country of origin or abroad. In these cases the

³¹¹ Aliens who are holders of a residence permit do not need a visa.

maximum duration of stay may be longer. The visa-holder may also be employed while studying as long as s/he can proof progress in the studies.

13.1.2. Vocational trainees

The study visa for professional trainees is also granted for one year initially and renewable on an annual basis for two additional years.

13.1.3. EU-trainees and exchange trainees

A trainee needs a study visas, which is initially granted for one year and renewable until the end of the traineeship.

13.1.4. Au Pairs

Au pairs need a work visa, type IV for their activity, which is valid for one year and renewable for another two years.

13.1.5. Guest Researchers

Non-remunerated guest researchers need a study visa, while remunerated guest researchers need a work visa type III or IV.

13.1.6. Pensioners

Pensioners need a residence visa, which allows them to enter Portuguese territory and to apply for a residence permit within six months.

13.1.7. Artists

Artists need a work visa, type II for the purpose of temporarily exercising a professional activity in the field of sports, shows, etc., or to be lawfully employed.

13.1.8. Clergy

Members of the clergy need a residence visa, which allows them to enter Portuguese territory and to apply for a residence permit within six months.

13.1.9. Journalists

Journalists that are admitted for a specific work assignment need a work visa. If the intention is to actually reside in the country, the journalist needs a residence visa and later a residence permit.

13.1.10. Persons with private means

Persons with private means need a residence visa, which allows them to enter the country and to apply for a residence permit within six months.

13.1.11. Other aliens that perform non-remunerated activities

This category needs a residence visa, which allows them to enter the country and to apply for a residence permit within six months.

13.2. Conditions

13.2.1. Students, unpaid trainees, EU trainees, exchange trainees, vocational trainees, and non-remunerated guest researchers

In order to be granted a study visa, the applicant needs to provide a health certificate and a police clearance certificate. The applicant has to prove that s/he has been accepted to a officially recognised Portuguese university/teaching institute. Further, the applicant needs to prove that s/he has enough means for living in Portugal. The minimum amount required for students is ESC 15,000 (=EURO 75) for the entry and ESC 8,000 (=EURO 40) per day. There are no age limits or further requirements. There are no further requirements.

13.2.2. Au pairs, remunerated guest researchers, artists, and journalists admitted for a specific work assignment

In order to be granted a work visa the applicant needs to provide a health certificate and a police clearance certificate. The applicant needs to prove that s/he has sufficient means for living in Portugal. In addition, a work contract or documentary proof of investment registration has to be provided, or in the case of free-lance professors, a document proving that they are approved by the authorities to exercise their profession in Portugal. There are no age limits and no further requirements.

13.2.3. Pensioners, clergy, journalists intending to actually reside in the country, persons with private means

In order to be granted a residence visa the applicant needs to provide a health certificate and a police clearance certificate. The applicant needs to prove that s/he disposes of sufficient means for living in Portugal. For instance, concerning clergy, a statement issued by the organisation to which the clergy member belongs is needed to prove that sufficient funds exist to cover the expenses of the stay. In addition, a health insurance is needed, except in cases when the visa holder is duly registered in a social security system. There are no age limits or further requirements.

13.3. Procedure

The visa application is filed with the diplomatic representation in the countries of origin or permanent residence, which are also responsible for the processing of the applications. Visas cannot be issued in Portugal. A valid travel document needs to be presented and the applicant needs to fulfil the conditions listed above.

The holder of a residence visa may file an application for a residence permit with the Regional Sectors/Delegations of the respective department where the applicant lives. The Borders and Immigration Department processes the residence permit. Visas applications do not have to be made in Portuguese, whereas the applications for residence permit can only be made in Portuguese. It takes about two months to process an application for a residence permit.

The fees for the different visas are as follows:

- study visa: 24,94 EURO
- work visa: 64,84 EURO
- residence visa for individual passport: 79,81 Euro

- residence visa for family passport: 84,80 Euro

The fees for the residence permits are as follows:

- temporary residence permit: PTE 20,000 (=EURO 100) plus and additional PTE 1,000 (=EURO 5) for its renewal
- permanent residence permit: PTE 40,000 (=EURO 200) plus PTE 1,000 (=EURO 5) for its renewal

13.4. Renewal

The application for a renewal of visas and residence permits has to be filed at the Regional Sectors/Delegations of the respective department where the applicant lives. The Borders and Immigration Department is responsible for the processing of the application for extensions. The applications for extensions of stay and residence permit may only be made in Portuguese.

13.4.1. Students, unpaid trainees, EU trainees, exchange trainees, vocational trainees, and non-remunerated guest researchers

The study visa has to be renewed every year. It has to be verified that the applicant continues to fulfil the original conditions that justified the initial entry into the country. Further, students have to proof progress in their studies. The fee for the renewal of the study visa is PTE 7,000 (=EURO 35). Visa holders who are beneficiaries of study grants offered by the Portuguese Government are exempt from any fees.

13.4.2. Au pairs, remunerated guest researchers, artists, and journalists admitted for a specific work assignment

The work visa has to be renewed every year. It has to be verified that the applicant continues to fulfil the original conditions that justified the initial entry into the country. The fee for the renewal of a work visa is PTE 15,000 (=EURO 75) plus an additional PTE 40,000 (=EURO 200), with regard to the 2nd extension or a later one.

13.4.3 Pensioners, clergy, journalists intending to actually reside in the country, and persons with private means

A residence visa cannot be extended. The residence permit, which is valid for two years, can be extended. Modifications with regard to already provided information on personal matters must be given. The fee for the renewal of a temporary residence permit is PTE 1,000 (=EURO 5), and for the renewal of a permanent residence permit PTE 1,000 (=EURO 5).

13.5. Change of purpose of admission

Whether or not a work visa is issued to a third country national, will depend on the unavailability of a national citizen or EU citizen duly qualified to perform the task. Notwithstanding the above, once the visa has been granted, the holder may not change type of work or employer.

13.6. Rights and status of third country nationals in comparison to EU and EEA nationals

As to access to the health and welfare system, there are no differences in the treatment.

Third country nationals acquire an active capacity to vote three years after their legal residence has been granted and passive electoral capacity after five years have elapsed. EU citizens have the right to political participation, provided that the right is a reciprocated vis-à-vis Portuguese nationals in their own countries.

13.7. Family Reunification

A third country national, who has been granted a residence permit for at least one year has the right to be joined by his/her family, if s/he is able to cover the maintenance of the family. The following family members are eligible for unification:

- the spouse;
- the couple's children, or children of one of the spouses under his/her custody, who are less than 21 years of age or handicapped;
- children (minors) adopted by both spouses in accordance with the decision handed down by the competent authorities of the country of origin, provided the law of that country recognises that adopted children have the same rights and duties as the couple's natural children, and that the adoption decision is duly acknowledged in Portugal;
- brothers and sisters (minors), provided that the competent authorities in the country of origin have decided that they should be under the custody of the main permit holder, and provided that this decision is duly acknowledged in Portugal.

A resident visa is issued to family members, allowing them to enter Portuguese territory. A temporary residence permit, valid for two years, will be issued when the family member is already in Portugal.

The same conditions that apply to the main permit holder when renewing his/her visa also apply to the family members when they renew their visas. A check is made on whether there are adequate housing and sufficient funds to cover the living expenses of the family. It will also be checked to see whether the original conditions that justified the initial entry into the country are still fulfilled. Family members too may not subsequently alter their type of residence permit.

13.8. Fraud

In cases where fraud is discovered after the entry into the country, a criminal process is initiated. Consequently, the residence permit issued will be cancelled and a request to start an expulsion process filed.

13.9. Removal

The temporary residence authorisation may be cancelled, if the holder leaves the country over a period of six consecutive months or eight non-consecutive months, during the validity term of the permit. A permanent permit may be withdrawn if the holder is absent during 24 consecutive months or, 30 non-consecutive months over a period of three years.

Third country citizens holding a temporary or permanent residence permit are subject to expulsion if:

- they are a threat against national security, public order or good behavioural customs;
- their presence or activities in the country constitute a threat to the interests or the dignity of the Portuguese State or its citizens;

- they exercise the right to political participation in an abusive manner;
- they had committed acts which, had they been known by the authorities at an earlier stage, would have presented a hindrance to their entry into the country.

