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Introduction

*Paul Minderhoud & Tesseltje de Lange**

On 23 May 2018 the deadline for the transposition of Directive 2016/801 on the conditions of entry and residence of third-country nationals (TCN) for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing expired. This new Directive repealed and replaced the Students Directive 2004/114 and the Researchers Directive 2005/71, which was unclear in certain aspects and had a number of shortcomings. The Directive applies to TCNs who apply or have been admitted to an EU Member State for purpose of research, studies, training or voluntary service in the European Voluntary Service. Member States have discretion to decide whether they want to apply the Directive to TCNs for the purpose of pupil exchange scheme or education project, voluntary service other than the European Voluntary Service or au pairing. Where all the general conditions and relevant specific conditions provided by the Directive are fulfilled, the third country national shall be entitled to an authorization. Authorised researchers are entitled to equal treatment with nationals of the host Member State in a number of areas such as working conditions, social security benefits, recognition of professional qualifications and access to goods and services. One of the important rights conferred on students is the right to work in the territory of the host Member State for at least 15 hours per week, or the equivalent in days or months per year (whereas the situation at the labour market may be taken into account here). Another important novelty is that the Directive obliges the Member States to entitle students and researchers who have completed their studies/research to stay on the territory of the Member State where they did their studies/research for at least nine months in order to seek employment or set up a business there. Contrary to most of the EU legal migration Directives, the Students and Researchers Directive regulates not only the issuance of residence permits, but also of long-stay visas.

This book is a result of seminar organized at 15 November 2019 at the Radboud University Nijmegen as part of the Jean Monnet Centre of Excellence program of the Centre for Migration Law. It highlights the central themes, problem issues and implementation in selected Member States of this Students & Researchers Directive.

The book starts with a contribution by *Matthieu Chavier & Paulina Bury* of the Legal Service of the Council of the EU on the negotiations in the Council. They point out that the following issues that became the most contentious during the negotiations within the Council: the scope, intra-EU mobility, and rights given to different categories of third-country nationals. The rights debated included equal treatment, economic activities by students, stay for the purpose of job-searching or entre-

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preneurship for researchers and students, and the rights of family members. Their chapter discusses the Council negotiations according to those issues. The chapter first elaborates on the timeline of the negotiations within the Council, taking into account the specificity of the procedure in the politico-institutional context. It then tackles the problem of scope in the light of the principle of subsidiarity and the controversies it has raised among Member States. Finally, the discussions on rights, such as intra-EU mobility and economic activity, are briefly described.

Hélène Calers of the European Commission, subsequently discusses the transposition of the Directive from the perspective of the European Commission. She concludes that this Directive includes a number of improvements compared to the Students Directive and the Researchers Directive, and provides for more precise and detailed rules than the previous Directives, making it the longest (43 Articles) and most complex EU Directive on legal migration at the moment. In her contribution she presents the main features of the Directive and the first identified implementation challenges, based notably on the discussions of the Contact Group on Legal Migration. She discusses the scope, admission conditions, the grounds for rejection, withdrawal and non-renewal as well as the procedures for the processing of applications, for approval of host entities and for authorisations. She ascertains that there are relatively few compulsory grounds for rejection/withdrawal/non-renewal ("shall clauses"), but a longer list of optional grounds ("may clauses"), which endangers the harmonisation effect of the Directive. Then the rights of the TCNs during their stay (equal treatment rights, economic activities rights for students and rights of family reunification for researchers) is described. Also intra-EU mobility and the possibility to stay for job-searching or entrepreneurship are addressed. She ends her contribution with the observation that The complexity and length of the Directive, the delays in transposition by Member States and the lack of statistics do not yet allow to draw general conclusions on the transposition of the Directive and its application.

Next, *Jo Antoons & Ana Correia Horta* of Fragomen Global LLP Brussels give a comparative overview of Member States' policies on attracting and retaining foreign talent across the EU. This contribution outlines the practical impact Directive 2016/801 had on foreign students, researchers and trainees in the EU by focusing on the admissibility criteria and benefits foreseen for each of these categories. Throughout the sub-sections, practical examples on the implementation of specific legal provisions have been included, as well as comparative overviews on member states' policies. The information with regard to the implementation of the Directive has been limited to the following member states: Austria, Czech Republic, France, Germany, Italy, Luxembourg, Netherlands, Poland, Spain, Malta and Portugal. Their conclusion is that while Directive 2016/801 brings several new benefits to foreign researchers, students and trainees in the EU, an overall conservative approach towards the implementation of the Directive has unfortunately been adopted by the member states.

