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THIRD COUNTRY NATIONAL STUDENTS AND  
RESEARCHERS IN THE EUROPEAN UNION: DIRECTIVE  
2016/801/EC

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## **ABSTRACT**

The European Union has been aiming to attract third-country national students and researchers to its territory for a long time. Directive 2016/801EC on the conditions of entry and residence of third-country nationals for the purpose of research, studies, training, voluntary service and pupil exchange has been one of the ambitious steps on this issue. Under the new Directive the Commission of the European Union simplified the existing rules on Intra-EU mobility rights for students and researchers. It also allows third-country national students to work at least 15 hours per week. Moreover, the researchers will be able to enjoy the right to family reunification. However, it is not guaranteed if the new Directive will be effective. The previous Directives 2004/114EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service and the Directive 2005/71EC on the conditions on admission of third-country nationals for the purpose of research has raised different problems in the Member States. There is a need of investigation through the provisions and wording of the new Directive in order to avoid the same obstacles.

The paper discusses the content of the EU directive on the conditions of entry and residence of third-country nationals for the purpose of research, studies, training, voluntary service, pupil exchange schemes or educational project. The author describes the problems of the former students and researchers directive and after that the pro's and the con's of the new directive will be analyzed. Moreover, the author analyses the rights that third-country national researchers and students derive from EU law and if this rights are fully guaranteed under the new Directive. In that regard, it is argued that the rights given to third-country nationals under the European Convention of Human rights such as right to family and non-discrimination are not affectively ensured by the new Directive and by the national laws implementing the Directive.

Keywords: Third-country nationals, Students, Researchers, Right of entry and residence, Equal treatment, Mobility.

# 1 Introduction

International student migration in the European Union has a long history. According to UNESCO data 1.6 million students were studying in 1996 abroad and half of these international students were studying in Europe. Nowadays this numbers are even higher due to EU financed programs like Erasmus and Socrates.<sup>1</sup> The benefits of the International Student mobility in the territory of the EU are since a long time recognized. In recent years there have been made a lot of developments to facilitate the migration of TCN for the purpose of studies or research. One example of recently made steps is the directive 2016/801/EC<sup>2</sup>. The European Commission is insisting to improve and harmonize the standards for welcoming international students.<sup>3</sup>

It is important to analyze the situation of third country national students in the European Union and to identify if the TCN students and researchers are equally treated and if their rights deriving from the European Charter of Human rights are fully guaranteed. It is often argued, that the establishment of the favorable environment with clear rules or financial support for third country national students and researchers occurs only at EU level.<sup>4</sup> For this reason it is important to identify how the Member states implement the new Directive and if they really solve already existing obstacles.

The EU has been trying to attract third country nationals to its territory for years. One reason of the need of immigration was the cheap flexible workforce due to the weak economic situation in labor market. The different countries have created their own

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<sup>1</sup> King R., Ruiz-Gelices E. (2003). International student migration and the European 'Year Abroad': Effects on European Identity and Subsequent Migration Behavior. -*International Journal of population geography*, Vol. 9, No. 3, 230-252, p. 232.

<sup>2</sup> Directive 2016/801 of the European Parliament and the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purpose of research, studies, training, voluntary service, pupil exchange, schemes or educational projects and au pairing, OJ L 132, 21.5.16, p21-57.

<sup>3</sup> Attracting and retaining foreign students: Workshop overview and conclusion.-*EMN Annual Conference in 2017 'The EU in the global race for talents: Challenges and solutions in strengthening the EU's competitiveness*, 21-22 September 2017, Tallinn, Estonia, Tallinn University,1-8, p 3.

<sup>4</sup> Hardy, J. (2012). The Objective of Directive 2003/86 Is to Promote the Family Reunification of Third Country Nationals. – *European Journal of Migration and Law*, Vol. 14, No. 4, 439-452, p 440.

policies regarding the matter of migration and it is difficult to generalize them, but the fact that the immigrants were the main workforces in western European countries is undeniable.<sup>5</sup>

From the migration benefits not only the EU but also the individual persons and the countries where they come from. However negative aspects of the migration can be noted. Firstly, it requires a lot of work from the side of the European Union (controlling external borders, issuing visas). Secondly, it raises the problem of illegal migration. In order to avoid the illegal migration the EU has adopted several programs and laws for the TCN.<sup>6</sup>

The Treaty of Amsterdam played the most important role in the way that the EU gained competences over migration of the Third country nationals. It transferred into community pillars measures in the field of asylum, external border controls and the rights of third country nationals, visas, and administrative co-operation.<sup>7</sup> However it did not develop European principles of immigration and asylum.<sup>8</sup>

The main development in the past years regarding the TCN students and researchers is the Directive 2016/801/EC. The new Directive merges the former students Directive 2004/114 and researchers Directive 2005/71 and imposes simplified rules. However it does not solve already existing legal problems. In order to suggest recommendations for improvements, the author is aiming to review the previous two Directives and the case law. The author will compare the new Directive to the old Directives and identify if it is possible to solve all the existing problems and legal obstacles with the Directive 2016/801/EC.

The author aims to examine the implementation procedure of the new Directive in German and Estonian Legislation. "It is clear that TCN under the directives adopted since 2003 do not have the same rights as Union Citizens."<sup>9</sup> The Author aims to examine differences between the rights of students and researchers from EU and non-

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<sup>5</sup> Hysmans J. (2000). The European Union and the Securitization of Migration. – *Journal of Common Market Studies*, Vol. 38, No. 5, 751-77, p 754.

<sup>6</sup> *Ibid.*, p 755

<sup>7</sup> Kostakopoulou T. (2000). The protective Union: Change and Continuity in Migration law and Policy in Post Amsterdam Europe. – *Journal of Common Market Studies*, Vol. 38, No. 3, 497-518, p 500

<sup>8</sup> Roots, L. (2009). Impacts of the Lisbon Treaty on the Development of EU Immigration Legislation. – *Croatian Yearbook of European Law and Policy*, Vol. 5, 261-282, p 275.

<sup>9</sup> Kees, G. (2014). Recent Developments in EU law on Migration: The Legislative Patchwork and the Court's Approach. – *European Journal of Migration and Law*, Vol. 16, No. 3, 313-336, p 327.

European countries. The hypothesis of the thesis is: The recast Directive's provisions allow discretion to MS to the extent that the implementation rules do not substantially affect pre-existing rights and obligations of TCN researcher and students in particular.

Research uses qualitative, analytical and explanatory approaches. The descriptive part of the thesis is important in order to identify the legal framework of Directive 2016/801EC. The main part of the research will be based on normative research, based on academic articles, publications, Union legislation Case law and national legislations of Germany and Estonia.

Master Thesis consists of four main chapters. First Chapter analyses the Directive 2004/114EC and Directive 2005/71 and describes the problems of the Directive. The Second chapter analyses the Case law of the European Union and identifies if the same obstacles would arise under the new recast Directive 2016/801. The third Chapter describes the Directive 2016/801. Firstly it examines the improvements and secondly it identifies the legal problems. Right to family reunification and Intra-EU mobility of third-country national students and researchers will be also analyzed in third chapter. The last chapter aims to examine the implementation of the recast Directive in German and Estonian legislation and suggest improvements in order to avoid practical problems.

## **2 Immigration of Third Country national Students and Researchers in the European Union: General overview**

From the beginning of student migration, students and researchers came in the territory of the European Union in order to gain a valuable knowledge and after finishing their study programs they returned to their countries of origin. Third country national citizens who had an intention to study in the territory of EU had to sign a statement directly upon arrival. In this statement TCNs guaranteed their return to home countries after the graduation of study programs. The developing countries benefited from this process as the knowledge from the Europe was leading to the development of different fields. Nowadays the situation is dramatically changed. TCN students and researcher have possibility to stay and work in Europe. They are offered jobs and are seen as a future potential of workforce.<sup>10</sup>

Another issue that make the study period of TCN students in EU difficult is the limited hours to work while studying. According to the old directive 2004/114/EC the maximum hours of work permit in the week was 10 hours.<sup>11</sup> The new directive 2016/801/EC this work permit allows a maximum of 15 hours per week.<sup>12</sup>

The Directive 2004/114/EC on the conditions of admission of third-country nationals for the purpose of studies, pupil exchange, unremunerated training or voluntary service as well as the directive on a specific procedure for admitting third-country nationals for the purposes of scientific research were the directives that firstly addressed the rights of the third country national students and researches in the EU.<sup>13</sup> However, the directives

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<sup>10</sup> De Lange T. (2014). Third Country National Students in the EU: Caught between Learning and Working. *International Journal of Comparative Labour Law and Industrial Relations*, Vol. 31, No. 4, 453-472, p457-458.