The expulsion process takes approximately two months.

13.10. Legal Developments

As of the entry into force of the Constitution of the Republic of Portugal in 1976, the following legislation has been approved related to entry, stay and removal of foreign citizens from the Portuguese territory:

- Decree Law No 274-B/81, dated September 1981, cancelled by
- Decree Law No 59/93, dated 3 March 1993, later cancelled by
- Decree Law No 244/98, dated 8 August 1998.³¹²

The main historical fact influencing the legislation was related to Portugal's accession to the European Economic Community in 1986 and the signing of the Agreement of Schengen in 1990.

The most significant modifications to immigration law were related to:

- the right to family reunification;
- a new legal instrument to cover assistance to combating illegal immigration;
- investigation of crimes against the aliens legislation;
- types of visa available;
- type of residence permit granted;
- provisions for an alien who finds him/herself in an irregular situation to leave the country voluntarily;
- modifications of the rules of procedure with regard to filing an expulsion request were modified;
- the expulsion penalty is no longer automatically applied to certain types of legal crimes, and the courts are empowered to reason their decision on whether to expel the alien or not
- reinforcement of the rights of the family members of a Portuguese citizen who are third country nationals.

The most important legal decision determines that foreign citizens, who have minors of Portuguese nationality, living with them in Portugal, can no longer be expelled from the country.

³¹² The Regulation Decree pertaining to Decree Law No 244/98, dated 8 August 1998 will enter into force soon.

13.11. Statistics

Only data for 1998 and 1999 are available for the numbers of visas issued:

Visa type	1998	1999
Study visas	1899	1459
Work visas	266	no data available
Residence visas	2862	1919

13.12. Conclusions

Admission for the purposes of relevance for this study is, judging by the low numbers, not particularly favoured. It is not necessary to apply for further work or residence permits after having entered the country with a valid study or work visa. In the case where an alien is issued a residence visa s/he has to apply for a residence permit within six months after entry into the country. Only au pairs, remunerated guest researchers, artists, and journalists admitted for a specific assignment need a work visa. Regarding maximum duration of stay, students may stay as long as their studies last, vocational trainees and au pairs may stay for a maximum period of three years. All visas and permits have to be renewed on an annual basis. The possibility to change the purpose of stay to work will depend on the unavailability of a national citizen to perform the task. Notwithstanding the above, once the visa has been granted, the holder may not change type of work or employer.

The rules for family reunification are of a flexible nature since every alien who has been granted a residence permit for at least one year may be joined by his/her family under the condition that s/he is able to cover the maintenance of the family.

14. SPAIN

14.1. General admission regulations

Table 14.1: Overview of required permits for admission and residence

Categories	Up to 3 months	More than 3 months
Students	Short term visa for students Temporary residence permit for students	Long term visa for students Temporary residence permit for students
Unpaid trainees	Short term visa for students Temporary residence permit for students	Long term visa for Students Temporary residence permit for students
EU trainees	Short term visa for students Temporary residence permit for students	Long term visa for students Temporary residence permit for students
Exchange Trainees	Short term visa for exchange trainees Temporary residence and work permit for trainees	Long term visa for exchange trainees Temporary residence and work permit for trainees
Vocational trainees	Long term visa for vocational trainees Temporary residence and work permit for trainees	Long term visa for vocational trainees Temporary residence and work permit for trainees
Au pairs	Short term visa for students Temporary residence permit for students	Long term visa for students Temporary residence and work permit for students
Guest researchers	Short term visa for guest researchers Temporary residence permit with exempt of work permit	Long term visa for guest researchers Temporary residence permit with exempt of work permit
Journalists	Short term visa for journalists Temporary residence permit with exempt of work permit	Long term visa for journalists Temporary residence permit with exempt of work permit
Clergy	Short term visa for clergy Temporary residence permit with exempt of work permit	Long term visa for clergy Temporary residence permit with exempt of work permit
Artists	Short term visa for artists Temporary residence permit with exempt of work permit	Long term visa for artists Temporary residence permit with exempt of work permit
Pensioners	Short term visa, no residence permit needed	Long term residence visa Temporary residence permit “non-remunerated

Persons with private means	Short term visa, no residence permit needed	Long term residence visa Temporary residence permit “non-remunerated”
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Generally, a residence permit can be either a temporary or permanent character. A temporary residence permit is issued for a period of more than three months and less than five years. In the present context only temporary permits are of relevance. There are no quotas nor ceilings for any of the categories.

14.1.1. Students

The visa and temporary residence permit for students will be issued as long as the alien is enrolled in a university/teaching institution.

14.1.2. Vocational trainees

This category needs a temporary residence permit and a work permit issued for twelve months and they may be prolonged for another six months. This permit allows the alien to stay in the country and to carry out the specific tasks, as indicated in the permit

14.1.3. Au Pairs

The rules on au pairs are regulated in accordance with the “European Au Pair Treaty of 24 November 1964”. The treaty states that an au pair should be between 16-30 years of age and come from a Member State of the Council of Europe to carry out defined services. The purpose of stay is to improve the language skills and not to work. The initial duration of stay will be for one year and it can be prolonged for a total of two years.

14.1.4 Artists, journalists, guest researchers and clergy

This residence permit allows an alien to stay in a country to carry out specific work activities as indicated in the permit.

14.2. Conditions

The passport or other valid travel document to enter Spain should be provided in addition to the following

14.2.1. Students

In order to receive a residence permit for students, the applicant needs to present the following:

- a student visa issued by the Spanish consular representation in the country of origin/or residence (if not exempted from visa requirement);
- certificate of admission to an officially recognised Spanish University or school;
- proof of sufficient means to cover the costs of the studies, maintenance during the stay, as well as the return travel to the country of origin or residence;
- students who are under-aged need to present an authorisation from the parents, which names the study centre and the duration of the stay; and
- three passport size photos.

14.2.2. Unpaid trainees and EU trainees

Third country nationals belonging to these categories are issued a residence permit for students and need to present the same documentation as listed in 14.2.1, except for the certificate of admission to a university/school and parental authorisation.

14.2.3. Au pair

In addition to the documentation for 14.2.2, a written contract between the alien and the host family stating the rights and obligations of both parties' needs to be presented with the application.

14.2.4. Guest researchers, journalists, clergy and artists

The following is needed:

- a residence visa issued by the Spanish Consular Representation in the country of origin/or residence of the applicant (if not exempted from visa requirement); or any document proving a previous legal and continuous residence;
- police clearance certificate issued by the authorities of the country of origin;
- health certificate, if this had not been presented during the application for the visa;
- proof of sufficient means to cover the living costs during the stay;
- proof of being covered by social security, this may be proven through the presentation of the municipal registration certificate; and
- three photos in passport size.

A work permit is not needed. However, the applicant needs to present a certificate issued by the General Directorate of Migration Ordinances at the Ministry of Labour and Social Affairs, stating that s/he belongs to a category, which is exempt from presenting a work permit. If this certificate is presented, also the requirement to prove sufficient means to cover the costs of living is also waived.

14.2.5. Vocational trainees and exchange trainees

When applying for a residence permit the applicant needs to present the following documents:

- valid passport or other valid travel document to enter Spain;
- visa issued by the Spanish consular representation in the country of origin/or residence of the applicant (if not exempted from visa requirement);
- study certificate issued in the country of origin or residence;
- work contract or admission document by the training body;
- police clearance certificate issued by the authorities of the country of origin;
- health certificate issued by the authorities of the country of origin;
- proof of sufficient means to cover the living costs during the stay;
- proof of social security cover, this may be proven through the presentation of the municipal registration certificate; and
- four photos in passport size.

They also need a work permit.

14.2.6. Pensioners and other persons with private means

When applying for a residence permit the applicant needs to present the following documents:

- valid passport or other valid travel document to enter Spain;
- visa issued by the Spanish consular representation in the country of origin/or residence of the applicant (if not exempted from visa requirement); or any document proving a previous legal and continuous residence;
- police clearance certificate issued by the authorities of the country of origin;
- health certificate issued by the authorities of the country of origin if not already presented during the application for a visa;
- proof of sufficient means to cover the living costs during the stay;
- proof of being covered by social security, this may be proven through the presentation of the municipal registration certificate; and
- three photos in passport size.

