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THE EUROPEAN UNION**

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**LIMITE**

**MIGR 107  
RECH 424  
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**NOTE**

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From: Presidency

On: 14 October 2013

To: Working Party on Integration, Migration and Expulsion

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No. Cion doc.: 7869/13 MIGR 27 RECH 87 EDUC 97 CODEC 669

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Subject: 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]

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Examination of Presidency compromise suggestions

The Presidency proposes to complete the review of the provisions that were not dealt with in the previous meeting of the 1st of October.

The new Presidency compromise suggestions concerning mobility provisions are set out in the Annex to this Note. Please be aware that:

For addition of new text: ➞ **addition in bold** Ⓞ

For deletion of text: ➞ [...] Ⓞ

**ANNEX**

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↓ 2004/114/EC, 2005/71/EC

(adapted)

⇒ new

2013/0081 (COD)

Proposal for a

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

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

[RECAST]

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↓ 2004/114/EC recital 16

(adapted)

⇒ new

⇒ Council

(31) The ☒ intra-Union ☒ mobility of ~~students who are~~ third-country ☒ national researchers, students [and remunerated trainees] ☒ ~~studying in several Member States~~ should be facilitated, ~~as must the admission of third-country nationals participating in Community programmes to promote mobility within and towards the Community for the purposes set out in this Directive.~~ ⇒ For researchers, this Directive should improve the rules relating to the period for which the authorisation granted by the first Member State should cover stays in a second Member State without requiring a new hosting agreement ⇒ **in case of short-term mobility** . Improvements should be made regarding the situation of students, [and the new group of remunerated trainees], by allowing them to stay in a second Member State for periods lasting ⇒ [...] ⇒ **90 days in a 180-day period** , provided that they fulfil the ⇒ [...] conditions laid down in this Directive. ⇒ [...] ⇒

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↓ new

⇒ Council

(32) Union immigration rules and ⇒ [...] ⇒ **[bilateral and multilateral]** programmes including mobility measures should complement each other more. Third-country national researchers and students covered by such ⇒ [...] programmes should be entitled to ⇒ [...] ⇒ **use short-term mobility** to the Member States foreseen on the basis of the authorisation granted by the first Member State. ⇒ [...] ⇒

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↓ 2004/114/EC (adapted)

*Article 3*

**Definitions**

For the purposes of this Directive:

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↓ new

↻ Council

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

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

(q) '↻ [...] ↻ **Bilateral and multilateral** ↻ programmes including mobility measures' means ↻ [...] ↻ programmes ↻ **funded by the Union or by two or more Member States** ↻ promoting inward mobility of third country nationals to the Union ↻ **or relevant Member States participating in such programmes** ↻ ;

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↓ 2005/71/EC (adapted)

⇒ new

⇒ Council

Article ~~8~~ 16

**Duration of residence ~~permit~~**

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↓ new

⇒ Council

**⇒ 2a. By way of derogation from paragraphs (1) and (2), researchers and students who are covered by [bilateral or multilateral] programmes including mobility measures, shall be issued an authorisation covering the whole duration of their stay in the Member States concerned.** ↻

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## CHAPTER VI

### MOBILITY BETWEEN MEMBER STATES

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↓ 2005/71/EC

⇒ Council

Article ~~13~~ 26 ⇒ A ☺

☺ [...] ☺ ⇒ Short-term mobility of researchers ☺

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

~~2.~~ ⇒ 2. ☺ If the researcher stays in another Member State for a period of up to ☺ [...] ☺  
☺ 90 days in any 180-day period ☺, the research ☺ activity ☺ may be carried out on the basis of the hosting agreement concluded in the first Member State, provided that he has sufficient resources in the other Member State and is not considered as a threat to public policy, public security or public health in the second Member State.

- 3. The second Member State may require [the host entity] in the first Member State to notify the first Member State and the second Member State of the intention of the researcher to carry out the research activity in [the research organization] established in the second Member State:**
- (a) either at the time of the application in the first Member State, where the mobility to the second Member State is already foreseen at that stage;**
- (b) or after the researcher has started research activity in the first Member State, as soon as the intended mobility to the second Member State is known.**
- 4. The notification shall include the transmission to the second Member State of the documents transferred to the first Member State in the context of Article 6 (1) (a), (c) and (f) and the planned duration and dates of the mobility.**
- 5. Where the notification has taken place in accordance with paragraph 3 (a), and where the second Member State has not raised any objection with the first Member State in accordance with paragraph 7, the mobility of the researcher to the second Member State may take place at any moment within the validity of the authorisation.**
- 6. Where the notification has taken place in accordance with paragraph 3 (b), the mobility may be initiated after the notification to the second Member State immediately or at any moment thereafter within the validity of the authorisation.**

**7. Following the notification referred to in paragraph 3, the second Member State may object to the mobility of the researcher to its territory within 20 days from having received the notification, where:**

**(a) the criteria set out in Article 6(1), points (a), (c) and (f), are not met;**

**(b) the researcher is considered to pose a threat to public policy, public security or public health;**

**(c) the documents presented have been fraudulently acquired, falsified or tampered with;**

**(d) the maximum duration of stay as defined in paragraph (2) has been reached.**

**The competent authorities of the second Member State shall inform without delay the competent authorities of the first Member State, the researcher and [the host entity] about their objection to the mobility.**