<sup>11</sup> Directive 2004/114 EC of the Council of the European Union of 13 December 2004 on the conditions of admission of third-country nationals for the purpose of studies, pupil exchange, unremunerated training or voluntary service, Article 17 (2), OJ L 375, 23.12.2004, p 12-18.

<sup>12</sup> Directive 2016/801 of the European Parliament and the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purpose of research, studies, training, voluntary service, pupil exchange, schemes or educational projects and au pairing, Article 24 (3), OJ L 132, 21.5.16, p 21-57.

<sup>13</sup> Attracting and retaining foreign students: Workshop overview and conclusion.-*EMN Annual Conference in 2017 The EU in the global race for talents: Challenges and solutions in strengthening the EU's competitiveness*, 21-22 September 2017, Tallinn, Estonia, Tallinn University, 1-8, p 1.

could not govern the actual obstacles and were raising legal and practical problems. In 2016 the European Parliament introduced the new Directive 2016/801EC that combined the previous two directives and merged the regulation for students and researchers in one Directive. On September 2017 this issue was addressed by the European Migration Policy (EMN) in Tallinn, Estonia. The EMN annual conference in 2017 addressed the recent developments from the side of the European Union to attract the third country national students and researchers in the Union.<sup>14</sup>

Due to the facts mentioned above it is important to examine the Directive 2004/114 on the conditions of admission of third country nationals for the purpose of studies, pupil exchange unremunerated training or voluntary services. The following chapter aims to identify the problems and obstacles of the old student's Directive and to provide case law regarding this issue.

## **2.1. Directive 2004/114/EC**

In December 2004 the Directive 2004/114/EC on the conditions of admission of third country national's for the purpose of studies, pupil exchange, unremunerated training or voluntary service was adopted by the EU institutions. The aim of the EU under this Directive is clear. Firstly, it promotes the Europe in the field of education and vocational training as a whole as word center of excellence. Secondly, it facilitates the mobility of third country nationals for the purpose of study in the Member States of the European Union.<sup>15</sup> The migration purpose under the Directive 2004/114/EC is the promotion of familiarity between cultures. It should be mentioned that the migration carries the meaning of temporary migration and does not depend on the labor market situation in the host country. This migration is to be understood as a mutual enrichment for the migrants concerned, their country of origin and the host Member State.<sup>16</sup>

In 2011 the Commission evaluated the Directive and stated that it attracts third country nationals to study in Europe but it mentioned also that the Directive is not fully

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<sup>14</sup> *Ibid.*

<sup>15</sup> Guild, E., Mitsilegas, V. (2001). Immigration and Asylum Law in Europe. – *Brill Nijhoff*, Vol. 30, 175-192, p 187.

<sup>16</sup> Guild, E., Mitsilegas, V. (2001), *supra nota 15*, p187.

implemented in the legislation of the member states. The Commission offered amendments to the directive.<sup>17</sup> In order to identify the legal obstacles of the directive mentioned above, it is important to examine its Articles and identify under which circumstances the TCNs were allowed to study in the European Universities and how the admission procedure looked like. The following part deals with the Directive 2004/114/EC and defines its articles.

The subject matter of the previous students directive are TCN students who intend to stay to the territory of the Member States for a period exceeding three months for purpose of studies, pupil, exchange, unremunerated training or voluntary service.

According to the definitions of the article 2 of the Directive 2004/114/EC a third country national means that a person is not a citizen of the European Union. Under the definition of a student should be understood a person accepted by the establishment of higher education and admitted to the territory of the member state.<sup>18</sup> The purpose of the admission should be the full-time study program that is aiming the gaining of a higher education qualification. This qualification should be also recognized by the Member State. The higher education qualification is not only diplomas of bachelor, master and doctoral degrees but also it can be a certificate. In order to avoid confusion the article 2 specifies that higher educational degree could also cover a preparatory course prior to such education. However, the degree is only recognized if it is issued from an establishment that is recognized according to its national legislation.<sup>19</sup>

Article 2 specifies also the definition of a school people and remunerated trainees. The former one is to be understood as a third country national who is admitted to the territory of the Member State in order to attend the program of the secondary education and the later one means a third country national who is admitted to the territory of the EU for a training period remuneration in accordance with its national legislation. TCN receive their residence permit which means a document issued by the authorities of the Member States in order to legally reside to the territory of the Member State.<sup>20</sup>

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<sup>17</sup> *Ibid.*, p88.

<sup>18</sup> Directive 2004/114 EC, Article 2, *supra nota 11*, p14.

<sup>19</sup> Hoogenboon, A. (2013) Turkish Nationals and the Right to study in the European Union: A Progressive Interpretation. – *European Journal of Migration and Law*, Vol. 15, No.4, p396-400, 387-412.

<sup>20</sup> Directive 2004/114EC, Article 2, *supra nota 11*, p14.

Article 4 of the Directive 2004/114/EC lists the more favorable provisions. Here it is important to mention that the EU entitles Member States to impose or maintain more favorable provisions for third country nationals.<sup>21</sup> Moreover, the Directive applies to more favorable provisions of “bilateral or multilateral agreements between one or more Member States and one or more third countries.”<sup>22</sup>

In specific requirements for students falls also the knowledge of the national language where the TCN intends to reside. This requirement is not obligatory and the MS can decide if they need the proof or not.<sup>23</sup>

TCN students have to fulfill conditions that are listed in article 6 general conditions and article 7 specific conditions for students.<sup>24</sup> The general conditions of the admission of students are the following: 1) a valid travel document. MS can require that the validity of the travel document covers the time of studies, 2) in case the person who intends to study is minor he/she is obliged to present a parental authorization, 3) health insurance that covers all the costs during the stay to the territory of a member state, 4) a person should not be a threat to public policy , public security or public health, 5) if the MS requires, a TCN should be able to represent a proof of a payment for the processing the application.<sup>25</sup>

With the general requirements students should also meet the specific requirements that are listed in Article seven. This follows that a student should be accepted by the higher education establishment in order to follow a study program. One of the most important requirements are the financial resources that are to be presented from the students.<sup>26</sup> In another words it can be understood that the TCN who is intending to study in the European University a Member State needs to be sure that he/she has a sufficient financial resources to live on the territory of the European Union. The proof of financial resources may differ from country to country.

Having analyzed the conditions of admission of the directive 2004/114EC, it should be questioned if the TCN students retain a right of admission when they satisfy the conditions of Article 6 and 7 and the MS retains discretion to refuse a student as part of

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<sup>21</sup>*Ibid.* Article 4, p14.

<sup>22</sup> *Ibid.* Article 4, p14.

<sup>23</sup>*Ibid.* Article 7, p15.

<sup>24</sup> *Ibid.* Article 5, p14.

<sup>25</sup> *Ibid.* Article 6, p14.

<sup>26</sup> *Ibid.* Article 7, p15.

its migration policy. It can be argued, that this Directive does not provide clear answers regarding this issue. There is also an opinion that the admission requirements given in this Directive results in different migration policies and admission criteria for TCN students.<sup>27</sup>

The Directive sets out two definitions entry and residency of TCN students. The entry is established with the residency and it does not stay on its own. Under the definition of entry it should be understood that a MS rewards TCN with visa before he/she gets a residence permit. Usually TCN receive his/her residency document after arriving in MS. The mentioned visa grants the students to travel first to the territory of a MS where they are planning to study. Article 12 of the Directive says that the Member State shall issue a residency permit to those students satisfying the conditions of admission. It means that the Directive provides for the mandatory admission of individuals to the territory of the Member States when the conditions that are provided in Article 6 and 7 have been fulfilled.<sup>28</sup> As Alexander Hoogenboom argues in his research report, Article 18 only refers to rights of appeal of the applicant against a decision of a MS of refusing or renewing a residency permit.<sup>29</sup> Article 6 (1) (d) of the Directive 2004/114 provides Member states the right to refuse the issue of a residency document if a TCN constitutes a threat public policy, public security and public health. This fact can be seen “as a narrowly interpreted exception to the main principle and certainly not as a foundation for the introduction of generally applicable additional conditions applying to admission.”<sup>30</sup>

In another words the question follows: is a TCN student satisfying the conditions laid out by article 6 and 7 of the Directive 2004/114/EC provided with the right to be admitted for study purpose? Or does the Member State still retain the discretion to refuse the admission according to its national legislation and as a part of its migration policy, for example due to the high quota of admissions of TCN students.<sup>31</sup> The argumentation above leads to the conclusion that the admission is not mandatory. This idea will later be examined with the case law of the European Union.

