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signed by Mr Jordi AYET PUIGARNAU, Director

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to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
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Subject: COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT
Accompanying the document
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
Recasting and amending Directives 2004/114/EC and 2005/71/EC

Delegations will find attached Commission document SWD(2013) 78 final.

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EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

**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**

Recasting and amending Directives 2004/114/EC and 2005/71/EC

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1. INTRODUCTION AND POLICY CONTEXT

Article 79 of the Treaty on the Functioning of the European Union (TFEU) entrusts the EU with the task to develop 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.

Directive 2004/114/EC sets out mandatory provisions for the admission of students who are third-country nationals. It was left optional to Member States to apply the Directive to school pupils, volunteers and unremunerated trainees. If they meet the conditions, students are entitled to a residence permit and they have certain rights with regard to employment or self-employment, which allows them to cover part of the cost of their studies and move between different Member States to pursue their studies. 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. The hosting agreement confirms that there is a valid research project, that the researcher has the scientific skills to complete it and that he/she has sufficient resources and health insurance. Researchers can stay in another Member State as part of their research project, and can teach in accordance with national legislation.

The Commission presented reports on the implementation of these two Directives to the European Parliament and the Council in 2011. The reports showed that there were a number of weaknesses in the Directives. The existing Directives, adopted by the Council in simple consultation with the European Parliament, do not address some of the difficulties that applicants who want to come to the EU face, in particular regarding visas. The current provisions are not always fully in line with Union programmes including mobility measures and provide weak procedural guarantees. They are insufficiently clear or binding, particularly for students. The implementation reports therefore concluded that the Directives needed to be improved.

This conclusion is reinforced by the fact that the policy context of today is very different to that in which the Directives were adopted. Human capital is one of Europe's key assets in the context of the Europe 2020 Strategy and the need to ensure smart, sustainable and inclusive growth. Immigration from outside the EU is one source of highly skilled people, and third-country national students and researchers in particular are groups which are increasingly sought after.

Any initiative in the area of migration should also be seen in the wider context of the EU's dialogue and cooperation with third countries in terms of its foreign policy objectives and external migration policy, as defined by the renewed EU Global Approach to Migration and Mobility (GAMM). Fostering people-to-people contacts and encouraging action on education are important aspects of this policy across the globe, especially in countries in the EU's immediate neighbourhood and its strategic partners. This provides mutual enrichment through the benefits of cultural, social and linguistic exchanges. Events in the southern Mediterranean over the past months in particular confirm the importance of fostering stronger people-to-people contacts and providing opportunities for exchanges, especially for young people. The EU also needs to reconcile its objective of promoting the inward mobility of researchers and students with its commitment to helping the developing countries affected to deal with the brain drain in critical sectors.

PROBLEM DEFINITION

The biggest problem with the two Directives relates to authorisations for third-country nationals to enter and stay in the EU (long-term visas and/or residence permits). Legal provisions are often complex and unclear. Procedures are lengthy and not always fairly or consistently applied. For the groups for which the immigration procedure requires an organisation to initiate and facilitate admission (in particular school pupils, trainees and volunteers), fragmentation across the EU entails a lot of resources and work. This is because several, sometimes divergent frameworks need to be taken into account.

Although the rights of the third-country nationals concerned have evolved with the adoption of the Single Permit Directive, some groups risk not being fully covered by its provisions, due to existing limitations.

Current provisions on immigration are not sufficiently supportive of Union programmes including mobility measures such as Erasmus Mundus or Marie Curie. This can lead to problems with admission procedures and intra-EU mobility. Intra-EU mobility is not only a problem for the beneficiaries of Union programmes including mobility measures, but more generally for students, researchers and remunerated trainees, as the provisions of the Directives on intra EU-mobility are not sufficiently advanced.

Weaknesses in procedural guarantees were also identified. One of them is the lack of any provision on time limits within which applications for admission would need to be assessed and decided on by Member States.

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. Researchers' family members are not guaranteed access to the labour market. Students' access is restricted during their studies, hampering their ability to adequately fund themselves and to make an economic contribution.

