



European Economic and Social Committee

SOC/484
Admission of third-
country nationals

Brussels, 18 September 2013

OPINION

of the

European Economic and Social Committee

on the

Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing (recast)

COM(2013) 151 final – 2013/0081 (COD)

Rapporteur: **Mr Pîrvulescu**

On 26 April 2013, both the European Parliament and the Council decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing
COM(2013) 151 final – 2013/0081 (COD).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 5 September 2013.

At its 492nd plenary session, held on 18 and 19 September 2013 (meeting of 18 September), the European Economic and Social Committee adopted the following opinion by 126 votes to 2 with 1 abstention.

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1. **Conclusions and recommendations**

- 1.1 The Committee welcomes the European Commission's initiative and considers that it is necessary to recast the two directives with a view to tackling the demographic and economic challenges facing the EU.
- 1.2 The EU urgently needs a smart and solid migration policy if it wishes to achieve the goals it has set under the Europe 2020 strategy and other major initiatives. If the EU wishes to remain an innovation hub and a strong centre of industry, it needs to attract talented people and ensure effective "brain circulation".
- 1.3 The Committee believes that the policy of encouraging migration and mobility should be firmly anchored in the fundamental human rights system. The principles of the Charter of Fundamental Rights should be implemented at all levels.
- 1.4 The Committee encourages the European Commission and the Fundamental Rights Agency to assess the vulnerabilities that third-country nationals face here and put forward to the Member States active measures aimed at removing them. Determined efforts should be made at all levels to tackle discriminatory situations.

- 1.5 The Committee strongly supports the Commission in its efforts to develop bilateral "mobility partnerships" which offer a framework for cooperation between the EU and non-EU countries (notably in the EU neighbourhood).
- 1.6 The Committee encourages the European Commission and the Member States to take into account the gender aspect and to configure their programmes so as to facilitate the participation of more women.
- 1.7 An in-depth analysis of the obstacles that hinder visa procedures is needed, irrespective of their nature, and measures to eliminate them should be identified. The process for granting visas should be simple, fair, accessible and non-discriminatory.
- 1.8 The Committee stresses the importance of the principle of third-country nationals being treated on a par with nationals of the host Member State as regards access to goods and services.
- 1.9 The Committee draws attention to the need to ensure appropriate protection for students, researchers, volunteers and au pairs where they are engaged in paid work or active in the labour market. Such paid work often obscures working relationships and abuses that may result from this situation should be avoided by ensuring equal treatment for all of these categories. Special attention should be given to people engaged in domestic work as au pairs, particularly women.
- 1.10 The Committee welcomes Article 24, which allows third-country nationals to stay in the Member State for 12 months upon completion of their research or studies in order to look for work. However, the equal-treatment provisions in Directive 2011/98/EU include derogations that seem to run counter to the objectives of the proposal to recast the two directives.
- 1.11 The Committee thinks that the communication aspect is crucial to the success of this policy. The Member States and the EU institutions should communicate with third-country nationals and give them access to high-quality information.

2. **Introduction**

- 2.1 The EU is facing major structural challenges both demographically and economically. The working-age population is shrinking, and companies are struggling to find skilled staff.
- 2.2 The EU Global Approach to Migration and Mobility sets the overarching framework of the EU's migration policy. It also defines how the EU organises its dialogue and cooperation with non-EU countries.
- 2.3 The EU is also facing a situation of "innovation emergency". The Europe 2020 strategy and its Innovation Union flagship initiative have set the goal of increasing investment in research

and innovation, requiring an estimated one million extra research jobs. Immigration from outside the EU is one source of highly skilled and talented people who the Member States can and should attract.