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<sup>27</sup> Hoogenboom, A. (2013). TCN students seeking to study in the EU with Special emphasis on Indian students: conditions rights and possibilities. Carim India- *Developing A knowledge Base for Policymaking on India-EU Migration*, Maastricht University, 1-9 p 4.

<sup>28</sup> *Ibid.*, p 4.

<sup>29</sup> *Ibid.*, p 4.

<sup>30</sup> *Ibid.*, p 5.

<sup>31</sup> Hoogenboom, A. (2013), *supra nota* 27, p 397.

Article 8 of the directive 2004/114/EC defines the mobility rights of TCN students in the territory of the European Union. It states that a third country national who has already been admitted as a student and applies to follow in another Member State part of the studies, shall be admitted by the second MS within a period that does not obstacle the pursuit of the relevant studies.<sup>32</sup> What is intra-EU mobility exactly? And how can the European Union and TCN students benefit from this right? Was the mobility right of TCN students unlimited or was it a question of several limitations? The following part is dealing with these questions.

After the entry into force of treaty of Amsterdam Member States follow a selective approach in the field of admission. They adopted Directives regulating the entry and residing of third country national students and researchers. The Lisbon treaty has established a new framework which could create new inputs. The new situation leads to the Stockholm plan. The Stockholm plan was adopted to implement the Stockholm program, to develop a genuine common migration policy consisting of new and flexible frameworks for the admission of legal immigrants.<sup>33</sup> The recently adopted directive 2016/801EC on TCN students, researchers, school pupil, unremunerated trainees, and volunteers developed new provisions and attract students and researchers from non-European countries to study in the European Universities. This new rules give students and researchers the possibility to enjoy the right of intra-EU mobility in a better way. Before these developments there were serious limitations regarding the right of mobility.<sup>34</sup>

In order to get the right of mobility in another Member State the student was obliged to fulfill the requirements of article 6 and 7 of the Directive 2004/114. After examining the mobility right arising from the article mentioned above, several limitations are directly to see. Firstly, the student had to proof that the part of the studies that he/she was aiming to follow in another Member State complemented the previous studies. Secondly, the student who was aiming to move to another MS under the article 8 of the Directive 2004/114 had to provide his/her academic records. Finally, the TCN student had to be admitted to the territory of the first MS for a period not less than two years or

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<sup>32</sup>Directive 2004/114 EC, Article 8, *supra nota 11*, p 15.

<sup>33</sup> Pascouau, Y. (2013) Intra-EU mobility: The second building block of EU labor migration policy. – *European policy center*, p 1-3.

<sup>34</sup> *New Directive improves mobility within the EU for researchers and students from third countries.* (2017) Accessible: <https://ind.nl/en/news/Pages/New-directive-improves-mobility-within-the-EU-for-researchers-and-students-from--%E2%80%98third-countries%E2%80%99.aspx>, 15 October, 2018.

participate in an EU or bilateral exchange program. Such a mobility is not only beneficial for TCN students but for the Member States as well. Mobility of TCN students makes the mutual enrichment and cultural exchange between the country of origin and the Member States of the EU easier to achieve. However the mobility rights were through the old students Directive not completely guaranteed.<sup>35</sup>

Mobility rights of TCN students are nowadays not limited to that extend. The European Commission said directly that due to different procedures in Member States and additional rules on visas TCN had a lot of obstacles to affectively exercise their right to mobility.<sup>36</sup> In the report the Commission said “Most Member States indicate that they take the start of the course into consideration when processing the application- for example via fast-track procedures (NL) or issuing a temporary authorization to stay on their territory pending a final decision on the application (BG,DE). However, from the queries submitted to the Commission it appears that additional rules on visas often make it difficult for third country national students to effectively exercise their right to mobility”.<sup>37</sup>

The Commission identified also some practical problems. It stated that the first Member States were failing to provide the second Member State with the information relating to the student’s stay on its territory. This obligation has been fulfilled only by some Member States. In the new directive 2016/108 the situation seems to be easier because students willing to move in another Member State does not have to acquire the residence permit of another MS. However there are still some questions arising and it is not proved if the new Directive really removes the existing burdens. In March 2013 the commission published a single proposal. The proposal was made for students and researchers to facilitate the simplify intra-EU mobility. The proposal was suggesting simplified rules for the students under Erasmus mundus and Marie curie programs.<sup>38</sup>

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<sup>35</sup> Hoogenboom, A. (2013), *supra nota* 27, p 11.

<sup>36</sup> Commission Report COM/2011/587 final to the European Parliament and the Council on the application of Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, Accessible: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52011DC0587> 20 November, 2018.

<sup>37</sup> Commission Report COM/2011/587 final to the European Parliament and the Council on the application of Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, Accessible: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52011DC0587> 20 November, 2018.

<sup>38</sup> Pascouau, Y. (2013), *supra nota* 33, p 6.

Article 12 deals with residence permits. It lists out the requirements that are met in case of renewing the residency card of the MS. On the one hand, a residence permit should be issued to a student for a period that constitutes at least one year. The card can be renewable if the holder meets the requirements of the Article 6 and 7. If the study program is for a shorter period than one year the residency permit should cover the period of time until which the study program lasts. MS have a right to withdraw a residency card if the holder does not respect the limits imposed on access to economic activities or does not make acceptable progress in his/her studies in accordance with national legislation or administrative practice.<sup>39</sup>

The Directive 2004/114 was a significant improvement for TCN persons who aimed to study in the European Union. It has undoubtedly a lot favorable articles that attract TCN to study in MS of the EU. On the one hand, the admissions made on the EU level make it possible to avoid the different admission procedures in all MS. On the other hand, the intra-EU mobility and the right to participate in the labor market activities of the MS are extremely important rights that had not been granted to third country national students before. Despite there can be seen serious limitations that are not only for TCN students problematic but also for the Union.<sup>40</sup>

Under the former students Directive 2004/114EC the Union gave the TCN students the ability to come to the territory of the Member State and pursue his/her studies but at the same time it does not gave the TCN who already gained their degree or a certificate to stay in the Territory of the Member State or in Europe generally. It seemed that the Union committed recourses for TCN to study on its territory and later does not remain a chance to maintain these valuable resources. Instead the EU faced the risk that all this TCN students would leave its territory at the same time. The Erasmus Mundus Country report on India showed that the lack of work possibilities was an important factor why a lot of Indian student were not aiming to study in the EU. It can be also said that the strict return politics was for played a negative role for the development of the migration in the Europe.<sup>41</sup>

Another question that arises from the Directive is the matter of family reunification. TCN students admitted to the territory of the Union under the Directive 2004/114 had

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<sup>39</sup> Directive 2004/114EC Article 12, *supra nota 11*, p16.

<sup>40</sup> Pascau, Y. (2013), *supra nota 33*, p 8.

<sup>41</sup> Pascouau, Y. (2013), *supra nota 33*, p 8.

barely right of a family reunification. It has been discussed that TCN admitted to the EU Member State under the Directive 2004/38 had better conditions than students who were admitted under the Directive 2004/114. The family member of TCN student needed to perform sufficient resources to support himself during the stay.<sup>42</sup>

## 2.1 The case of Ben Alaya (case-491/13)

Ben Alaya was a Tunisian national and wanted to enter the territory of Germany in order to study. However, he already had been in Germany for study purposes and at the time when he was refused to come to Germany he was applying for visa for the second time. The preliminary question of the Ben Alaya case<sup>43</sup> was if the Article 6 and 7 of the Directive 2004/114 are satisfied can a Member State still refuse to grant a residence permit for a person who is willing to enter the Territory of the Union for study purposes. The German, Belgian, Estonian, Greek and Polish authorities submitted observations to the court and they were arguing that the Directive 2004/114 only imposed the general rules for the admission of a third country nationals for the purpose of studies and the main power was remaining to the MS and they could refuse not to grant a visa or a permit to legally reside in EU.<sup>44</sup> In the end the court held that, if the third country national is fulfilling the general admission requirements of article 6 and specific requirements of article 7 the MS is obliged to grant a TCN a residence permit.<sup>45</sup>

Fernhout analyzed the legislation of Germany when the Directive 2004/114EC<sup>46</sup> was implemented and the new Directive 2016/801 did not exist.<sup>47</sup> It is important to examine how the legislation looked like then and how the legislation looks like now when the new Directive 2016/801/EC<sup>48</sup> is already implemented in Germany. Did the German authorities changed the wording of so called “Aufenthaltsgesetz “§16?<sup>49</sup> Or did it remain the same? This question should be asked in order to see if the new Directive

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<sup>42</sup> *Ibid.*

<sup>43</sup> Judgment of 10 September 2014, Mohamed Ali Ben Alaya v. Bundesrepublik Deutschland C-491/13, EU:C:2014:2187.