14.3. Procedure

Once the alien has entered Spain with the relevant visa, which had been issued by the Spanish Consular Representation in the country of origin or residence, s/he has to apply for the corresponding permit at the Office for Foreigners or the local Police Station and present the appropriate documentation as listed in section 14.2.

14.3.1. Guest researchers, journalists, clergy and artists

Before applying for a visa, the third country national belonging any of these categories must also apply for a certificate at the General Directorate of Migration Ordinances at the Ministry of Labour and Social Affairs, stating that s/he does not need a work permit.

14.3.2. Vocational trainees and exchange trainees

Before applying a residence permit, the trainee must also apply for a work permit either at the Office for Foreigners or at the Provincial Authorities responsible for labour and social affairs. If this authority is of the opinion that a work permit can be granted, the Office for Foreigners or the Police Station of the place where s/he is going to stay is informed accordingly and they can proceed with the issuing of the residence permit.

14.4. Renewal

In general a residence permit is renewable if the original purpose of stay in Spain, for which it was initially granted still pertains.

14.4.1. Students, unpaid trainees and EU-trainees

A residence permit for students is usually being renewed every year, if the conditions have not changed and if the applicant meets the requirements for continued studies as set by the educational institution/university.

14.4.2. Exchange trainees and vocational trainees

A residence permit for students is usually being renewed every year, if the conditions have not changed and the applicant meets the requirements.

14.5. Change of purpose of admission

The general rule is that a holder of a temporary residence permit and a work permit can be issued a permanent residence permit, when five years have passed since the permits were first issued. However, the maximum duration of stay for trainees and au pairs is less than five years.

If an alien who resides in Spain wishes to apply for a different permit than the one s/he already has, s/he may do so under the condition that s/he is able to meet all necessary conditions for the specific permit, for example hold a work contract. Since s/he is already resident in Spain, the alien does not have to leave the country to apply for a new visa.

14.6. Rights and status of third country nationals in comparison to EU and EEA nationals

Foreigners who are resident in Spain are legally guaranteed the following rights and freedoms:

- the rights and freedoms as stated in Article. I of the Constitution, to the same extent as a Spanish citizen;
- the right and obligation to carry the document(s) issued by the authorities of the country of origin as proof of the identity, as well as the document that regulates the situation in Spain (the residence permit).
- freedom of movement within the Spanish territory, including the right to choose the place of residence; and
- the right to assemble and to associate.
- the right to education and to carry out scientific research activities or teaching activities.
- the right have access to social security.
- the right of foreign workers to free choice of syndicates and the right to strike.
- the right to health facilities if registered in the municipality of usual residence
- the right to subsidy for housing.
- the right to transfer one's income and savings earned in Spain to the country of origin or any other country.
- the right to family reunification and privacy according to national law.
- the right to judicial protection.
- the right to have a legal representative as well as the right to interpretation in certain administrative or judicial procedures concerning the status of aliens.
- the right to judicial assistance free of charge during law suits in cases where financial means are proven not to be sufficient.

Apart from all these rights, EU/EEA citizens enjoy an active as well as passive right to vote in municipal elections.

14.7. Family reunification

Aliens who are resident in Spain have the right to family reunification. The family member has to enter the Spanish territory with a valid passport, or other travel document, and the relevant type of visa (connected to the residence status of the main permit holder). Once the family member has entered Spain, s/he has to apply for a temporary residence permit from the respective authorities.

- The following family members are eligible:
- the legally wedded spouse who is neither *de facto* nor *de jure* separated (bigamy is not accepted);
- unmarried children of the applicant and his/her spouse, including adopted children, who are less than 18 years old, or handicapped;
- children who are less than 18 years old or handicapped and for whom the applicant is the legal guardian;
- ascendants of the applicant who are economically dependant on him/her and where it can be proven necessary to authorise residence in Spain;
- any other family member for whom the residence can be proven necessary for humanitarian reasons.

The family members will be issued a residence permit, which is dependent on the permit of the main permit holder. This means that the validity of the permit depends on the legal residence of the main permit holder in Spain and the conditions under which s/he has been granted the initial permit. In cases of separation or divorce the family members who have been granted a residence permit under the condition of family reunification will preserve their right to residence.

The spouse may receive a residence permit, which is independent of the main permit holder, if s/he has a work permit and has lived together with the main permit holder in Spain for at least two years (this period of time may be shorter under certain conditions) or when the main permit holder dies in Spain during legal residence.

Children who grow up in Spain are entitled to receive their proper residence permits.

14.8. Fraud

In case of fraud, the residence permit will be withdrawn. In cases where it is discovered that a couple has not been legally wedded, the respective residence permit will also be withdrawn.

14.9. Removal

A residence permit can also be withdrawn if the foreigner:

- is absent for more than six consecutive months;
- fails to meet the conditions for which the initial permit was granted (this includes lack of sufficient financial means to cover the living expenses);
- changes or loses his/her nationality;
- does not apply for renewal after the permit has expired;
- has participated in illegal activities or in activities which could endanger the relations of Spain with other countries, resulting in the expulsion of the alien; and
- participates in activities which severely endanger public order.

14.10. Legal developments

Main laws and legal regulation concerning the admission and residence of aliens:

The current law, which regulates the juridical framework of third country nationals in Spain is the *Ley Orgánica 4/2000* of January 11, 2000 regulating the rights and freedoms of aliens in Spain and their social integration. This law entered into force on 1, February 2000. The law also includes the rules of procedure and a timeframe of six months for their adoption by the Government.

This new law replaced the *Ley Orgánica 7/1985* of 1 July 1985 as well as all normative developments. The rules of procedure of the *Ley Orgánica 7/1985*, which were adopted by the Royal Decree 155/1996 are partially still in force.

So far, there is no jurisprudence relating to the new legislation. The new law is very complex and regulates all issues relating to foreigners in Spain. During the coming years there are no further major changes are expected.

The current law allows the authorities to admit aliens, who do not meet all the requirements which are mentioned by this law, due to humanitarian reasons, public interest, etc. Further, it is possible to issue residence permits on an exceptional basis.

14.11. Conclusions

The admission of students from mainly Spanish speaking countries is favoured (former colonies) and, for instance, in 1998, 22,056 students were admitted to the country. Concerning the categories presently of relevance, the admission for work related activities is also not handled too restrictively, as only vocational and exchange trainees need a work permit. Other categories like guest researchers, journalists, clergy, and artists only need a temporary residence permit including a special endorsement that they are allowed to carry out the specific activity in question. The admission of au pairs is on the other hand restricted, as only citizens from States, which are members of the Council of Europe can be admitted. Au pairs may stay a maximum of two years in the country and vocational and exchange trainees a maximum of 18 months. All the other categories may stay up to 5 years. After 5 years they may apply for a permanent residence permit. Change in the purpose of stay is possible as long as the alien is able to meet all necessary conditions for the new permit, e.g. hold a work contract. Concerning family reunification, aliens who are resident in Spain have the right to family reunification. In regard of the integration of foreigners in Spain, the new aliens law provides a series of social and medical measures, which allows third country nationals to enjoy the same rights as citizens of EU countries.

15. SWEDEN

15.1. General admission regulations

An applicant who intends to stay for less than three months in the country needs an entry visa.

An applicant who intends to stay for more than three months should apply for a residence permit before entering the country. A holder of a residence permit does not need a separate visa to enter the country.

Table 15.1: Overview of required permits for admission and residence

Categories	Up to 3 months	More than 3 months
Students	Short-term visa, if required	Residence permit
Unpaid trainee	Short-term visa, if required Work permit	Residence permit Work permit
Vocational training	Short-term visa, if required Work permit	Residence permit Work permit
EU trainees	Short-term visa, if required Work permit	Residence permit Work permit
Exchange trainees	Short-term visa, if required Work permit	Residence permit Work permit
Au pair	Short-term visa, if required Work permit	Residence permit Work permit
Guest researchers	Short-term visa, if required	Residence permit Work permit
Artists	Short-term visa, if required Work permit	Residence permit Work permit
Journalists	Entry visa, if required Work permit	Residence permit Work permit
Clergy	Short-term visa, if required Work permit	Residence permit Work permit
Persons with private means and pensioners	Short-term visa, if required	Residence permit
Athletes	Short-term visa, if required Work permit	Residence permit Work permit

15.1.1. Students (university, college, high school/folk high school)

The permit is issued for the study period, but not for longer than one year. If the study period lasts more than one year, the permit has to be renewed annually. There are no quotas or ceilings. Students at the World Maritime University in Malmö³¹³ do not need a residence permit

15.1.2. Unpaid trainees

This category is rare, but a work permit is required in addition to an entry visa or residence permit.