Finally, the personal scope of the current framework is limited. It is optional for school pupils, volunteers and unremunerated trainees, leading to wide variations in the Member States' coverage of the different groups. Remunerated trainees and au pairs are not covered by any EU legislative framework, despite facing similar problems and taking part in similar exchanges. These groups need to benefit from more protection, especially au pairs, in view of their particular vulnerability which is related to the family context in which they work.

In 2010, around 220 000 third-country nationals came to the EU for education and study purposes and around 7 000 for research purposes. There is no comprehensive quantitative data on the number of incoming third-country nationals who encounter the problems outlined above or the number of third-country nationals who choose a different destination to the EU due to such problems. It is clear however that the considerable numbers of those who come under the current provisions are affected by their shortcomings, as long as there are no national provisions that remedy them. The information available on the nature of the problems identified, coupled with the substantial number of permits issued annually under the current Directives, suggest that the situation needs to be addressed. Taken together, the weaknesses identified may undermine the EU's capacity to attract highly qualified students, researchers and other groups of third-country nationals at a time when other parts of the world are becoming increasingly attractive for these groups.

2. WHAT IS THE EU'S ROLE?

Article 79 TFEU explicitly gives the Union the task of developing a common immigration policy, whilst leaving the Member States responsible for determining the number of immigrants they admit for the purposes of work or self-employment.

An efficient immigration system that attracts talented immigrants needs a common set of admission conditions and requirements. Intra-EU mobility can only be achieved by establishing a common system for all Member States.

EU legislation may cover conditions of entry and residence, long-term visas and residence permits, the rights of legally residing third-country nationals and conditions governing their intra-EU mobility and residence. Article 79 (2) TFEU provides that adoption of such provisions falls under the ordinary legislative procedure and is decided by the Council and the Parliament.

The added value of the current Directives has been proven over the years and the new instrument would further improve the situation. A transparent legal framework, including safeguards to ensure a genuine transfer of skills, would facilitate international exchanges between the Member States and sending countries.

EU legislation to clarify rights and conditions of residence would also contribute to a better protection of fundamental rights.

3. OBJECTIVES

The main general policy objective is to improve the legal framework applied to third-country nationals who want to come and temporarily stay in the EU for more than three months for research and study purposes and to acquire experience and/or participate in various activities to increase their skills and competences, including by being a school pupil, volunteer, unremunerated or remunerated trainee or au pair.

Specific objectives were identified in light of the problems outlined above:

- to improve the conditions of admission by better linking obtaining the relevant authorisations and improving decision-making processes for these authorisations;
- making provisions clearer and binding for the other groups they apply to;
- to strengthen the link between provisions on Union programmes including mobility measures such as Erasmus Mundus and Marie Curie Fellowships;
- to improve procedural guarantees, such as time limits for decisions on applications;
- to improve access to seek employment and the labour market, both for students during their studies as well as to give researchers and students the possibility to remain on the territory under certain conditions after finishing their studies or research to identify job opportunities;

- to facilitate intra-EU mobility;
- to set out coherent provisions ensuring the protection of au pairs and remunerated trainees.

4. POLICY OPTIONS

Four policy options were considered.

Option 1 (baseline). No change in the current situation

This policy option would leave a number of problems unsolved. Independently of each other, the Member States would continue to implement different measures with regard to admission conditions, in particular visas. There would still be a lack of clarity and transparency on these aspects, and potential applicants and organisations would have to continue taking all the current different frameworks into consideration. Conditions for exercising intra-EU mobility (in particular for students) would remain restrictive, while remunerated trainees would not be covered at all by EU legislation. They would therefore continue to face obstacles and have to rely on national legislation, which differs from one Member State to another. With a view to the proposal for a Directive on intra-corporate transferees (currently being negotiated with the Council and Parliament) which also includes intra-EU mobility provisions for trainees, the continued non-existence of such provisions for trainees coming to the EU outside of an intra-corporate transfer would lead to inconsistencies in the EU legal framework for this group. The lack of coherence between Union programmes including mobility measures and immigration rules would also continue, as would the risk of some groups not being fully covered by the provisions on equal treatment rights in the Single Permit Directive.