<sup>44</sup> Roel, F. (2017) An Analysis of the BenAlaya Case (C-491/13): When Conditions of the Students Directive are met, that Directive Confers Entitlement to Student visa, without Leaving the National Authorities Any Discretion in that Regard. – *European Journal of Migration and Law*, Vol. 17, No. 1, 147-155 p 148.

<sup>45</sup> *Ibid.*

<sup>46</sup> Directive 2004/114 EC, *supra nota 11*.

<sup>47</sup> *Ibid.*

<sup>48</sup> Directive 2016/801/EC, *supra nota 2*.

would change the case of Ben Alaya and if it guarantees that in the future TCN will not be refused to enter the Territory of Germany when they satisfy the admission criteria of the Directive 2016/801/EC. As Fernhout described the German law followed: “A residence permit may be granted to a foreign national for the purpose of study at a State-approved establishment of higher education or at comparable training establishment.”<sup>50</sup>

The purpose of study shall include the pursuit of pre-study language courses and attendance at a school where foreign students prepare for university studies. The residence permit for study purposes shall, when first issued and when extended, remain valid for at least one year, but a period of validity must not exceed two years for the studies and the study preparatory measures, it may be extended if the objective of the training has not yet been achieved and may yet be achieved within an appropriate period.”<sup>51</sup> If we look through the same legislation of Germany nowadays we will notice, that the same wording. The change is only made in the beginning of §16 of Aufenthaltsgesetz<sup>52</sup> where it is stated that the TCN students are admitted to the territory of Germany according the EU Directive 2016/801/EC.<sup>53</sup>

In German law this wording has been constructed to mean that the German authorities have discretion to give visa to TCN students but they are not obliged to do so.<sup>54</sup> However, it is important to mention, that the new recast of Student and Researchers Directive makes it clear that once the general requirements are fulfilled no additional conditions may be applied to grant residence to third country national students. From Article 5(3) of the Directive 2016/801EC it follows that where all the general conditions and relevant specific conditions are fulfilled, shall be entitled to the authorization. This amendment directly points out that the Ben Alaya case belongs to the past as Fernhout also wrote in his analyses of the Ben Alaya case.<sup>55</sup>

In that time the new Directive was not in force but nowadays it is for sure that the Member States does not have any discretion to refuse to grant TCN students with residence permits if they fulfill the requirement pointed out in the Directive 2016/801. The question that was asked in the beginning of this chapter weather the new students

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<sup>50</sup> Roel, F. (2017), *supra nota 44*, p 149.

<sup>51</sup> *Ibid*, p 149.

<sup>52</sup> Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, *supra nota 48*.

<sup>53</sup> Roel, F. (2017), *supra nota 44*, p150.

<sup>54</sup> *Ibid*, p 150-155.

<sup>55</sup> *Ibid*, p 150-155.

and researchers Directive make more favorable provisions for the admissions to TCN students can be answered positively. The only discretion that is remained from MS is that they are able to grant TCN students and researchers the visa which allows them to enter only the territory where they are willing to conduct their studies. “Where a Member State issues residence permits only on its territory and all the admission conditions laid down in this Directive are fulfilled, the Member State concerned shall issue the third-country national with the requisite visa.”<sup>56</sup>

Having answered the question of admissions it is important now to see how the new Directive regulated the right of third country nationals to get involved in labor market. The following chapter analyzes the Fahiman case and compares the rights to work of TCN students under the Directive 2004/114/EC and under the new Directive 2016/801/EC.

## **2.2 The case of Fahiman C-544/15**

The case <sup>57</sup> is dealing with a third country national student who was aiming to study in Germany but who was refused to enter the territory of Germany. The ground of refusal was that German authorities thought that he could misuse the knowledge gained in Germany in his home country Iran. Fahiman was an Iranian national who was studying information technology in Tehran. This University was on the list of entities subject to EU restrictive measures. Fahiman intended to study in Germany. Her research was focusing on the security of mobile systems and on effective protection for smartphones.<sup>58</sup>

Fahiman was accepted for studies but her application on visa was refused. The German authorities refused to grant visa under the Directive 2004/114 Article 6(d) where it is stated, that MS retain the discretion not to grant visas/residence permits to TCN students or researchers if this persons are regarded to be a threat for public security. For this reason the national court of Germany made a preliminary ruling and asked ECJI for the interpretation of following questions: 1) how much discretion is left to Member

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<sup>56</sup> Directive 2016/801/EC, *supra nota* 2, Article 7, p 32.

<sup>57</sup> Judgment of 5 April 2017, Sarah Fahiman v. Bundesrepublik Deutschland, C-544/15, EU:C:2017:255

<sup>58</sup> Stehik, V. (2017) Discretion of Member States Vis-à-vis Public Security. - *DE GRUYTER*, Vol.17, No.2, 127-142, p133.

States when they decide on the right of entry of a third country national, 2) what are the legal limits placed on national authorities when assessing that a third country national is to be regarded as a threat to public policy, public security or public health based on the facts underlying that assessment and their evaluation, 3) how to assess the actual case concerning the situation of Ms. Fahiman, namely the ground of refusal. The national authorities had an opinion, that if Ms. Fahiman conducted studies in Germany it would result in acquisition of sensible information in Western countries for the purpose of internal repression or it could also result in the violation of human rights.<sup>59</sup>

It is important to examine the judgment of the court on this case<sup>60</sup> and to imagine how the situation would look like if instead of Directive 2004/114 the authorities had a Directive 2016/801. Would it still result in misunderstanding? Would Ms. Fahiman still be refused to study in Germany? The meaning of public security was not so broadly addressed in the old Directive. The wording of the new Directive in the preamble already gives an impression, that the Member states have more discretion when refusing third country national to enter the territory of EU when they are regarded to constitute a public threat.<sup>61</sup>

The first issue was whether the Directive 2004/114/EC guarantee any right to entry the EU for third country national. The decision about the first entry is done by the Member States. After analyzing the European Convention for the Protection of Human rights and Fundamental Freedoms the AG stated, that there is no right to enter a state, except the cases of asylum, family reunification and the obligation of Member States to respect the right of family right. The right to enter the Territory of EU is not guaranteed by the European Convention for the protection of Human rights and Fundamental Freedoms. However, the Charter points out that the EU should guarantee the non-discrimination of the persons who legally reside to the territory of the Union.<sup>62</sup>

Having analyzed that the old Directive did not guarantee any right to enter the territory of Member State; it is now also interesting to see what the new Directive is saying about the same issue. The Directive 2016/801/EC is not defining that the Member States are obliged to grant third country nationals visas or residency documents. As the old

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<sup>59</sup> *Ibid.*

<sup>60</sup> *Supra nota 57.*

<sup>61</sup> Stehik, V. (2017) *supra nota 58*, p133

<sup>62</sup> *Ibid.*

Directive 2004/114/EC Articles 6 and 7, the new Directive in Article 5-11 defines which conditions should be met in order to get residence permit. In preamble (36) it is said that it should be possible to refuse admission on duly justified grounds.<sup>63</sup> In other words, MS can refuse the application of TCN students or researchers if they think that the person can be a threat to public policy, public security or public health. However the principle of proportionality that the third country national concerned is a potential threat to public policy, security or public health should be taken in to account.<sup>64</sup>

The aim of Directive 2004/114 is to attract third country nationals to study in the European Union and not guaranteeing the fundamental rights of third country nationals.<sup>65</sup> The same background is to be seen in the new Directive 2016/801. Migration under the new Directive should promote students and researchers, their home countries and Member States. It should strengthen the links between different cultures and countries. The new Directive promotes the Union as an attractive location for research and innovation and sets out simplified rules for admission of third country nationals for study and research purposes.<sup>66</sup>

In the whole Directive there is not mentioned that the Third country nationals have a right to reside on the territory of the Union. They get the right to become legal residents of the Member States, if they fulfill the general and the specific condition for students and researchers admissions. As already discussed in the previous chapter, the case of Ban Alaya was concerning the Articles 5 and 6 of the old students Directive. A third country national Ban Alaya was fulfilling all the general and the specific requirements of admission and still the German authorities were refusing to grant him with a residence permit. This decision was rejected by the CJEU. However, the matter in Fahiman case was that the TCN was fulfilling the admission requirements and the German authorities had an opinion, that he could be a public threat for Germany. This opinion is also presented by Vaclav Stehlik when analyzing the case of Fahiman.<sup>67</sup>

The Directive 2004/114 does not explicate the definition of public security either. The CJEU made a distinction between the internal migration that is covered by the Directive 2004/38 and the migration based on Directive 2004/114. The first Directive says that a

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<sup>63</sup> Directive 2016/801/EC, *Supra nota 2*, Article 6,7 p25.