- 2.4 Article 79 of the Treaty on the Functioning of the European Union (TFEU) entrusts the EU with the task of developing a common immigration policy aimed at ensuring efficient management of migration flows and fair treatment of third-country nationals residing legally in the Member States.
- 2.5 Directive 2004/114/EC lays down mandatory provisions for the admission of students who are third-country nationals. The application of the directive to school pupils, volunteers and unremunerated trainees was left optional for Member States. Directive 2005/71/EC provides for a fast-track procedure for admitting researchers from third countries who have signed a hosting agreement with a research organisation approved by the Member State.
- 2.6 In 2011, the Commission presented reports on the implementation of the two directives to the European Parliament and the Council. The reports revealed a number of shortcomings in the directives.
- 2.7 The biggest problem identified in the two directives relates to authorisations for third-country nationals to enter and stay in the EU (long-term visas and/or residence permits). The legal provisions here are often complex and unclear. The procedures are lengthy and are not always applied fairly and consistently. Current provisions on immigration are not sufficiently supportive of EU programmes including mobility measures such as Erasmus Mundus or Marie Curie.
- 2.8 In terms of the labour market, there is a lack of opportunities for graduates from third countries to identify work opportunities after they graduate, and for researchers to do so after finishing their research project. In some cases, third-country nationals cannot be employed by universities because they are considered to be public-sector institutions. Priority should be given to encouraging women to access the scientific professions by removing all forms of direct and indirect discrimination or other barriers that hinder their access to highly-skilled scientific positions.

3. **General comments**

- 3.1 The Committee welcomes the European Commission's initiative and considers that it is necessary to recast the two directives.
- 3.2 Being open to the outside world remains a priority for the EU and in the current climate this goal is difficult to pursue. The EU should facilitate mobility and make use of all the tools at its disposal to improve access for third-country nationals to educational and research activities in the EU and to its labour market.

- 3.3 The EU needs to take a new approach to economic migration, one that would allow third-country nationals to acquire knowledge and skills. Cooperation with third countries should encourage "brain circulation", which benefits both the receiving and the sending countries.
- 3.4 In October 2010, the European Commission adopted an initiative setting out an ambitious set of actions and policies needed to transform the EU into an "Innovation Union". To that end, the EU should ease entry and residence rules for third-country nationals.
- 3.5 Third-country nationals can bring dynamism and diversity to Europe's educational, scientific, cultural and economic activities. The Committee believes that facilitating the mobility of third-country nationals is one of the answers to the demographic and economic-development challenges facing the EU. At the same time, it believes that this policy should be firmly anchored in the fundamental human rights system.
- 3.6 The Committee welcomes the commitment to unifying and simplifying the procedures involved in accessing the EU's territory. The current economic and political conditions may lead to the fragmentation of systems, policies and national legislation regarding third-country nationals.
- 3.7 The EU's role here is to encourage discussion, find common solutions, promote certain practices and support the efforts of its Member States and of third countries and their nationals.
- 3.8 The Committee also welcomes the fact that there has been clarification of the particular groups of third-country nationals that are the beneficiaries of easier access to the EU. This brings clarity and predictability for both the Member States and the third-country nationals. Although their conditions of entry and residence are differentiated, the inclusion of all the groups in the new directive helps promote certain essential cross-cutting aspects such as respect of fundamental human rights.
- 3.9 Third-country nationals have both rights and obligations, which they should be aware of and duly exercise.
- 3.10 The Committee appreciates the attempt to more efficiently link third-country nationals' access with the major policy areas regarding migration, education and research, in particular in relation to recognised programmes such as Erasmus Mundus and Marie Curie.
- 3.11 The Committee also welcomes the emphasis on the fundamental rights of third-country nationals. However, greater attention needs to be given to active measures to ensure their fair treatment. In practice, third-country nationals are often in vulnerable situations, especially students and au pairs. The Committee encourages the European Commission and the

Fundamental Rights Agency to assess the vulnerabilities that third-country nationals face here and put forward to the Member States active measures aimed at removing them.

- 3.12 The Committee is concerned about the spread of racist and xenophobic attitudes targeting third-country nationals. If we facilitate their mobility but fail to put a stop to these attitudes, all of the policy objectives will be undermined.
- 3.13 The Committee notes that the proposal contains practical measures for integrating third-country nationals into the European research and education areas and into the labour market.
- 3.14 Access for third-country nationals to forms of employment that combine work with education and training should be encouraged. It is important to reinforce the principle of equal treatment with regard to the employment and conditions of employment of people whose situation is governed by these directives.
- 3.15 The Committee encourages the European Commission and the Member States to take into account the gender aspect and to configure their programmes so as to facilitate the participation of more women. This objective should be pursued as a priority when it comes to the mobility of students, and, in particular, of researchers.
- 3.16 The Committee would encourage the Member States and EU institutions to give consideration to a broader sphere of interaction, including research, education and the labour market. Europe is a space in which artistic production and the creative industries constitute a driver for both integration and social progress and economic development.
- 3.17 In the case of third-country nationals admitted as researchers, students or au pairs, the Committee encourages the Commission, the Member States and the European Parliament to strengthen their protection in the workplace or where they participate in the labour market. In particular, the Committee thinks that the derogations from the equal-treatment provisions of Directive 2011/98/EU should be removed for students, researchers and au pairs.