15.1.3. Vocational and exchange trainees

A permit issued for the purpose of vocational training can be for a maximum of 18 months. There are no general quotas regarding trainees, but in certain areas there could be other ceilings, for instance the number of trainees who could be employed by a single employer, or the number of trainees from a certain country.

15.1.4. EU trainees

EU trainees need a work permit and the maximum duration of stay is 48 months.

15.1.5. Au pairs

The permit is limited to au pair work and related activities and is valid for a maximum of one year. There are no quotas or ceilings for the admission of au pairs from third countries.

15.1.6. Guest researchers

This category includes holders of a doctorate, such as postdoctoral fellows.

15.1.7. Artists

Artists need a residence permit if the stay exceeds three months. A work permit is also needed for single performances in Sweden.

15.1.8. Journalists

For a stay exceeding three months, journalists need both residence and work permits.

15.1.9. Clergy

The holder of the permit may stay and work in Sweden as a religious leader. The permit is normally granted for one year at a time. There are no quotas or ceilings.

15.1.10. Persons with private means, e.g. pensioners

If the applicant intends to settle down permanently in Sweden, a permanent residence permit will normally be granted from the very beginning. If the applicant receives a permanent residence permit, he/she is principally also eligible to work, to be involved in any kind of business etc., i.e. no special work permit is required. There are no quotas or ceilings.

³¹³ Världssjöfartsuniversitet

15.1.11. Athletes

The holder of the permit can stay in Sweden in order to take up activities according to a contract signed by the applicant and the sports club, i.e. the permit is limited to the activity and club in question. If the contract period is less than one year, the permit will last the same period as the contract. If the contract period is longer than one year, a permit will be granted for one year at a time. There are no quotas or ceilings.

15.2. Conditions

There are no health checks and no insurance of any kind is required. The applicant is checked against the Swedish criminal database, in case s/he has been to Sweden before and has a criminal conviction.

15.2.1. Students

To obtain a permit to study the applicants must be accepted by a university/college/school in Sweden and be able to show that they have enough money to support themselves throughout the planned study period, i.e. 6,300 SEK (=618 EURO)/month (for the time being) at disposal for ten months a year. Proof must be provided, for instance a document proving their own or their sponsor's bank assets. A letter of guarantee from the sponsor, or documentation that the applicant has received either a scholarship or student benefit from the country of origin, is required. The applicant must intend to leave Sweden on completion of his/her studies.

There are no age limits for this group, no special requirements regarding accommodation and no specific language skills have to be proven.

- **Students at high school/folk high school**

To obtain a permit the applicant must be accepted by a school in Sweden and intend to be a full-time student. A permit is not granted if the studies are only in preparation for further studies or other activities in Sweden and the admission to the studies would require the applicant to settle in Sweden or remain for a considerable period.

15.2.2. Unpaid trainees

The trainee needs to be provided some kind of compensation as well as lodging.

15.2.3. Vocational and exchange trainees

To obtain a permit the applicant must have a written offer from the employer and/or the organisation (for instance AISEC or IAESTE), which acts as an intermediary. The applicant should also be guaranteed a wage to support him/herself and must also be provided accommodation.

According to agreements with other countries on trainees,³¹⁴ additional conditions, for instance age limits, could apply. No language skills have to be proven.

³¹⁴ Agreements have been concluded with Switzerland, USA, Canada, Estonia, Latvia and Lithuania. The agreements are similar to their contents. Agreements have also been concluded with the following organisations: International Agricultural Exchange Association, International Association of Agricultural Students, and other agricultural associations, Youth International Internship Programme (with Canada) and Sweden/Canada Youth Exchange.

15.2.4. EU trainees

The applicant needs to prove that s/he is taking part in an EU education or research programme. Accommodation has to be provided.

15.2.5. Au pairs

To obtain a permit the applicant must be of 18-30 years of age and have a written offer from the host family setting out the conditions for employment as an au pair. The host family has to offer board and lodging and a wage of at least SEK 3,500 (=420 EURO) a month (for the time being) for a maximum of 25 hours of household work a week. A certificate of admission to a programme for Swedish language studies, for a considerable part of the remaining time, has to be enclosed with the application.

15.2.6. Guest researchers

The university/college department concerned has to provide a written offer of employment. The offer must state that the work is part of an international exchange programme or that the special competence involved is in short supply in Sweden. The remuneration needs to be at least SEK 13,000 (=1,560 EURO) per month before tax and housing must be provided.

15.2.7. Persons with private means, e.g. pensioners

To obtain a residence permit the applicant must prove that they have sufficient means to support themselves and that they have ties to Sweden. The expression "ties to Sweden" is not defined under Swedish law. In practice earlier residence in the country, relatives in the country, knowledge of Swedish language, employment in a Swedish company, ownership of property in the country, etc. count as "ties".

Generally, practice has been restrictive for this category, since both conditions have to be fulfilled. There are no age limits and no language skills have to be proven.

15.2.8. Clergy

To obtain a permit the applicant must be employed by a well established church or corresponding religious establishment, be guaranteed a monthly salary of at least 13,000 SEK (=1,560 EURO) per month before tax, and show that s/he is qualified. No language skills have to be proven.

15.2.9. Athletes

To obtain a permit the applicant must have a written contract signed both by him/herself and the club in Sweden and be provided with some form of accommodation. The employer must guarantee a monthly salary of at least 13,000 SEK (=1,560 EURO) per month before tax. The applicant must be prepared to leave Sweden once the contract expires.

No language skills have to be proven.

15.3. Procedure

The application for a visa or residence permit must be submitted to the Swedish embassy or consulate in the country of origin or of permanent residence. The application is submitted to the National Immigration Board, which decides upon the case. In some cases embassies are authorised to decide. In principle, the residence permits cannot be obtained when already in Sweden.

A valid passport and the documents to fulfil the conditions as specified below are required. The application can be made in Swedish or English. No fees are charged. The application is processed in about six weeks.

If the Immigration Board decides not to grant a residence permit, the applicant may lodge an appeal with the Aliens Appeals Board,³¹⁵ within three weeks of being informed of the decision. However, a third country citizen, for instance an au pair, needing both residence and work permits and having been refused these, cannot file an appeal with the Alien's Appeals Board. This is because the Board cannot examine the appeal concerning a work permit since the third country citizen is not in Sweden³¹⁶ and it cannot therefore examine the appeal with regard to the residence permit Either.

15.3.1. Vocational trainees

An application may be forwarded directly to the National Immigration Board from an organisation which act as an intermediary.

The National Labour Market Board decides on guidelines for the assessment of cases relating to work permits for trainees. Associations of employers and employees respectively are consulted prior to the guidelines being issued.

15.3.2. Athletes

The National Immigration Board decides upon the case after consultation with the Swedish Sports Federation.

15.4. Renewal

15.4.1. Students

The residence permit is usually renewed for one year at a time or for a shorter period if the remaining studies will last less than one year.

Renewal of the permit is possible if the applicant can prove that s/he has performed well enough to be allowed to continue the studies. After the first year the student needs to have earned 10 study points, after the second 15 points and after the third and every year thereafter 20 points.³¹⁷ The applicant must also prove that s/he has the means to cover living costs and can assure that this will be the case also in the future. A permit is renewed free of charge.

³¹⁵ Ulänningsnämnden

³¹⁶ The decision of the Immigration Board to refuse a work permit can only be appealed if a decision on removal has also been taken, thus, the alien is present in Sweden.

³¹⁷ One year is usually equivalent to 40 points.

- **Students at high school/folk high school:**

The residence permit is usually renewed for one year at a time or for a shorter period if the remaining studies will last less than one year. The applicant has to continue to meet the requirements listed under “conditions”.

15.4.2. Vocational trainees

Renewal is possible if the initial permit was issued for less than 18 months and the applicant still meets the criteria as a trainee. The maximum duration of the stay in Sweden cannot exceed 18 months.

15.4.3. Au pairs

A renewal of the permit extending the maximum period of one year is in principle not possible. In practice, one cannot exclude that under certain circumstances a permit could be issued for a little bit more than one year, if the case is good.