The section which goes into more detail in selected Member States starts with a contribution by *Louisa Borg Haviaras* with empirical findings from Cyprus on the mobility of third country national researchers in the European Research Area (ERA). It provides a very insightful account of Cyprus in the EU in general and more specifically of the interaction with ERA soft law and the lack of researcher mobility into Cyprus. It explores the challenges to scientific migration affecting TCN and Cypriot scientists and researchers, arising from the domestic research environment (Cyprus).

Her contribution stresses the role of the home country scientific/research environment as this determines the safeguarding of TCN scientists' and researchers' rights: the right to entry, right to family reunification, right to work, mobility rights and opportunities to remain or not. She also considers the weaknesses and improvements between the old and the new Directive on TCN Researchers and their family members at an EU level.

The next country to be discussed is the Netherlands. *Arno Overmars* analyses the policy and challenges regarding the topic of international students in higher education. He outlines the regulation regarding the recruitment, selection and admission of international students and researchers, and the influence of higher education and migration policy on the possibilities for high-quality knowledge workers to work in the Netherlands. He advocates more cooperation between higher education institutions, but realizes that the Corona crisis, and the global immobility it likely brings, might put the development of such co-operations on hold. In his opinion higher education institutions should focus more on the legal position of the non-EU/EEA students. He also points at the existence of a Code of Conduct (which contains a complaint procedure) but observes that framework is rather unknown.

Ingeborg Spiegeler Castañeda discusses subsequently the experience in Germany. Her chapter is divided in six key themes; the first theme explains the legal framework in which the Directive was transposed. The second theme defines the role of the Federal Office for Migration and Refugees as the national contact point. In this context, the mobility notification procedure and the relevance of a safe data exchange will be described. Additionally, the third and fourth themes show statistics on the mobility of international students and researchers. The fifth theme covers some of the challenges faced so far and the respective solutions applied in the implementation of the Directive in regards to mobility in Germany. Finally, the sixth theme gives a short overview of the Skilled Labor Immigration Act which recently entered into force and expands the possibilities for qualified professionals to come to Germany for work.

The transposition in Poland is described by *Izabela Florczak*. She points out that over the last decades Poland used to be a country of emigration, but the changing attitude to internationalization of scientific research conducted in Poland the last years gives grounds for acknowledging that there will be a gradual increase in the share of highly qualified science representatives and students from third countries in Poland. She discusses the different types of visas and temporary residence permits executing the provisions of Directive 2016/801 as well as the rights to stay and continue residence conferred under the Directive.

The section on selected Member States is closed by *Sandra Mantu & Roxana Ruja* who discuss the implementation of Directive 2016/801 in a human capital exporting country Romania. They describe the transposition of the Directive in Romania in light of the Directive's stated objectives of simplification and streamlining while equally bearing in mind that although other categories are envisaged by the personal scope of the Directive, students and researchers enjoy the most developed legal status. While Romania continues to be a country of net emigration, the number of foreign students has increased steadily over the last decade. Until 2018, TCN students outnumbered TCN labour migrants. According to Mantu & Ruja the immigration authorities apply the law rigidly, there is little cooperation between universities and the immigration authorities, while jurisprudence in this area of law is far from unitary.

In practice, this means that TCN students and researchers may not always experience Romania as an attractive destination. If simplifying administrative procedures and streamlining the existing framework were the aims of Directive 2016/801, then Romania still has work to do to meet these goals.

The last chapter of the book contains some concluding remarks by *Tesseltje de Lange*. Building on the work in the other chapters she delineates five episodes in what she calls ‘a legal jungle’ in which third country nationals coming into the EU under this Directive may find themselves. These episodes are divided in two pre-admission episodes; one episode during their stay in one Member State, and one while mobile in the EU and finally, and after their studies or research, and an episode of looking for a future career, possibly also in the EU. She concludes with some suggestions for future research on the migration issues covered by this Directive, such as comparing legal jungles across the EU, drawing hierarchies between students (based on country of origin, type or location of educational institution, gender etcetera), comparing mobility regimes in other Directives and, finally, the study of stepwise migration and the extent to which the Directive facilitates a future career for TCN in the EU.