<sup>64</sup> Directive 2016/801/EC. *Supra nota 2*.

<sup>65</sup> Stehlik, V. (2017), *supra nota 44*, p 134.

<sup>66</sup> Directive 2016/801/EC, *Supra nota 2*, Article 8, p 33.

<sup>67</sup> Stehlik, V. (2017), *supra nota 44*, p 134.

person should constitute a real threat to public security based on the evaluation of personal conduct on the individual concerned. On the other hand, the Directive 2004/114/EC it is to understand, that a person concerned can be regarded as a public threat if he is considered to be so only potentially.<sup>68</sup> “Not only the personal conduct of the applicant but also other elements relating, in particular, to his professional career”.<sup>69</sup>

The new Directive covers third country national students and researchers and replaces Directives 2004/114/EC and 2005/71/EC. It includes condition that the applicant who is willing to come to EU should not be threat to public policy, public security and public health. It is more specific than the previous directive and defines that an admission of a third country national will be refused even if the person is only a potential threat to public security. This assigns of course discretion to the authorities of the Member States.<sup>70</sup>

The given case is giving an impression that a Member States have a really broad discretion when deciding if the person in question is a public threat or not. The Union is not giving any legal guidelines and requirements. The new Directive is making it more clear and granting Member states freedom. It seems that the MS have the right to refuse the application of third country national students and researchers without any grounds and the assumption that the person could be a threat to a public security can be based on his nationality.

The enlargement of the Union has not only a beneficial side but it includes risks that could damage the EU area of freedom security and justice. In order to avoid risks the Union has adopted Directive 2004/38/EC, which replaced Council Directive 64/221/EEC. The aim of the Directive was to impose stricter conditions when determining the condition under which third country nationals are granted visas and residence permit to legally reside on the territory of EU. It is important that the measures shall comply with the principle of proportionality and it must be based on the personal conduct of the individual concerned.<sup>71</sup>

The MS that hosts the TCN should in order to make sure whether the individual is dangerous for the public policy or public security issue a registration certificate. On the

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<sup>68</sup> Stehik, V. (2017), *supra nota 44*, p 134

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.* p 136.

<sup>71</sup> *Ibid.* p 134.

one hand, this could be seen positively for the European Union. On the other hand, it can be discrimination on the grounds of nationality? How can a Member State prove that an applicant is a public threat if there is no link between the person and the act? The answers on this questions were not provided by the old Directive and they seem not be provided by the new Directive as well. According to the case law of the European Court of Justice, Member States must take into account different general and individual conditions, when they are restricting the right of residence of the third country nationals. As Janosi argues, the behavior can be assumed to be a threat to public policy, public security and public health, if it effectively and essentially infringes the elements and the interests of the society.<sup>72</sup>

Member states can define such behaviors themselves, but the qualification should be consequent.<sup>73</sup> The new Directive 2016/801EC fails to define which the ways that the Member States can follow are.<sup>74</sup> The case discussed above shows, that neither the old Directive nor the new one guarantee the right of third country national students and researchers to enter the territory of the Union.

### **2.3 Directive 2005/71/EC**

During the last years, several EU Member States' authorities have raised important questions about the existence of express legal basis for the Union to legislate on labor immigration. These legislative measures had been adopted before the Lisbon Treaty. Some of this legislation deals directly with entry and residence for reasons of employment, for example the EU blue card or researchers' Directive. However, the directive was not fully guaranteed TCN researchers the rights of mobility, residency and family reunification.<sup>75</sup>

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<sup>72</sup> *Ibid.*

<sup>73</sup> Janosi, A. Public security public policy and public health as potential grounds for imposing restrictions on the right of free movement of persons.

Accessible:[https://www.law.muni.cz/sborniky/cofola2008/files/pdf/evropa/janosi\\_andrea.pdf](https://www.law.muni.cz/sborniky/cofola2008/files/pdf/evropa/janosi_andrea.pdf), 05 November 2018, p3.

<sup>74</sup> Directive 2016/801EC, *supra nota* 2.

<sup>75</sup> Carrera, S., Atger, F., Guild, E., Kostakopoulo, D. (2011) *Labor immigration policy in the EU: A renewed Agenda for Europe 202*. Accessible:

[https://www.researchgate.net/profile/Theodora\\_Kostakopoulou/publication/228120887\\_Labour\\_Immigrat](https://www.researchgate.net/profile/Theodora_Kostakopoulou/publication/228120887_Labour_Immigrat)

As Carrera argues, a majority of EU member states labor immigration policies are based on the perceived needs and labor market demands.<sup>76</sup> TCN are often treated as economic units and not as human right holders and/or workers in need of protection, security of residence and inclusion.<sup>77</sup> Directive 2005/71/EC<sup>78</sup> and Council recommendation 2005/76 and 2005/762 have been adopted in order to govern the situation of researchers from third countries. In 2016 the EP and the council of the European Union adopted a recast directive to make the admission procedure of TCN researchers, students, school pupil and au pairs. In order to identify the developments of the recast directive it is first important to see what kind of obstacles the old researchers Directive had. The old directive has been adopted in the light of Lisbon declaration and its objective to make the EU the most competitive and dynamic knowledge economy in the world by encouraging the admission of TCN researchers in the territory of the Union.<sup>79</sup>

The Directive was based on a hosting agreement between the researcher and the institution where he/she was carrying out the research. Like in students Directive 2004/114, the former researchers' directive was stating, that the research institution should have been acknowledged by the Member State. The residence permit was granted to the researcher who had a unique talent. The permit had a duration of three years and four months. It has to be mentioned, that the right of settlement was granted to a TCN researcher after five years of residence. Job offers for the TCN researchers were depending on the labor market test unless the job falls under the shortage occupation list. Language proficiency as well as minimum salary was required. The salary should have been in one year at least 20.000\$ equivalent per month 1,725\$. According to the paragraph 83 of Appendix A of the migration Rules preference will be given to applications in shortage occupations or which are very highly skilled and well paid.<sup>80</sup>

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[ion\\_Policy\\_in\\_the\\_EU\\_A\\_Renewed\\_Agenda\\_for\\_Europe\\_2020/links/0deec52661b20908c0000000/Labor-Immigration-Policy-in-the-EU-A-Renewed-Agenda-for-Europe-2020.pdf](https://ec.europa.eu/euro-iss/immigration-policy-in-the-eu-a-renewed-agenda-for-europe-2020/links/0deec52661b20908c0000000/Labor-Immigration-Policy-in-the-EU-A-Renewed-Agenda-for-Europe-2020.pdf) , 5 November 2018, p6

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

<sup>78</sup> Directive 2005/71 EC of the European Parliament and the Council of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, OJ L 289, 3.11.2005, p15-22.

<sup>79</sup> Jesse, M., (2016). *The civil citizens of Europe: Legal realities for Immigrants in Europe and the Legal Potential for their Integration*. Vol. 11, Leiden: Boston, p 209.

<sup>80</sup> *Ibid.*

Directive 2016/801EC entitles TCN researchers with more favorable provisions on family reunification. With their family members they enjoy the right to move and reside in another Member State. The reason of their mobility can differ and the only requirements that they have to fulfill are written in Article 7 of the new Directive. In this directive researchers fall in the definition of workers or self-employed persons or as individuals with sufficient knowledge.<sup>81</sup> Freedom of movement inside the union was originally right for Union citizens. However, the Europeanization of freedom of movement has attributed some citizenship-like freedoms for non-EU nationals. Despite this fact the researchers could not fully enjoy the right to intra-EU mobility. Article 13 of the former researchers' directive follows "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".<sup>82</sup>

Exactly the conditions mentioned later make the mobility right complicated and full of obstacles. The researcher should prove that the research that he/she is conducting in another Member State is carried out on the basis of the agreement with the host country. The researcher should provide that he/she has sufficient financial resources and the Member States retain the right to refuse the admission of the TCN researcher if they think that the person constitutes threat to public policy, public security and public health. Again the conditions could be interpreted form different States in a different way. Furthermore, the proof of financial resources makes the admission of TCN researchers difficult as it differs from Member State to Member State. Moreover, if the researcher stays in another Member State for more than three months, Member States may require a new hosting agreement to carry out the research in that Member State.<sup>83</sup>

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<sup>81</sup> *Ibid.*

<sup>82</sup> Directive 2005/71EC Article 13 (1), *Supra nota* 78, p20.

<sup>83</sup> Directive 2005/71EC Article 3, *Supra nota* 78, p18.