15.4.4. Clergy

Permits are renewed for one year at a time. After four years it is possible to apply for and receive a permanent residence permit, if the applicant still meets the criteria as a religious leader.

15.4.5. Persons with private means, e.g. pensioners

Not applicable, since normally a permanent residence permit is granted.

15.4.6. Athletes

As long as the applicant has a valid contract, the permit can be extended. The maximum duration of stay is, in principle, four years. In exceptional cases, permits may be granted for a longer period than this.

15.5. Change of purpose of admission

There are no formal obstacles to change to other types of permit though in practice a change of status is not very common. The applicant has to meet the criteria for the new type of permit, and the fact that of holding a permit previously does not facilitate the possibility of changing .

15.6. Rights and status of third country nationals in comparison to EU and EEA nationals

A foreign national who has received a permit for at least one year and who intends to renew the permit, will be registered in the national register and subsequently s/he is covered by the health and welfare system. For those who are not registered there is only a basic safety net and a right to emergency health care.

A foreign national resident in Sweden for three years is entitled to vote and to stand for election in local and county elections.

15.6.1. Students

A university student is allowed to work only between 15 May – 15 September.

- Student at a high school/folk high school:

A student at a high school/folk high school is not allowed to take up any work. If the studies involve practical training at a work place, the student has to apply for a work permit for the trainee period.

15.6.2. Vocational trainees

The permit is restricted to the profession and the place of work stipulated in the offer to come to Sweden as a trainee.

15.6.3. Au pairs

Since the residence permit of an au pair is in principle not extendable beyond one year, the au pair cannot be covered by the health and welfare system.
(but if extended?)

15.6.4. Athletes

The permit is restricted to the activities and the sports club envisaged in the offer to come to Sweden.

15.7. Family reunification

Spouses and unmarried children under the age of 18 are eligible. Enough means to cover the costs of living need to be assured. Family members receive the same type of residence permit as the main permit holder, issued for the same duration. They are renewed at the same time as the permit of the main permit holder is renewed, provided the living costs continue to be met.

There are no formal obstacles for changing to other types of permit though in practice a change in status is not common. The family member has to meet the criteria for the new type of permit and the fact of holding a permit previously does not facilitate the possibility of changing.

15.7.1. Vocational trainees, clergy, and athletes

If the main permit holder has been granted a work permit for at least 6 months, family members can also obtain a work permit. The permits of the family members are renewed if the permit of the principal permit holder is renewed.

15.7.2. Au pairs

If an applicant applies for a permit as an au pair and already has a family of her/his own in the country of origin, permits for the family members will not be granted. In practice such claims do not occur, since the applicants generally are young persons who have not yet formed a family of their own.

15.7.3. Guest researchers

In the case of spouses of visiting researchers, work permits may also be provided without the customary labour-market assessment.

15.8. Fraud

According to rules regarding fraud, a residence permit may be revoked if the applicant has furnished incorrect particulars of his/her identity, other incorrect data or if s/he has concealed circumstances of importance.

15.9. Removal

A third country national with neither a valid permit nor a case pending has to leave the country. A decision to reject an application for renewal is normally combined with an expulsion order and the foreigner has to leave the country within a certain period of time, either voluntarily or by force. A decision by the National Immigration Board to remove a person could be appealed to the Aliens Appeals Board. It can take several months before the final decision is taken.

A residence permit may be withdrawn as a consequence of fraud. If the alien has not yet entered the country, a residence permit may also be withdrawn on other special grounds such as a change of circumstances resulting in the basis for issuance of the permit no longer existing e.g. in the case of a student applicant, a cancellation of the university admission, or in the case of family reunification, a divorce. An alien may also be expelled as a consequence of certain criminal offences.

15.10. Legal developments

The aliens legislation consists of the Alien's Act (1989), the Aliens Decree (1989) and its *travaux préparatoires*. The Aliens Act has been reformed on a number of occasions, and it was subject to major changes in 1997. The Aliens Act and its Decree can be characterised as framework legislation and it is left to the implementing authority to complement and specify the legislation, for instance through determining the study results necessary for any renewal, the necessary amounts to cover the costs of living, and for which kind of education residence is granted. This legal area is difficult to survey and not much is written. Decisions providing guidance are also rather rare.

The existing rules have been in force for several years and no amendments are expected. There are no important decisions or key events to point out.

15.10.1. Students

Nowadays it is common that students come to Sweden according to an exchange programme between universities. It has also become more common to study single courses, i.e. the student does not receive a complete education.

15.10.2. Au pairs

Sweden has not ratified the European Agreement on Au Pair Placement.

15.11. Statistics

15.11.1. Students and post-graduate students

Table 15.2: Admitted students and post-graduate students

1997	1998	1999
2,322	2,757	2,866

Table 15.3: Estimated numbers of admitted trainees, au pairs, artists and athletes

Trainees	Au pairs	Artists	Athletes
300-400	600	5000	250

Statistics on rejected applications are not available.

Table: 15.4: Renewals of residence permits for students and post-graduate students

1997	1998	1999
1,681	2,065	1,931

15.11.2. Other categories

There are no statistics available on admitted aliens belonging to the other categories. The numbers of clergy and persons with private means is assumed to be very low. There are no statistics available for permit changes nor for removals, but the number of removals is assumed to be low. There are no statistics available concerning the number of family members having changed the purpose of stay, but the Swedish authorities assume that this number is also very low.

15.12. Conclusions

Guest studies and other temporary residence in the country are seen as international exchange between countries and people. Sweden may in this way contribute to the development process of other countries. In order not to allow that regulations for permanent migration are circumscribed, admission policies for trainees, au pairs, guest researchers, artists, journalists, clergy and athletes (work-related purposes) are restricted. These categories need a work permit to carry out their activities. On the other hand, students are permitted to work during the summer holidays. Maximum duration of stay for a number of categories such as students, pensioners, artists, journalists and clergy is not regulated. Concerning change of purpose of admission, there are no formal obstacles to change to other types of permit, though in practice a change of status is not very common. The applicant has to meet the criteria for the new type of permit, and the fact that the applicant already holds a permit, does not facilitate the possibility of changing. Family reunification is in principle allowed for all categories of relevance for this study. Enough means to cover the costs of living need to be assured. Family members receive the same type of residence permit as the main permit holder, issued for the same duration.

16. UNITED KINGDOM

16.1. General Admission Regulations

A person who is neither a British citizen nor a Commonwealth citizen with the right of abode nor an EEA national or the family member of such a national who is entitled to enter or remain in the United Kingdom by virtue of the provisions of the Immigration (European Economic Area) Order 1994 requires leave to enter the United Kingdom.

Under Sections 3 and 4 of the Immigration Act 1971 an Immigration Officer when admitting to the United Kingdom a person subject to immigration control under that Act may give leave to enter for a limited period and, if he does, may impose all or any of the following conditions:

- a condition restricting employment or occupation in the United Kingdom;
- a condition requiring the person to maintain and accommodate himself, and any dependants of his, without recourse to public funds; and
- a condition requiring the person to register with the police.

He may also require him to report to the appropriate Medical Officer of Environmental Health. Under Section 24 of the 1971 Act it is an offence knowingly to remain beyond the time limit or fail to comply with such a condition or requirement.

The time limit and any conditions attached will be made known to the person concerned by a written notice which will normally be given to him or be endorsed by the Immigration Officer in his passport or travel document.

A visa national and any other person who is seeking entry for a purpose for which prior entry clearance is required under these Rules must produce to the Immigration Officer a valid passport or other identity document endorsed with a United Kingdom entry clearance issued to him for the purpose for which he seeks entry. Entry clearance takes the form of a visa (for visa nationals) or an entry certificate (for non- visa nationals). These documents are to be taken as evidence of the holder's eligibility for entry into the United Kingdom, and accordingly accepted as "entry clearances" within the meaning of the Immigration Act 1971.

Table 16.1 Overview of length of time a visa for each category of person listed is valid for:

Stays	Up to 90 days	Up to 6 months	More than 6 months
Student (higher education only)	Granted leave to cover course	Granted leave to cover course	Granted leave to cover course
Au pair	N/A	N/A	Normally granted up to two years maximum on entry
EU-Trainees ¹	•		
Exchange Trainees ²	•		
Professional Trainees			•
Academic visitors ³		•	
Artists, entertainers		•	
Ministers of religion			•
Journalists			•
Persons of independent means			•
Volunteers			•

¹ EU trainee: Education programme LEONARDO

² Exchange trainee: IAESTE

³ Includes guest teachers and foreign language assistants.