**8. Where the second Member State objects to the mobility in accordance with paragraph 7 and the mobility has not yet taken place, the researcher shall not be allowed to carry out research activity in the second Member State on the basis of the hosting agreement.**

**9. In case the authorisation is renewed by the first Member State, the renewed authorisation continues to authorise its holder to carry out the research activity in the second Member State notified, subject to the maximum duration stated in paragraph 2. ©**



Article 26B

Long-term mobility of researchers

1. If the researcher who has a valid authorisation issued by the first Member State stays in another Member State for more than [...] 90 days within any 180-day period, the second Member State may decide to: [...]

(a) apply the provisions referred to in Article 26A and allow the researcher to carry out the research activity on its territory based on and during the validity of the authorisation issued by the first Member State;

or

(b) apply the procedure provided for in this Article.

↓ new

→ Council

[...]

2. Where the researcher applies for long-term mobility:

(a) The second Member State may require [the host entity] or the researcher to transmit some or all of the documents referred to in Article 6 (1) (a), (c), (f), (2) and Article 7 (1), where these documents are required by the second Member State for an initial application;

**(b) The researcher shall not be required to leave the territories of the Member States in order to submit the application and shall not be subject to a visa requirement;**

**(c) The researcher shall be allowed to carry out the research activity in the second Member State until a decision on the application for long-term mobility has been taken by the competent authorities, provided that the time period referred to in Article 26A (2) and the period of validity of the authorisation issued by the first Member State has not expired.**

**3. Based on the documentation provided for in paragraph 2, Member States may reject an application for long-term mobility where:**

**(a) one of the grounds covered by Article 18 applies;**

**(b) the authorisation of the first Member State expired.**

**4. Where a Member State takes a decision on an application for long-term mobility, the provisions of Articles 29 and 31 shall apply. ☞**

**☞ Article 26C ☞**

**☞ Safeguards in case of researchers mobility ☞**

**☞ 1. [The host entity] shall inform the competent authorities of the second Member State of any modification which affects the conditions on which basis the mobility was allowed to take place.**

**2. Where the second Member State:**

- (a) has not been notified in accordance with Article 26A (3) and (4) and requires such notification;**
- (b) has objected to the mobility in accordance with Article 26A (7);**
- (c) has found that the researcher continues the research activity in the second Member State although the conditions laid down in Article 26B (2) (c) are no longer complied with;**
- (d) has rejected an application for mobility in accordance with Article 26B (3);**
- (e) has found that the authorisation is used for purposes other than those for which it was issued;**
- (f) has found that the conditions on which the mobility was allowed to take place are no longer fulfilled,**

**it may request that:**

- i) the researcher shall cease all activity on its territory;**
- ii) the first Member State shall immediately allow re-entry of the researcher without formalities and, where applicable, his or her family members. This shall also apply if the authorisation issued by the first Member State has expired or has been withdrawn during the period of mobility within the second Member State.**

**3. In case the first Member State withdraws the authorisation it shall inform the authorities of the second Member State immediately. ☺**

**⇒ Article 26D ◁**

**⇒ Short-term mobility for students [and remunerated trainees] ◁**

- 1. A third-country national who has been admitted as a student [or remunerated trainee] under this Directive shall be allowed to carry out part of his/her studies [or traineeship] in the [host entity] established in another Member State for a period of up to 90 days in any 180-day period subject to the conditions set out in this Article.**
- 2. The second Member State may require [the host entity] in the first Member State to notify the first Member State and the second Member State of the intention of the student [or remunerated trainee] to carry out study [or traineeship] in [the host entity] established in the second Member State:**
- (a) either at the time of the application in the first Member State, where the mobility to the second Member State is already foreseen at that stage;**
- (b) or after the student [or remunerated trainee] has started studies [or traineeship] in the first Member State, as soon as the intended mobility to the second Member State is known.**
- 3. The notification shall include the transmission to the second Member State of the documents transferred to the first Member State in the context of Article 6 (1) (a), (c), (f) and Article 10 (1) (a) [or Article 12 (1) (a)] and, where not specified in any of the preceding documents, the planned duration and dates of the mobility.**

**4. Where the notification has taken place in accordance with paragraph 2 (a), and where the second Member State has not raised any objection with the first Member State in accordance with paragraph 6, the mobility of the student [or remunerated trainee] to the second Member State may take place at any moment within the validity of the authorisation.**

**5. Where the notification has taken place in accordance with paragraph 2 (b), the mobility may be initiated after the notification to the second Member State immediately or at any moment thereafter within the validity of the authorisation.**

**6. Following the notification referred to in paragraph 2, the second Member State may object to the mobility of the student [or remunerated trainee] to its territory within 20 days from having received the notification, where:**

**(a) the criteria set out in Article 6 (1) (a), (c), (f) and Article 10 (1) (a) [or Article 12 (1) (a)], are not met;**

**(b) the student [or remunerated trainee] is considered to pose a threat to public policy, public security or public health;**