While some Member States have made further changes to their legislative frameworks on the implementation of the provisions on students and researchers, others have not. This means that the situation has already moved towards a more fragmented approach between Member States. There are no signs that this would change in the future. The openness of the EU towards third countries would therefore not materialise, as advocated in important policy frameworks such as the current Directives, the European Research Area and the European Higher Education Area.

Option 2. Communicating more (in particular in the case of researchers) and better enforcing the current provisions

This option includes better provision of and access to information to make the current provisions clearer so that they are better applied. More could also be done to raise awareness of the best practices of Member States in admitting and protecting groups currently not covered by Directive 2004/114/EC, i.e. au pairs and remunerated trainees. A more systematic exercise of ensuring that Member States understand and respect their obligations under the Directives would be carried out.

Option 3. Improving admission conditions, rights and procedural guarantees

This option mainly includes improvements for students, school pupils, volunteers and unremunerated trainees, as it puts admission conditions for these groups (facilitation to obtain a visa) comparable to those that apply to researchers. It would make provisions for the currently optional groups of school pupils, volunteers and unremunerated trainees mandatory. Member States would be obliged to grant every facility to obtain the necessary visas to a

third-country national (students and other groups) who has submitted an application and meets the admission conditions. Changes would also be made to procedural guarantees, mainly by introducing time limits that oblige Member States' authorities to decide on an application within 60 days. This is considered proportionate due to the temporary nature of these stays. In exceptional circumstances, the time limit could be extended by 30 days. This option would also extend students' right to work to cover a minimum of 15 hours per week from the first year of residence. To ensure coherence with EU instruments on legal migration such as the Single Permit Directive and recent case law on adequate fees, this option would also include a provision recalling that if Member States charge fees for processing applications, such fees should be proportionate.

Option 4. Further improving admission conditions, rights relating to intra-EU mobility and procedural guarantees; offering students and researchers access to job-seeking after finishing their studies or research project; extending scope to au pairs and remunerated trainees

This option aims to be more ambitious in improving the conditions and rights of the groups covered. It would extend the scope of the legislative framework to au pairs and remunerated trainees and introduce specific admission conditions to ensure better protection for those third-country nationals. Including au pairs under the scope of the Directive is considered proportionate in view of their vulnerability, which is relatively high compared to that of other groups of third-country nationals. This is mainly because they work in a family context which under normal circumstances is not subject to inspections. Including remunerated trainees is considered reasonable as the issues related to trainees are very similar whether or not they are remunerated, or whether or not they come to the EU as part of an intra-corporate transfer, as stipulated in the proposal for a Directive on intra-corporate transferees.

Member States would have the possibility to issue long-stay visas or residence permits. If both types of authorisations are issued, they should require only the fulfilment of admission conditions mentioned in the Directive (so that the conditions remain the same irrespective of the type of authorisation). If third-country nationals stay for more than one year, Member States issuing long-stay visas would have to issue residence permits after the first year. Intra-EU mobility, which requires common provisions at EU level due to its cross-border nature, would be made easier and simplified for researchers and their family members, students, and introduced for the first time for remunerated trainees. Specific, more favourable provisions would apply to the beneficiaries of Union programmes including mobility measures such as Erasmus Mundus or Marie Curie. Following the example of the contact points established under the Blue Card Directive and the proposal for a Directive on intra-corporate transferees, Member States would need to set up contact points for receiving and transmitting information needed to implement intra-EU mobility.

Regarding equal treatment rights, this option would allow more favourable treatment of third-country national researchers regarding branches of social security including family benefits beyond the rights given under the provisions of the Single Permit. It would also ensure the access to goods and services made available to the public to those groups which under the Single Permit could be excluded from this access.