The information given covers students, au pairs and others not gainfully employed. Immigrants such as doctors, dentists, domestic workers, investors etc. are not covered although statistics for admissions of these groups are given in Table 16.2.

16.1.1. Au Pair

For the purposes of these Rules an "au pair" placement is an arrangement whereby a young person, male or female:

- enters the United Kingdom for the purpose of learning the English language; and
- lives for a time as a member of an English speaking family with appropriate opportunities for study; and
- helps in the home for a maximum of 5 hours per day in return for a reasonable allowance and with two free days per week.

There are no quotas for entries of this type.

16.1.2. Ministers of Religion /Missionaries etc.

For the purposes of these Rules:

- a minister of religion means a religious functionary whose main regular duties comprise the leading of a congregation in performing the rites and rituals of the faith and in preaching the essentials of the creed;
- a missionary means a person who is directly engaged in spreading a religious doctrine and whose work is not in essence administrative or clerical;
- a member of a religious order means a person who is coming to live in a community run by that order.

There are no quotas for entries of this type.

16.1.3. Others

There are no quotas for entries of students, artists, academic visitors, journalists, persons of independent means, volunteers or trainees.

16.2. Conditions

A general condition is that the applicant can maintain them selves and any dependants without recourse to public funds. A minimum sum to meet this condition is around £100 per week once overheads such as rent and bills have been taken off. This can vary however depending on the season and the area. London may be more expensive.

16.2.1. Students

The requirements to be met by a person seeking leave to enter the United Kingdom as a student are that he:

- has been accepted for a course of study at:
 - (a) a publicly funded institution of further or higher education; or
 - (b) a bona fide private education institution which maintains satisfactory records of enrolment and attendance; or
 - (c) an independent fee paying school outside the maintained sector; and
- is able and intends to follow either:
 - i. a recognised full time degree course at a publicly funded institution of further or higher education; or
 - ii. a weekday full time course involving attendance at a single institution for a minimum of 15 hours organised daytime study per week of a single subject, or directly related subjects; or
 - iii. a full time course of study at an independent fee paying school; and
- if under the age of 16 years is enrolled at an independent fee paying school on a full time course of studies which meets the requirements of the Education Act 1944; and
- intends to leave the United Kingdom at the end of his studies; and
- does not intend to engage in business or to take employment, except part time or vacation work undertaken with the consent of the Secretary of State for Employment; and

is able to meet the costs of his course and accommodation and the maintenance of himself and any dependants without taking employment or engaging in business or having recourse to public funds (Both IND and the Foreign and Commonwealth Office (Migration and Visa Department) (F&CO MVD) who administer the entry clearance scheme rely on advice from the British Council when determining a minimum subsistence figure required to be held by a student in order to meet the conditions for the issue of a student visa.

For 1997/98 it was reckoned that a student would need £7,825 in order to live in London, Oxford or Cambridge. If studying elsewhere, the student would need between £5,400 and £7,000.

In addition to this, the student would also need to have sufficient funds to

- pay the course fees in order to be issued with a student visa; and
- knows the appropriate level of English required in order to pursue the course.

A person seeking leave to enter the United Kingdom as a student may be admitted for an

appropriate period depending on the length of his course of study and his means, and with a condition restricting his freedom to take employment, provided the Immigration Officer is satisfied that each of the requirements set out above are met.

Requirements for leave to enter as a student nurse

The term student nurse means a person accepted for training as a student nurse or midwife leading to a registered nursing qualification; or an overseas nurse or midwife who has been accepted on an adaptation course leading to registration as a nurse with the United Kingdom Central Council for Nursing, Midwifery and Health Visiting.

The requirements to be met by a person seeking leave to enter the United Kingdom as a student nurse are that the person:

- comes within the definition set out; and
- has been accepted for a course of study in a recognised nursing educational establishment offering nursing training which meets the requirements of the United Kingdom Central Council for Nursing, Midwifery and Health Visiting; and
- did not obtain acceptance by misrepresentation; and
- is able and intends to follow the course; and
- does not intend to engage in business or take employment except in connection with the training course; and
- intends to leave the United Kingdom at the end of the course; and
- has sufficient funds available for accommodation and maintenance for himself and any dependants without engaging in business or taking employment (except in connection with the training course) or having recourse to public funds. The possession of a Department of Health bursary may be taken into account in assessing whether the student meets the maintenance requirement.

A person seeking leave to enter the United Kingdom as a student nurse may be admitted for the duration of the training course, with a restriction on his freedom to take employment, provided the Immigration Officer is satisfied that each of the requirements above are met.

Requirements for leave to enter as a postgraduate doctor or dentist

The requirements for leave to enter the United Kingdom for the purpose of training as a postgraduate doctor or dentist are that the applicant:

- is
- iv. a graduate from a medical school, who is eligible for provisional or limited registration with the General Medical Council, and who
- (1) intends to undertake Pre Registration House Officer employment for up to 12 months, and
 - (2) has not spent more than 12 months in aggregate in Pre Registration House Officer employment; or
- (b) is a doctor or dentist eligible for full or limited registration with the General Medical Council or the General Dental Council, who intends to undertake postgraduate training in a hospital or the Community Health Services or both;
- intends to leave the United Kingdom on completion of his training period; and
 - is able to maintain and accommodate himself and any dependants without recourse to public funds.

A person seeking leave to enter the United Kingdom to undertake

- pre Registration House Officer employment may be admitted for a period not exceeding 12 months; or
- postgraduate training as a doctor or dentist in a hospital or the Community Health services, or both, may be admitted for a period not exceeding three years, if the Immigration Officer is satisfied that each of the requirements set out above are met.

Requirements for leave to enter as a prospective student

The requirements to be met by a person seeking leave to enter the United Kingdom as a prospective student are that he:

- can demonstrate a genuine and realistic intention of undertaking, within 6 months of his date of entry, a course of study which would meet the requirements for an extension of stay as a student; and
- intends to leave the United Kingdom on completion of his studies or on the expiry of his leave to enter if he is not able to meet the requirements for an extension of stay as a student; and
- is able without working or recourse to public funds to meet the costs of his intended course and accommodation and the maintenance of himself and any dependants while making arrangements to study and during the course of his studies.

A person seeking leave to enter the United Kingdom as a prospective student may be admitted for a period not exceeding 6 months with a condition prohibiting employment, provided the Immigration Officer is satisfied that each of the requirements above are met.

16.2.2. Au pair

The requirements to be met by a person seeking leave to enter the United Kingdom as an "au pair" are that he:

- is seeking entry for the purpose of taking up an arranged placement which can be shown to fall within the definition set out; and
- is aged between 17-27 inclusive or was so aged when first given leave to enter in this capacity; and
- is unmarried; and
- is without dependants; and
- is a national of one of the following countries: Andorra, Bosnia Herzegovina, Croatia, Cyprus, Czech Republic, The Faeroes, Greenland, Hungary, Macedonia, Malta, Monaco, San Marino, Slovak Republic, Slovenia, Switzerland, or Turkey; and
- does not intend to stay in the United Kingdom for more than 2 years as an "au pair"; and
- intends to leave the United Kingdom on completion of his stay as an "au pair"; and
- if he has previously spent time in the United Kingdom as an "au pair", is not seeking leave to enter to a date beyond 2 years from the date on which he was first given leave to enter the United Kingdom in this capacity; and
- is able to maintain and accommodate himself without recourse to public funds.

16.2.3. Ministers of Religion /Missionaries

The requirements to be met by a person seeking leave to enter the United Kingdom as a minister of religion, missionary or member of a religious order are that he:

- if seeking leave to enter as

- (a) a minister of religion who has either been working for at least one year as a minister of religion or, where ordination is prescribed by a religious faith as the sole means of entering the ministry, has been ordained as a minister of religion following at least one year's full time or two years' part time training for the ministry; or
- (b) a missionary who has been trained as a missionary or has worked as a missionary and is being sent to the United Kingdom by an overseas organisation; or
- (c) a member of a religious order who is coming to live in a community maintained by the religious order of which he is a member and, if intending to teach, does not intend to do so save at an establishment maintained by his order; and
 - intends to work full time as a minister of religion, missionary or for the religious order of which he is a member; and
 - does not intend to take employment except within the terms of this paragraph; and
 - can maintain and accommodate himself and any dependants adequately without recourse to public funds; and
 - holds a valid United Kingdom entry clearance for entry in this capacity.