**(c) the documents presented have been fraudulently acquired, falsified or tampered with;**

**(d) the maximum duration of stay as defined in paragraph 1 has been reached;**

**The competent authorities of the second Member State shall inform without delay the competent authorities of the first Member State, the student [or remunerated trainee] and [the host entity] about their objection to the mobility.**

- 7. Where the second Member State objects to the mobility in accordance with paragraph 6 and the mobility has not yet taken place, the student [or remunerated trainee] shall not be allowed to carry out studies [or traineeship] in the second Member State.**
- 8. In case the authorisation is renewed by the first Member State, the renewed authorisation continues to authorise its holder to carry out studies [or traineeship] in the second Member State notified, subject to the maximum duration stated in paragraph 1.**
- 9. Where the students intend to carry out economic activities in the second Member State, Article 23 shall apply. ☺**

**☺ Article 26E ☺**

**☺ Long-term mobility of students [and remunerated trainees] ☺**

- ☺ 1. If the student [or remunerated trainee] who has a valid authorisation issued by the first Member State stays in another Member State for more than 90 days within any 180-day period, the second Member State may decide to:**
- (a) apply the provisions referred to in Article 26D and allow the student [or remunerated trainee] to stay and carry out studies [or traineeship] on its territory based on and during the validity of the authorisation issued by the first Member State;**
- or**
- (b) apply the procedure provided for in this Article.**

**2. Where an application for long-term mobility is made:**

**(a) The second Member State may require [the host entity] or the student [or remunerated trainee] to transmit some or all of the documents referred to in Article 6 (1) (a), (c), (f), (2) and Article 10 (1) [or Article 12 (1)] where these documents are required by the second Member State for an initial application;**

**(b) The student [or remunerated trainee] shall not be required to leave the territories of the Member States in order to submit the application and shall not be subject to a visa requirement;**

**(c) The student [or remunerated trainee] shall be allowed to carry out studies [or traineeship] in the second Member State until a decision on the application for long-term mobility has been taken by the competent authorities, provided that the time period referred to in Article 26D (1) and the period of validity of the authorisation issued by the first Member State has not expired.**

**3. Based on the documentation provided for in paragraph 2, Member States may reject an application for long-term mobility where:**

**(a) one of the grounds covered by Article 18 applies;**

**(b) the authorisation of the first Member State expired.**

**4. Where a Member State takes a decision on an application for long-term mobility, the provisions of Articles 29 and 31 shall apply.**

**5. Where the students intend to carry out economic activities in the second Member State, Article 23 shall apply. ☺**

➤ Article 26F ◀

➤ Safeguards in case of students [and remunerated trainees] mobility ◀

➤ 1. [The host entity] shall inform the competent authorities of the second Member State of any modification which affects the conditions on which basis the mobility was allowed to take place.

2. Where the second Member State:

(a) has not been notified in accordance with Article 26D (2) and (3) and requires such notification;

(b) has objected to the mobility in accordance with Article 26D (6);

(c) has found that the student [or remunerated trainee] continues studies [or traineeship] in the second Member State although the conditions laid down in Article 26E (2) (c) are no longer complied with;

(d) has rejected an application for mobility in accordance with Article 26E (3);

(e) has found that the authorisation is used for purposes other than those for which it was issued;

(f) has found that the conditions on which the mobility was allowed to take place are no longer fulfilled,



**it may request that:**

- i) the student [or remunerated trainee] shall cease all activity on its territory;**
- ii) the first Member State shall immediately allow re-entry of the student [or remunerated trainee] without formalities. This shall also apply if the authorisation issued by the first Member State has expired or has been withdrawn during the period of mobility within the second Member State.**

**3. In case the first Member State withdraws the authorisation it shall inform the authorities of the second Member State immediately. ☺**

*Article 27*

☺ [...] ☺

*Article 28*

**Residence in the second Member State for ☺ researchers' ☺ family members**

- 1. When a researcher moves to a second Member State in accordance with Articles 26 ☺ A ☺ and ☺ [...] ☺ ☺ 26B ☺ , and when the family was already constituted in the first Member State, the members of his family shall be authorised to accompany or join him.**
- 2. No later than one month after entering the territory of the second Member State, the family members concerned or the researcher, in accordance with national law, shall submit an application for a residence permit as a family member to the competent authorities of that Member State.**

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

3. The second Member State may require the family members concerned to present with their application for a residence permit:
  - (a) their residence permit in the first Member State and a valid travel document, or their certified copies, as well as a visa, if required;
  - (b) evidence that they have resided as members of the family of the researcher in the first Member State;
  - (c) evidence that they have a sickness insurance covering all risks in the second Member State, or that the researcher has such insurance for them.

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

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

(b) has **⤵ [...] Ⓞ ⤵ sufficient resources to cover subsistence of his/her and of his/her family members Ⓞ** without recourse to the social assistance **⤵ system Ⓞ** of the Member State concerned.

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

**⤵ 5. Derogations contained in Article 25 shall continue to apply *mutatis mutandis*.**

**6. Where the family was not already constituted in the first Member State, Article 25 shall apply. Ⓞ**