### 3 Directive 2016/801/EC

In May 2016 the new students and researchers Directive was adopted by the European Parliament together with the Commission. The Directive<sup>84</sup> entered into force in May 2018 and merges the subject-matters of former researchers and students Directives. The aim of the Directive is facilitation of TCNs' immigration to the EU for the purpose of studies and researchers. In contrast to the old students and researchers Directives the new one enables TCN students and researchers to study in a European university but also grants them with the right to stay in the territory of MS after finishing their study or research programs. According to the preamble eligible persons under the recast directive are third country nationals wishing to come to the EU for more than 90 days as a researcher (for either a public or private organization) or as a student. Member states are obliged to treat doctoral candidates as researcher. The United Kingdom, Ireland and Denmark are not participating in adoption of the Directive. Under the recast Directive, the definition of third country national follows: "Third-country national" is a person who is not a citizen of the European Union, whereas researcher means a third-country national who holds a doctoral degree or an appropriate higher educational qualification which gives that third-country national access to doctoral programs, who is already by a research organization and admitted to the territory of a Member State for carrying out a research activity for which such qualification is normally required".<sup>85</sup>

#### 3.1 Intra-EU Mobility

The EU terminology defines intra-EU mobility as the ability to move freely within the European Union. It means that third-country nationals have the right to move inside the Union like the citizens of the EU. This right derives from the Founding Treaties of the

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<sup>84</sup> Directive 2016/801EC, *Supra nota 2*.

<sup>85</sup> *Students and researchers Directive: What is it and who can benefit from it?* Accessible: <https://www.euraxess.ie/information/content/europe/students-and-researchers-directive-what-it-and-who-can-benefit-it> , 20 October, 2018.

European Communities. However, this right is not fully guaranteed by the EU legislation.<sup>86</sup>

Directive 2016/108/EC has set new Articles regulating this matter. Moreover the TCN students had obstacles when trying to exercise the intra EU mobility right due because the requirements that was to be met in the first Member State was also to be met in the second Member State. The new Directive is flexible at this extend and offers easier regulations but the question still remains weather the new Directive solves the problems and obstacles regarding mobility rights of TCN students in the European Union. This question is the subject matter of the following chapters of the Master thesis and it will be later in details analyzed. In the former students Directive the intra-EU mobility appears as a major incentive which is nowadays addressed and put forward in the new Directive 2016/801.<sup>87</sup>

The old students Directive 2004/114 EC and the researchers Directive 2005/71 EC reveled crucial needs for amendments. Due to this fact, the European Commission made the proposal to recast the Directive on the conditions of Intra-EU mobility rights of third-country national students and researchers.<sup>88</sup>

The Directive 2004/114 did not entitle the TCN students to work during the first year of their study program but from 2018 the students from non-EU countries will have an easier access to the labor market. The previous Directive allowed them to work at least 10 hours per week. From May 2018 the students will have the right of working at least 15 hours a week next to their studies. MS remain the discretion to restrict this right in exceptional circumstances such as high unemployment rates. Intra-EU mobility rights of TCN students and researchers are also improved. Foreign students who are enrolled in higher educational institutions of Member States that has a mobility agreement with another higher educational institution are from May 2018 able to conduct the part of their studies in another Member State by issuing a simple notification.<sup>89</sup>

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<sup>86</sup> Tottos, A. (2013), The Intra-EU Mobility Right of Third-Country Nationals in the European Union. – *Studia Iuridica Auctoritate Universitatis Pecs Publicata*, Vol. 151, 239-254, p 240.

<sup>87</sup> Pascouau, Y. (2013), *supra nota* 33, p 6.

<sup>88</sup> Tottos, A. (2014) Legal Issues of Harmonizing European Legal Migration. – *Hungarian Yearbook of International Law*, Vol. 2014, 343-368, p193.

<sup>89</sup> Attracting and retaining foreign students: Workshop overview and conclusion.-*EMN Annual Conference in 2017 The EU in the global race for talents: Challenges and solutions in strengthening the EU's competitiveness*, 21-22 September 2017, Tallinn, Estonia, Tallinn University, 1-8, p 1.

For example, if a non-EU national student holds Dutch residence permit, he/she can go to one or more other Member States to conduct part of their studies or carry out research. Moreover, it is possible for TCN student or researcher who holds a residence permit entitled from German authorities for studies to spend a maximum number of days in the Netherlands without having to apply for a Dutch residence permit. Here it is important to mention, that in this case a non-EU national student or researcher can exercise the Intra-EU mobility rights on condition that the student or researcher is undergoing a program comprising mobility measures. The Intra-EU mobility rights of researchers and their family members differ from the mobility rights of TCN students. Students can use mobility and stay in another MS of the Union for 360 days at most and there is no need to apply for a residence permit. At the same time, the mobility rights of TCN researchers and their family members are guaranteed with 2 types or intra-EU mobility:<sup>90</sup>

1. Short-term mobility: a stay not exceeding 180 days (in a period of 360 days) in another Member state of the European Union. The researcher does not need to apply to the Member State concerned for a residence permit in order to do so.
2. Long-term mobility: a stay of more than 180 days in another Member State of the European Union. The researcher must apply to the Member State concerned for a separate residence permit.<sup>91</sup>

Applying for a new visa is not any more required. Instead the competent authorities of both MS can require the notification to include some documents and information. Based on the notification another MS still remains the right to reject the TCN student but this can accrue only in exceptional cases. Students who present a proof that they have obtained formal qualifications could be grant the right to stay on the territory of MS to search job or set up a business are least nine months after finishing their study programs.<sup>92</sup>

The recitals of the Directive speak of “attracting highly skilled people, forming the Union’s Key asset of human capital and ensuring growth fostering people-to-people

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<sup>90</sup> *New Directive improves mobility within the EU for researchers and students from third countries.* (2017) Accessible:<https://ind.nl/en/news/Pages/New-directive-improves-mobility-within-the-EU-for-researchers-and-students-from--%E2%80%98third-countries%E2%80%99.aspx>, 15 October, 2018.

<sup>91</sup> Ibid.

<sup>92</sup> Attracting and retaining foreign students: Workshop overview and conclusion.-*EMN Annual Conference in 2017 The EU in the global race for talents: Challenges and solutions in strengthening the EU’s competitiveness*, 21-22 September 2017, Tallinn, Estonia, Tallinn University,1-8, p1.

contacts and mobility enrichment for migrants concerned, their country of origin and the Member State concerned, while strengthening cultural links and enhancing cultural diversity, promoting the Union as an attractive location for research which should lead to an increase in the Union's overall competitiveness and growth rates while creating jobs that make a greater contribution to GDP growth and making the Union more attractive to third-country nationals wishing to carry out a research activity. Still it is argued that the Union legislation does not try to promote a brain drain from developing or emerging countries, which is why measures to support researcher reiteration into their countries of origin should be taken in partnership with the countries of origin with a view to establishing a comprehensive migration policy.”<sup>93</sup>

In order to make the European Union center of excellence for studies and researching the conditions that are to be provided by the TCN students and researcher to get their residence permits should be even more improves and simplified. The new recast Directive also includes articles that deal with the admission conditions for trainees and volunteers from third countries. Several amendments were made for this group of people. For instance, the TCN who wishes to come to the Netherlands as volunteer in the framework of European Voluntary Service has to conclude a contract with the exchange organization. Furthermore, the volunteer can also have had a residence permit before in the context of exchange. The most important amendment of the rules for trainees is that more highly educated third-country nationals graduating 2 years can also undergo traineeship in the Netherlands.<sup>94</sup>

The new Directive improves the Intra-EU mobility rights of TCN researchers. However, there are still some problems left. If the researcher stays only up to three months in the second Member State, research can be carried out according to the hosting agreement concluded in the first Member State. On the other hand, if the duration is more than three months, the Member State has the right to require a new hosting agreement. This means that a TCN researcher will have to fulfill all the conditions that he/she was asked to fulfill when he applied in the first Member State.<sup>95</sup> As Brinkmann argues the

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<sup>93</sup> Stehik, V. (2017), *supra nota 44*, p 136

<sup>94</sup> *New Directive improves mobility within the EU for researchers and students from third countries.* (2017) Accessible: <https://ind.nl/en/news/Pages/New-directive-improves-mobility-within-the-EU-for-researchers-and-students-from--%E2%80%98third-countries%E2%80%99.aspx>, 15 October, 2018.