A person seeking leave to enter the United Kingdom as a minister of religion, missionary or member of a religious order may be admitted for a period not exceeding 12 months provided he is able to produce to the Immigration Officer, on arrival, a valid United Kingdom entry clearance for entry in this capacity.

16.2.4. Artists, entertainers

The requirements to be met by a person seeking leave to enter the United Kingdom as a writer, composer or artist are that he:

- has established himself outside the United Kingdom as a writer, composer or artist primarily engaged in producing original work which has been published (other than exclusively in newspapers or magazines), performed or exhibited for its literary, musical or artistic merit; and
- does not intend to work except as related to his self employment as a writer, composer or artist; and
- has for the preceding year been able to maintain and accommodate himself and any dependants from his own resources without working except as a writer, composer or artist; and
- will be able to maintain and accommodate himself and any dependants from his own resources without working except as a writer, composer or artist and without recourse to public funds; and
- holds a valid United Kingdom entry clearance for entry in this capacity.

A person seeking leave to enter the United Kingdom as a writer, composer or artist may be admitted for a period not exceeding 12 months, subject to a condition restricting his freedom to take employment, provided he is able to produce to the Immigration Officer, on arrival, a valid United Kingdom entry clearance for entry in this capacity.

16.2.5. Academic visitors i.e. guest teachers, foreign language assistants etc.

The requirements to be met by a person seeking leave to enter the United Kingdom as a teacher or language assistant on an approved exchange scheme are that he:

- is coming to an educational establishment in the United Kingdom under an exchange scheme approved by the Education Departments or administered by the Central Bureau

for Educational Visits and Exchanges or the League for the Exchange of Commonwealth Teachers; and

- intends to leave the United Kingdom at the end of his exchange period; and
- does not intend to take employment except in the terms of this paragraph; and
- is able to maintain and accommodate himself and any dependants without recourse to public funds; and
- holds a valid United Kingdom entry clearance for entry in this capacity.

Postgraduate researchers or privately financed doctors, teachers etc. may carry out research for their own purposes once entry conditions have been met.

A person seeking leave to enter the United Kingdom as a teacher or language assistant under an approved exchange scheme may be given leave to enter for a period not exceeding 12 months provided he is able to produce to the Immigration Officer, on arrival, a valid United Kingdom entry clearance for entry in this capacity.

16.2.6. Journalists

The requirements to be met by a person seeking leave to enter the United Kingdom as a representative of an overseas newspaper, news agency or broadcasting organisation are that he:

- has been engaged by that organisation outside the United Kingdom and is being posted to the United Kingdom on a long term assignment as a representative; and
- intends to work full time as a representative of that overseas newspaper, news agency or broadcasting organisation; and
- does not intend to take employment except within the terms of this paragraph; and
- can maintain and accommodate himself and any dependants adequately without recourse to public funds; and
- holds a valid United Kingdom entry clearance for entry in this capacity.

A person seeking leave to enter the United Kingdom as a representative of an overseas newspaper, news agency or broadcasting organisation may be admitted for a period not exceeding 12 months provided he is able to produce to the Immigration Officer, on arrival, a valid United Kingdom entry clearance for entry in this capacity.

16.2.7. Volunteers

The requirements to be met by a person seeking leave to enter the United Kingdom as a volunteer are that he:

- is over the age of 16
- has no criminal record

16.2.8. Persons of independent means

The requirements to be met by a person seeking leave to enter the United Kingdom as a retired person of independent means are that he:

- is at least 60 years old; and
- has under his control and disposable in the United Kingdom an income of his own of not less than £25,000 per annum; and
- is able and willing to maintain and accommodate himself and any dependants indefinitely in the United Kingdom from his own resources with no assistance from any other person and without taking employment or having recourse to public funds; and

- can demonstrate a close connection with the United Kingdom; and
- intends to make the United Kingdom his main home; and
- holds a valid United Kingdom entry clearance for entry in this capacity.

A person seeking leave to enter the United Kingdom as a retired person of independent means may be admitted subject to a condition prohibiting employment for a period not exceeding 4 years, provided he is able to produce to the Immigration Officer, on arrival, a valid United Kingdom entry clearance for entry in this capacity.

16.2.9. Trainees

The requirements to be met by a person seeking leave to enter the United Kingdom for Department of Employment approved training or work experience are that he:

- holds a valid work permit from the Department of Employment issued under the Training and Work Experience Scheme; and
- is not of an age which puts him outside the limits for employment; and
- is capable of undertaking the training or work experience as specified in his work permit; and
- intends to leave the United Kingdom on the completion of his training or work experience; and
- does not intend to take employment except as specified in his work permit; and
- is able to maintain and accommodate himself and any dependants adequately without recourse to public funds.

A person seeking leave to enter the United Kingdom for approved training may be admitted to the United Kingdom for a period not exceeding 3 years and a person seeking entry for approved work experience may be admitted for a period not exceeding 12 months, provided the Immigration Officer is satisfied that each of the requirements set out above are met. Leave to enter is to be subject to a condition permitting the person to take or change employment only with the permission of the Department of Employment.

16.2.10. EEA nationals

European Community law grants EEA nationals a right to live and work in the UK.

An EEA national has the right of residence if:

- they are working in the UK; or
- they are not economically active and they have sufficient funds to support themselves throughout their stay without recourse to public funds.

Non-EEA family members must obtain a EEA family permit before travelling to the UK if they are coming to live with an EEA national permanently or on a long term basis. Non-EEA family members do not have to register with the police.

16.3. Procedure

The procedure is the same for all groups of people covered.

Visa nationals need apply for entry clearance at the British Embassy or High Commission in the country where they live.

Overseas, an entry clearance officer who is employed by the Foreign & Commonwealth Office at an Embassy or High Commission is responsible for processing applications. At the port of entry, an immigration officer is responsible.

Applications are made in either English or the local language and applicants must produce the correct fee, two passport sized photos (not more than six months old) and a current passport.

Fees are:

students and visitors

The cost of a visa varies by the duration it is valid for as follows:

A single entry visa costs £33,

a 6 month multiple entry visa costs £45,

a 12 month multiple entry visa costs £55,

a 2 year multiple entry visa costs £65, and

a 5 year multiple entry visa costs £80. (source of information F&CO, MVD)

Au pair £50

People applying for a settlement visa, for example, would be charged more.

The actual cost of a visa does not vary from country to country of application, but all payments are made in local currency.

Usually, the FCO would expect to process an application on the same day. Should the applicant require an interview, a delay may occur. Waiting times will also depend on the size of the queue at the time.

16.4. Renewal

General requirements for all applicants are that they continue to meet the requirements set out initially and that they do not stay longer than any time limits set out such as those for au pairs.

General requirements for an extension of stay as a student, student nurse or postgraduate doctor or dentist are that the applicant:

- was admitted to the United Kingdom with a valid student entry clearance if he is a person specified in the Appendix to these Rules; and
- meets the requirements for admission as a student set out; and
- has produced evidence of his enrolment on a course which meets the requirements set out; and
- can produce satisfactory evidence of regular attendance during any course which he has already begun; or any other course for which he has been enrolled in the past; and
- can show evidence of satisfactory progress in his course of study including the taking and passing of any relevant examinations; and
- would not, as a result of an extension of stay, spend more than 4 years in obtaining the relevant qualification or on short courses (ie courses of less than 2 years duration, or longer courses broken off before completion); and
- has not come to the end of a period of government or international scholarship agency sponsorship, or has the written consent of his original sponsor for a further period of study in the United Kingdom and satisfactory evidence that sufficient sponsorship funding is available.

For Ministers of religion, a renewed permit is valid for 3 years.

An extension of stay as a representative of an overseas newspaper, news agency or broadcasting organisation may be granted for a period not exceeding 3 years.

16.5. Change of permit

No switching to work permit employment or other categories is permitted for any of the given groups of people with the exception of trainees.