As is already the case in some Member States, students would have the right to work for a minimum of 20 hours per week from the first year of residence to enable them to better fund themselves and contribute to the Member State's economy. Member States would be allowed

to continue taking the national labour market into account. After finishing their studies or research, students and researchers would be allowed to stay on the territory for 12 months to find a job. A number of Member States already have such provisions in place. Given the time it takes for a job-seeking process to be successfully completed, 12 months is considered a proportionate time limit. With regard to procedural guarantees, Member States' authorities would have to decide on applications within 60 days for all groups and within 30 days for Erasmus Mundus and Marie Curie fellows. Like option 3, this option would also include a provision recalling that if Member States charge fees for processing applications, such fees should be proportionate.

5. ANALYSIS OF IMPACTS

The impact of policy options 2, 3 and 4 was assessed against the baseline scenario in terms of their relevance and effectiveness in achieving key objectives, their feasibility (difficulty of or risks for transposition including proportionality, administrative burden/simplification and financial impact), their economic, social and external impacts and their impact on fundamental rights. While the analysis of the likely impacts of the policy options includes some quantitative elements, it is mainly based on a multi-criteria qualitative assessment.

While option 2 would have some positive impacts, these would mainly relate to a better awareness of current provisions such as admission conditions, and the benefits that could be reaped from this as it might attract more students and researchers to the EU. As the current legal instruments would not be changed, their weaknesses would persist. As access to the labour market for these third-country nationals would not be improved, this option would put the EU in an increasingly disadvantaged position for attracting talent for study and research purposes. The impact on the three other (optional) groups covered by Directive 2004/114/EC would be very limited. The economic impact and administrative burden of this option would be limited and confined to efforts needed to implement improved communication activities insofar as Member States deem this necessary.

Option 3 would facilitate the access of students, school pupils, volunteers and unremunerated trainees to the EU. It would thus have some positive impacts, mainly of a social nature. It would allow students to apply for mobility from within the territory of a Member State, thereby increasing intra-EU mobility and strengthening the cultural and linguistic diversity of the EU. Provisions on equal treatment would strengthen students' rights and align them further with those of EU citizens. This option would increase the EU's pool of students and researchers who are third-country nationals. Some of them may subsequently contribute to the EU's economic growth and development if a Member State issues the necessary authorisation to work. Improved access to the labour market during studies would allow students to more adequately fund themselves and contribute to the economy during their studies. The introduction of binding time limits for processing applications would increase transparency and enable potential applicants to plan ahead. The transposition efforts and costs would vary between Member States, depending on the extent to which they already have provisions in the areas concerned, and whether or not they have transposed provisions for groups that are optional under Directive 2004/114/EC. The additional procedural guarantees would entail more work, for example in situations where the Member State authority must provide reasons for rejecting an application in its written decision.

Option 4 would have the most significant positive economic impacts. This is because it would allow students and researchers to stay on a Member State's territory for 12 months after finishing their studies or research to identify job opportunities. In Member States where they currently cannot do so, this would open up a new pool of talent that could contribute to the EU's growth and competitiveness if the Member State decides to issue the necessary work permit. This would create a demand-driven situation, allowing third-country nationals to work if their skills are needed on the national labour market. Some Member States would have to introduce this possibility, while others would have to adjust it so that it (at least) corresponds to 12 months. Substantially improved admission conditions should facilitate the access of researchers and students whose skills, knowledge and competencies already during their initial stay will have a positive effect on the stimulation of research and development and innovative performance. Improved provisions on intra-EU mobility will allow any such advantage to spread more widely across the EU. Including au pairs and remunerated trainees under this option would strengthen the protection of these vulnerable groups of immigrants who are often subject to abuse.

A stronger link between the requirements to obtain permits and visas would imply adjustments at Member State level but there should not be any major difficulties with transposition. Implementing these provisions would cost more in the short term, in particular as far as changes in admission conditions are concerned. However, in the medium to long term Member States could expect to make savings through a more streamlined link between different kinds of authorisations. Introducing and applying procedural guarantees will entail additional costs.

6. COMPARISON OF OPTIONS

Option 2 would address a significant weakness in the current framework (provision of information). Overall however, it has limited positive impacts, as it would not change the substance of the current legal instruments. Their other weaknesses would therefore persist.