<sup>95</sup> Mazzeschi, M. (2017) *Workers Mobility within Schengen: A Comparative Study of 17 Countries Requirements.* – *European Centre for Research Training and Development*, Vol. 5, No. 2, 14-20, p 18.

problem can be found in national legislations and general practices in Member States.<sup>96</sup> The authorities of Member States develop their legislation with their national interest and do not pay attention to EU law in particular to Article 18 TFEU, Regulation 492/2011, Directive 2004/38 and Article 47 of the Charter of Fundamental Rights of the European Union.<sup>97</sup>

### 3.2 Economic Activities

The economic growth through the student mobility has a lot of advantages. Highly skilled migrants contribute to innovation process and unlock the benefits to the economy generated by these highly skilled workers for the EU and non-European countries.<sup>98</sup>

Regarding the researchers from non-EU countries there was one practical problem under the former researchers Directive 2005/71. As Antero Puhaka argues international recruitment activities of Universities in Finland have been spurred on further by granting funds to universities for degrees earned by international students and for hiring teaching and research staff from abroad.<sup>99</sup> The higher educational institutions have been given a financial incentive to aim at increasing the proportion of their students and staff from abroad. As the author argues, one problem is that when Universities hire early stage researchers to do their works, they do not make an employment contracts for four years.<sup>100</sup> Shorter terms of the contract have the meaning that the researchers coming from non-EU countries have to apply for the residence permit for several times due to the fact, that as a researcher a residence permit is granted for the duration of the employment contract. This is of course connected with costs. Taking into account the miserable salary level of early stage researchers this issue has big financial consequences.<sup>101</sup>

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<sup>96</sup> Brinkmann, G. (2015) Equal Treatment on the Ground of Nationality for EU migrant Workers. – *European Journal of Migration and Law*, Vol.17, No. 2, 239-258, p 241.

<sup>97</sup> *Ibid.*

<sup>98</sup> Hoogenboon, A. (2013) Turkish Nationals and the Right to study in the European Union: A Progressive Interpretation. – *European Journal of Migration and Law*, Vol. 15, No.4, 387-412, p 393.

<sup>99</sup> Puhaka, A., *The Directive helps improve the Status of researchers from outside the EU and EEA Countries*. Accessible: [http://www.acatiimi.fi/8\\_2017/7.php](http://www.acatiimi.fi/8_2017/7.php), 15 October, 2018.

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.*

Another problem in Finland was the different types of residence permits. When a student from outside EU or EEA countries was writing the dissertation without an employment relationship with the higher educational institution they could live in Finland after finishing their dissertation for one year to search a job. This meant that a PHD education in Finland has one year to look for a job. At the same time, when a TCN researcher does his research as a paid work, they had been granted a researcher's residence permit until their employment contract expired. In contrast with TCN students the researchers were not entitled to the residence permit that allows them to stay to the territory of Finland for one year in order to search a job. As Andrade argues, the provisions in former researchers Directive leave an appropriate margin of discretion to Member States.<sup>102</sup>

The only possibility for them to stay was the existence of a new employment contract of funding lined up, their residence permit would not have been renewed and they would have to leave Finland. The problems mentioned above are nowadays already solved by the recast Directive 2016/801. Students and researchers from outside the EU or EEA countries have the possibility to stay in Finland for one year for the purpose of finding employment or establishing a business after their work contract ended. The Directive also lists many other important developments that will change the existing situation in Finland. However the granting of the residence permit for one year after the study program or research dissertation conclusion is the most important solution to the critical problems.<sup>103</sup>

The current Directive also applies to the admission of school pupils on exchange programs, unpaid trainees and volunteers. The MS have an option to apply it to the latter three groups of migrants. As discussed above, the CJEU has ruled in Sommer case that MS could not apply a labor-market preference test for students, in Ben Alaya case it decided that MS must admit students who comply with the rules of admission in the Directive. The same attitude applies to the new Directive. The rules on the other volunteers and school pupils remain optional as well as the new rules on au pairs. Moreover, the commission proposed to limit MS to apply more favorable rules. The new Directive accepts the basic principle that the power to set more favorable standards

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<sup>102</sup> Andrade, G. (2013) The Legal Feasibility of the EU's External Action on Legal Migration: The Internal and the External Intertwined. – *European Journal of Migration and Law*, Vol. 15, No. 3, 236-282, p 270.

<sup>103</sup> Puhaka, A., *supra nota* 99, p 187.

should be more limited compared to present. According to recast Directive MS are allowed to apply more favorable rules for TCN students and researcher regarding the time limits on their residence permits. Still there are conditions that relate to admission and withdrawal or non-renewal of the right to stay. The council also wishes to provide MS rules on admission of other categories of students or researchers.<sup>104</sup> As Andrade argues, the provisions in former researchers Directive leave an appropriate margin of discretion to Member States.<sup>105</sup>

The equal treatment of those who work is not guaranteed by the new Directive. The new Directive extends the equal treatment rules to students and researchers when they are not considered as employers and to au pairs whenever they are considered employees. The EU's single permit Directive provides equal treatment for TCN even if they are not admitted on the EU's territory for employment. The new Directive does not waive the various exceptions to equal treatment that the single permit Directive currently provides. It only addresses a few minor exceptions for researcher.<sup>106</sup>

### 3.3 Family Reunification

The non-discrimination of TCN is guaranteed by two groups of EU law. Firstly, Article 19 of TFEU prohibits discrimination on the grounds of sex, race/ethnic, origin, disability, sexual orientation age or religion/belief. Secondly, Article 18 TFEU prohibits discrimination on the grounds of nationality.<sup>107</sup> Is the equal treatment and non-discrimination of TCN students and researchers guaranteed under the new recast Directive 2016/801? The following part is dealing with this question.

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<sup>104</sup> *The new Directive on immigration of students and researchers: A small step or a big leap forward?* (2015), Accessible: [https://eulawanalysis.blogspot.com/2015/11/the-new-directive-on-immigration-of.html?m=1&fbclid=IwAR1wZubt1soFKW7k94Naz04PWWi0gB8ldnNmWO5KI\\_72jJUD\\_5i6TsDyMpY](https://eulawanalysis.blogspot.com/2015/11/the-new-directive-on-immigration-of.html?m=1&fbclid=IwAR1wZubt1soFKW7k94Naz04PWWi0gB8ldnNmWO5KI_72jJUD_5i6TsDyMpY), 20 October 2018.

<sup>105</sup> Andrade, G. (2013) *The Legal Feasibility of the EU's External Action on Legal Migration: The Internal and the External Intertwined.* – *European Journal of Migration and Law*, Vol. 15, No. 3, 236-282, p 270.

<sup>106</sup> *The new Directive on immigration of students and researchers: A small step or a big leap forward?* (2015), Accessible: [https://eulawanalysis.blogspot.com/2015/11/the-new-directive-on-immigration-of.html?m=1&fbclid=IwAR1wZubt1soFKW7k94Naz04PWWi0gB8ldnNmWO5KI\\_72jJUD\\_5i6TsDyMpY](https://eulawanalysis.blogspot.com/2015/11/the-new-directive-on-immigration-of.html?m=1&fbclid=IwAR1wZubt1soFKW7k94Naz04PWWi0gB8ldnNmWO5KI_72jJUD_5i6TsDyMpY), 20 October 2018.

<sup>107</sup> Elise, M. (2011) *Enhancing the Protection of Third-Country Nationals against Discrimination: Putting EU Anti-Discrimination Law to the Test.* – *Maastricht Journal of European and Comparative Law*, Vol.18, No.1-2, 136-156, p 136-137.

Family reunification is one of the important rights granted to third-country nationals.<sup>108</sup> However, there are differences between TCN family members and EU national family members. These differences include residence card and visas.<sup>109</sup> The new Directive replaces the weak rules on family reunification in the old researcher's Directive. However the recast Directive does not include any favorable rules to the family members of students as well. The family reunification Directive applies to the Directive 2016/801 but the rights to family life is not fully guaranteed for the TCN students. In order to make it clear it is important to analyze the right to family right and to identify how the TCN students are excluded from this right.

The EU law is stating that family reunification is a necessary way of making family life possible. However, the right to family reunification is not exercised without limits. Several conditions like accommodation, stable income and health insurance should be satisfied.<sup>110</sup> As Staver argues, there are four scenarios of family reunification.<sup>111</sup> This paper examines the second scenario, where a third country national seeks to reunification with his/her third country national family member.<sup>112</sup> The family reunification right of third country national student is restricted. It can be argued that such a restriction is justified as the student's period of residence in a Member State is limited. The EU has adopted very strict approach in contrast to other categories of EC nationals.<sup>113</sup>

The right to family right exists in the European Charter of Human Rights (ECHR) since a long time. Through the litigation of the fundamental right to family life under the ECHR, family reunification has become a part of the liberal framework of human rights protection. This framework plays a positive role and promotes the social rights to enjoy the economic and material resources necessary to enable the successful integration of immigrants. The main basis of immigration policy was reformed by the family

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<sup>108</sup> Sánchez, S. (2013). Fundamental Rights Protection for Third Country Nationals and Citizens of the Union: Principles of Enhancing Coherence. – *European Journal of Migration and Law*, Vol 15, No.25, 137-153, p144.