Trainees can switch to a Training and Work Experience Scheme.

Non- visa nationals may switch to student status.

16.6. Rights and status

- The right to work - an EU national resident in the UK under student conditions has no restrictions on their right to take up employment. A non-EU national resident in the UK as a student is permitted to work up to 20 hours a week during term time and full time during vacations.

An au pair under the Immigration Rules scheme may only seek a position as an au pair.

For non-students, EU citizens have no restrictions on taking work. Non-EU citizens are restricted.

- The health and welfare system - an EU national resident in the UK as a student has the right to immediate NHS treatment. A non-EU national resident In the UK as a student enrolled on a course of study, the prescribed duration of which is not less than 6 months, would not be liable to charges under the NHS regulations.

An au pair under the Immigration Rules scheme who is resident in the UK for a period of not less than 6 months would not be liable to charges under the NHS regulations.

- Political participation - EU national students in the UK are eligible to vote in European Parliamentary Elections and Local Government Elections provided that they are registered. However, they are not entitled to vote in National Elections.

16.7. Family reunification

Spouses

The requirements to be met by a person seeking leave to enter or remain in the United Kingdom as the spouse of a student or as the spouse of a person with limited leave to enter or remain in the United Kingdom such as artists, etc. are that:

- the applicant is married to a person with limited leave to enter or remain in the United Kingdom
- each of the parties intends to live with the other as his or her spouse during the applicant's stay and the marriage is subsisting; and
- there will be adequate accommodation for the parties and any dependants without recourse to public funds in accommodation which they own or occupy exclusively; and
- the parties will be able to maintain themselves and any dependants adequately without recourse to public funds; and
- the applicant does not intend to stay in the United Kingdom beyond any period of leave granted to his spouse; and

- spouses of students must not intend to take employment except where the period of leave being granted is 12 months or more.
- if seeking leave to enter, the applicant holds a valid United Kingdom entry clearance for entry in this capacity or, if seeking leave to remain, was admitted with a valid United Kingdom entry clearance for entry in this capacity.

Children

The requirements to be met by a person seeking leave to enter or remain in the United Kingdom as the child of a student are that he:

- is the child of a parent admitted to or allowed to remain in the United Kingdom as a student under the conditions set out; and
- is under the age of 18 or has current leave to enter or remain in this capacity; and
- is unmarried, has not formed an independent family unit and is not leading an independent life; and
- can, and will, be maintained and accommodated adequately without recourse to public funds; and
- will not stay in the United Kingdom beyond any period of leave granted to his parent.

The requirements to be met by a person seeking leave to enter or remain in the United Kingdom as a child of a person with limited leave to enter or remain in the United Kingdom such as artists etc. are that:

- he is the child of a parent who has leave to enter or remain in the United Kingdom; and
- he is under the age of 18 or has current leave to enter or remain in this capacity; and
- he is unmarried, has not formed an independent family unit and is not leading an independent life; and
- he can and will be maintained and accommodated adequately without recourse to public funds in accommodation which his parent(s) own or occupy exclusively; and
- he will not stay in the United Kingdom beyond any period of leave granted to his parent(s); and
- both parents are being or have been admitted to or allowed to remain in the United Kingdom save where:
 - the parent he is accompanying or joining is his sole surviving parent; or
 - the parent he is accompanying or joining has had sole responsibility for his upbringing; or
 - there are serious and compelling family or other considerations which make exclusion from the United Kingdom undesirable and suitable arrangements have been made for his care; and
- if seeking leave to enter, he holds a valid United Kingdom entry clearance for entry in this capacity or, if seeking leave to remain, was admitted with a valid United Kingdom entry clearance for entry in this capacity.

16.8. Fraud

Fraud discovered after entry into the UK is dealt with as an offence, leave granted could be curtailed and removal action started.

16.9. Removal

A deportation order requires the subject to leave the United Kingdom and authorises his detention until he is removed. It also prohibits him from re-entering the country for as long as it is in force and invalidates any leave to enter or remain in the United Kingdom given him before the Order is made or while it is in force.

The circumstances in which a person is liable to deportation are set out in the Immigration Act 1971 and include:

- failure to comply with a condition attached to his leave to enter or remain or remaining beyond the time limited by the leave;
- where the Secretary of State deems the person's deportation to be conducive to the public good;
- where the person is the spouse or child under 18 of a person ordered to be deported; and
- where a court recommends deportation in the case of a person over the age of 17 who has been convicted of an offence punishable with imprisonment.

In considering whether deportation is the right course on the merits, the public interest will be balanced against any compassionate circumstances of the case. While each case will be considered in the light of the particular circumstances, the aim is an exercise of the power of deportation which is consistent and fair as between one person and another, although one case will rarely be identical with another in all material respects. Deportation will normally be the proper course where a person has failed to comply with or has contravened a condition or has remained without authority. Before a decision to deport is reached the Secretary of State will take into account all relevant factors known to him including:

- age;
- length of residence in the United Kingdom;
- strength of connections with the United Kingdom;
- personal history, including character, conduct and employment record;
- domestic circumstances;
- previous criminal record and the nature of any offence of which the person has been convicted;
- compassionate circumstances;
- any representations received on the person's behalf.

In all cases of deportation the person in respect of whom the order has been or is to be made has a right of appeal against the removal directions on the ground that he ought to be removed (if at all) to a country or territory specified by him, other than the one named in the direction (Section 17 of the 1971 Act).

There is no appeal within the immigration appeal system against the making of a deportation order on the recommendation of a court; but there is a right of appeal to a higher court against the recommendation itself. An order may not be made while it is still open to the person to appeal against the relevant conviction, sentence or recommendation, or while an appeal is pending.

16.10. Legal Developments

Before 1905, there were no immigration laws in the UK. The Aliens Act, 1905 was the first piece of immigration legislation in the UK. The British Nationality Act, 1948, gave Commonwealth citizens right of entry to the UK.

The Commonwealth Immigrants Acts, 1962 and 1968 were designed to restrict entry of Commonwealth citizens. This also led to the invention of the 'right to abode'.

The Immigration Act, 1971 and the British Nationality Act, 1981 codified British immigration and nationality law.

16.11. Statistics

Table 16.2 gives the admission figures for the various categories covered (source: Immigration Research and Statistics Service).

Table 16.3 Renewals issued during the five most recent years.

	1995	1996	1997	1998	1999 ¹
Students	51,610	52,530	54,450	46,500	-
Au pairs	990	900	820	720	400

¹1999 figure provisional

16.12. Conclusion

The main structural legislation currently in place is the Immigration Act, 1971 and the British Nationality Act, 1981. Further legislation has been made and most entry is controlled through the application of the Immigration Rules which may on occasion be amended by the Home Secretary without new primary legislation. The immigration policy is currently in the middle of a rethink, which places much more emphasis on bringing in appropriate skills and adopting a more liberal approach generally (except asylum seekers). This will mean favouring those having economic potential - notably students.

A person who is neither a British citizen nor a Commonwealth citizen with the right of abode, nor an EEA national or the family member of such a national who is entitled to enter or remain in the United Kingdom by virtue of the provisions of the Immigration (European Economic Area) Order 1994, requires leave to enter the United Kingdom. A visa national and any other person who is seeking entry for a purpose for which prior entry clearance is required under these Rules must produce to the Immigration Officer a valid passport or other identity document endorsed with a United Kingdom entry clearance (known as a visa) issued to him/her for the specific purpose for which he/she seeks entry.

The general policy is to maximise the intake of overseas students in order to get as much fee revenue as possible. There are no quotas in place for any category of applicant. Work permits are generally not required by most categories of visa-required nationals, as a condition of stay is that no gainful employment is taken. However, students are allowed to take part time or vacation work with the consent of the Secretary of State for Education and Employment.

General requirements for renewal are that the applicant continues to meet the initial entry conditions. For students this may include evidence of satisfactory attendance and progress in the chosen course of study. Renewals may be made for a limited time period only, i.e. for students to the end of the course or, for ministers of religion and journalists, a period not exceeding 3 years. Change of status is generally not allowed with the exception of trainees who may switch to the Training and Work Experience Scheme. The latest policy development include likely switch to encouraging foreign students who have graduated to stay and work in the United Kingdom. Family reunification is possible for all categories with the exception of au pairs who, as an entry condition, are required to be single with no dependants.