Option 3 would be a step forward in improving **admission conditions** with regard to issuing visas and/or work permits. It would have positive impacts mainly for students and to some extent school pupils, volunteers and unremunerated trainees. Very limited benefits would be derived from time limits for researchers and no benefits for the groups currently not covered by either of the Directives. Option 4 would have significantly greater positive impacts on access to the EU, not only for the groups covered by the Directives but also for au pairs and remunerated trainees. The changes introduced by option 4 would make the requirements to be fulfilled at the different stages of the admission procedure and the way they are linked to each other much clearer.

Regarding **equal treatment**, compared to the other options, only option 4 would allow more favourable treatment of third-country national researchers regarding branches of social security including family benefits beyond the rights given under the provisions of the Single Permit. It would also ensure the access to goods and services made available to the public to those groups which under the Single Permit could be excluded from this access.

Regarding **intra-EU mobility**, only the conditions for students would be improved under option 3. Option 4 would also improve the conditions for researchers and their family

members as well as for remunerated trainees and make specific provisions for the beneficiaries of Union programmes including mobility measures.

With regard to **procedural guarantees**, introducing binding time limits for processing an application under option 3 would increase transparency and enable potential applicants to plan ahead. The stricter time limits proposed under option 4 would further increase the advantages potential applicants gain.

With regard to **improving access to the labour market**, option 3 would significantly improve the current situation of students by increasing the minimum number of working hours and removing the possibility of limiting access to the labour market in the first year of residence. Option 4 would further increase the minimum number of working hours for students. It would also make the legal framework significantly more attractive for students and researchers by allowing them to stay on the territory of a Member State to find a job and by granting researchers' family members access to the labour market.

Only option 4 achieves the objective of providing **coherent provisions to ensure that au pairs and remunerated trainees are protected**. It envisages a coherent set of admission conditions and rights ensuring that the objective of training and au pairing in the EU are not compromised.

Preferred Option

The analysis and comparison of the options suggest there are problems that cannot be solved by better communication alone and that the Directives therefore need to be updated.

Although it has the lowest implementation costs, option 2 only has limited potential to achieve the objectives. The real issues at stake remain largely unresolved. Option 2 is therefore regarded as the least cost-efficient option. Option 3 is more effective and efficient than option 2.

However, option 4 is the most effective and efficient overall. While it costs more to implement than the other options, the implementation costs are considered proportionate to the objectives and necessary to allow for the most substantial benefits to materialize.

Since the issues identified are similar for both Directives, and in order to provide for more coherence and clarity of the EU rules, the most effective way to implement the preferred option would be to combine the two Directives in a single legislative instrument. This would be done by recasting both Directives, merging them in a single legislative act and proposing substantive changes.

7. MONITORING AND EVALUATION

Currently, the main indicator is the number of permits granted to third-country nationals who come to the EU for research or educational and study purposes. Under the new instrument, an effort could be made to better distinguish between the different groups, including remunerated trainees and au pairs, regardless of whether they come to the EU under a permit or long-stay visa. Recording the number of authorisations granted would enable monitoring of the situation over time. To better assess their intra-EU mobility, the number of beneficiaries of EU-funded mobility programmes could be recorded separately. Statistics could also be developed to

monitor the number of students and researchers who look for a job, compared to the overall number who are third-country nationals and who obtain the necessary work permit. The time Member States take to decide on applications would be recorded and compared with the time limits currently in force.

As with any EU legal instrument, the Commission is responsible for ensuring that Member States apply the Directive(s) correctly and on time. In the area of migration, the Commission communicates with the Member States through the Contact Committee on Migration. This is a forum for discussion to help anticipate problems and solve them more effectively, in particular during the implementation period.

The Commission will continue to verify that transposition measures comply with the Directive and that Member States transpose it on time. It will launch infringement procedures if necessary. The proposal will include an obligation for the Commission to report to the European Parliament and the Council evaluating the application of the new Directive by the Member States five years after the deadline for transposition. The report could also cover the effects of the Directive and it may contain policy recommendations.