4. **Specific comments**

- 4.1 The Committee considers it appropriate to extend the scope of the directive to include remunerated trainees and au pairs.
- 4.2 The Committee believes that, in practice, a huge number of procedural and institutional obstacles continue to stand in the way of mobility. These obstacles mainly concern visa procedures. These procedures are lengthy, unpredictable and even arbitrary. They entail very high, almost-prohibitive costs for applicants. Access to embassies and consular offices is often limited. An in-depth analysis of these obstacles is needed, irrespective of their nature, and measures to eliminate them should be identified. The process for granting visas should be simple, fair, accessible and non-discriminatory.

- 4.3 The private sector is very important for achieving the objectives related to funding and developing research. Companies should be encouraged to adopt a pro-active attitude to attracting researchers. Specific measures must also be devised by the Member State authorities, in cooperation with institutions and private companies, aimed at removing practical barriers to the integration of third-country nationals. For instance, the procedure involved in opening a bank account can be complicated and lengthy.
- 4.4 The Committee notes the procedural difficulties involved in granting visas to people seeking to work on a voluntary basis. Volunteering is a special activity that constitutes neither employment nor education, but involves both to a certain extent. Volunteering should be formally recognised as an activity that warrants the issuing of visas.
- 4.5 In this context, the EESC would welcome the involvement of local and regional authorities.
- 4.6 As regards the provision that Member States may grant more favourable conditions to the persons to whom the proposal for a directive applies, the Committee endorses this as it allows the individual states to develop their own policies for attracting third-country nationals. Although this does not come under the scope of the directive, the Member States' policies should not discriminate against certain groups of nationals or individual nationals.
- 4.7 The Committee supports the development of mobility partnerships under this policy and underlines the need to enhance cooperation between the EU and third countries to ensure effective "brain circulation". Developing education and research in the EU should not be done by depriving third countries of the skills of their own citizens. It is not clear from the Commission proposal what specific activities are envisaged in this regard.
- 4.8 Regarding the situation of students and the new group of remunerated trainees, the Committee endorses the proposal to allow them to stay in a second Member State for periods of between three and six months, provided that they fulfil the general conditions laid down in the directive.
- 4.9 The Committee agrees with enhancing students' access to the labour market, under the conditions set out in the directive, by enabling them to work a minimum of 20 hours per week. It is up to each Member State, within the framework of social dialogue with the social partners, to determine the maximum number of hours per week or days or months per year allowed for such an activity, which is not to be less than 20 hours per week, or the equivalent in days or months per year. However, given that completion of studies is the primary objective, the permitted working time should be limited to a level conducive to this goal. Proof of progress with studies should be provided at regular intervals.

- 4.10 The Committee stresses the importance of the principle of third-country nationals being treated on a par with nationals of the host Member State as regards access to goods and services.
- 4.11 In its opinions on the Green Paper on economic migration, adopted in 2006¹, and on the single permit, adopted in 2008², the Committee advocated granting legal migrants the right to education and vocational training, in addition to equal treatment in the workplace (working conditions, pay and dismissal, health and safety in the workplace, freedom of association, etc.).
- 4.12 The Member States should ensure that the fundamental rights of third-country nationals are respected in practice.
- 4.13 The Committee thinks that the communication aspect is crucial to the success of this policy. The Member States and the EU institutions should communicate with third-country nationals and give them access to high-quality information.
- 4.14 The Committee will continue to act as a bridge between organised civil society and the EU institutions and aims to continue promoting best practice in the area of immigration and integration.

Brussels, 18 September 2013

The President
of the
European Economic and Social Committee

Henri Malosse

¹ [OJ C 286, 17.11.2005, p. 20.](#)

² [OJ C 27, 3.2.2009, p. 114.](#)