<sup>109</sup> Doukas, I. (2008). Non-Discrimination on Grounds of Nationality: The Position of Third Country Nationals within the EU. – *Cambridge Student Law Review*, Vol. 4, No.1 1-10, p 4.

<sup>110</sup> Szigeti, B. (2014). European Dilemmas of Family Reunification.- *Hungarian Yearbook of Internationals Law and European law*. Vol. 2014, 369-376, p 370.

<sup>111</sup> Staver, A. (2013). Free Movement and the Fragmentation of Family Reunification Rights, *European Journal of Migration and Law*, Vol.15, No.1, 69-90. p72.

<sup>112</sup> *Ibid.*

<sup>113</sup> Iris, G. (2005), Family Reunification of European Community Nationals, *Croatian Yearbook of European Law and Policy*, Vol.1, 163-202, p192-193.

reunification. However, in the past years, France, Germany, Austria and the UK and the Netherlands have adopted immigration policies with new restrictions on family reunification in order to remain control over the cultural integration of immigrant communities. These restrictions include increased deportation of irregular family members, complicated financial thresholds for the entry of family members, and DNA tests. Some MS have adopted integration contracts, language requirements and civics tests in which a family member must take a part in order to enter the borders of the European Union. The barriers for children over the age of 16 and under 21 makes the right to family life for TCN hard to be exercised.<sup>114</sup>

For non-EU citizens the family reunification is regulated by the Directive on family reunion for third-country nationals. The Directive was adopted in 2003.<sup>115</sup> In 2008, the Commission of the European Union issued a report on the application of the Directive. This report indicated that MS have breached the Directive in dozens of ways. Instead of this fact the Commission did not bring any infringements actions against Member States. The Council had issued a Green Paper on possible reform of the Directive, however later decided against amendments. The rejection of the amendments could possibly be attached to the fact that MS would insist on dropping the degree of protection for family reunion rather than raising it. The Commission issued the guidance document 11 years after the Directive was adopted. The Directive applies to 25 MS. UK, Ireland and Denmark are excluded from the scope of the Directive. The Directive on family reunification does not apply for EU citizens who intend family reunion with their TCN family members.<sup>116</sup>

The right to family life is guaranteed under the article 8 and article 12 of the ECHR. Both ECHR provisions apply in MS and should be respected by the community law. The expression of Article 8 ECHR can be found in article 7 of the EU Charter, part of the EU primary law. Due to this fact, such rights must be respected by the Family

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<sup>114</sup> Ruffer, G., (2011). Pushed beyond recognition the liberality of family reunification polices in the EU, *Journal of Ethnic and Migration studies*, 6 July 2011, Vol. 37, No.6, 935-951, p937.

<sup>115</sup> Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJL 251, 3.10.2010, p 12-18.

<sup>116</sup> *The new Directive on immigration of students and researchers: A small step or a big leap forward?* (2015), Accessible: [https://eulawanalysis.blogspot.com/2015/11/the-new-directive-on-immigration-of.html?m=1&fbclid=IwAR1wZubt1soFKW7k94Naz04PWWi0gB8ldnNmWO5KI\\_72jJUD\\_5i6TsDyMpY](https://eulawanalysis.blogspot.com/2015/11/the-new-directive-on-immigration-of.html?m=1&fbclid=IwAR1wZubt1soFKW7k94Naz04PWWi0gB8ldnNmWO5KI_72jJUD_5i6TsDyMpY), 20 October 2018.

reunification Directive. Family reunification Directive constitutes a secondary EU legislation that must be always be in accordance with EU primary law.<sup>117</sup>

The Directive 2016/801/EC does not apply any favorable rules on family reunification for the TCN students. The right to family life is not fully guaranteed. The requirements that should be satisfied by the TCN in order to enjoy the right to family reunification are given in Article 7 of the Directive 2003/86/EC.<sup>118</sup> The Directive includes three requirements for family reunification that MS can ask the sponsor. Under this Directive sponsor means “a third country national residing lawfully in a Member State and applying or whose family members apply for family reunification to be joined with him/her.”<sup>119</sup>. The first requirement is that the sponsor should possess an accommodation that is regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State. The second requirement obliges TCN to cover sickness insurance in respect of all risks normally covered for its own nationals in the Member State concerned for himself/herself and the members of his/her family. Article 7(c) requires from sponsors stable and regular resources that are sufficient to maintain himself/herself and the members of his/her family. In the sufficient resources does not count the resource to the social assistance system of the Member State concerned. The MS retain the discretion to evaluate these resources by reference to their nature and regularity and can take into account the level of minimum national wages and pensions as well as the number of family members.<sup>120</sup>

Member states shall determine the maximum number of hours per week or days or months per year allowed for such an activity, which is at least 15 hours per week. These limitations make it difficult for TCN students to exercise the right to family reunification. Furthermore, MS have the right to require TCN to comply with some pre departure or post departure integration measures according to national provisions Art.7 (2) of Directive 2003/86/EC. The sponsor may also be required to have been resident

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<sup>117</sup> Mazilu-Babel, M.,(2012) The right to Family reunification in relation to third country nationals within the European Union, *European Integration- Realities and Perspectives*, 166-173, p167

<sup>118</sup> Directive 2003/86/EC of the European Parliament and the Council of 22 September 2003 on the right of family reunification. OJ L251, 3.10.2003, p12-18, Article 7, p15.

<sup>119</sup> *Ibid.*, Article 7, p15.

<sup>120</sup> Mazilu-Babel, M., (2012), *European Integration- Realities and Perspectives*, *Supra nota 117*, p167.

for a maximum period of 2 years, or exceptionally 3 years, before reuniting with the family (Art.8 of Directive 2003/86-EC).<sup>121</sup>

Can a TCN student having a residence permit and legally residing to the territory of MS and works 15 hours per week be eligible as a sponsor? Theoretically the answer to this question can be positive as the sponsor is a TCN person who resides in the EU plus Norway as a beneficiary of international protection or is a holder of another permit e.g. as worker and student. The relevant family members are the children and a spouse. The Directive 2004/114 did not include the equality clause for students. The new recast Directive seems to have the same obstacles in this field. That's why it can be said that, compared to EU citizen students the TCN students is discriminated as they are not able to fully exercise their right to family reunification. The equal treatment is contacted to the protection of human rights or fair treatment of TCNs.<sup>122</sup>

“In more recent instruments the EU legislator applies the right to equal treatment more as a tool to attract highly-skilled migrant workers or researcher. In other words, the foal of strengthening the position of those ‘within’ the EU changed into the goal of attracting a selected group of migrants from outside the EU. Furthermore, the equality clauses which have been included in the different EU instruments leave the Member States with a wide discretionary power.”<sup>123</sup>

As we can see the Directive 2016/801 does not include any favorable provisions under which third-country national students could freely exercise the right to family life. It includes neither provisions about family reunification for TCN students nor talks about their equal treatment. In this field the recast Directive delivers no improvements compared to former students directive 2004/114.

In another words it can be concluded that within the area of social benefits and social security EU laws allow Member States to limit the scope of protection of equality. This is done through vague definitions or references to national laws. TCNs who are wishing

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<sup>121</sup> Family Reunification of Third-country nationals in the EU (2016), Accessible: <http://www.emncz.eu/files/books/177.pdf>, 5 November 2018.p 7.

<sup>122</sup> Brouwe, E. R., Vries, K., (2017), Third country nationals and discrimination on ground of nationality: article 18 TFEU in the context of article 14 ECHR and EU migration law: Time for the new approach, 123-146, p 136

<sup>123</sup> *Ibid.*

to use mobility provisions on the regime of Directive 2003/86 EC in order to bring their family members with them face a ‘dual burden’ as Wiesbrock argues.<sup>124</sup> This means that they have to provide all the admission requirements, including resource requirements and integration tests in the first as well as the second Member State.<sup>125</sup> “Family reunification is treated by Community law as a necessary element in giving effect to the freedom of movement of workers and does not become a right until the freedom which it presupposes has taken effect.”<sup>126</sup> It can be said that MS maintain control of integration and restrictive attitude of the Family Reunification Directive.<sup>127</sup> It is also argued that in Germany and Belgium the procedure of family reunification are more restrictive than in other Member States.<sup>128</sup> In conclusion it can be said, that family reunification is seen as a right on the EU level but not by the Member states. The right to family reunification is included as one of the essential elements of the free movement of students and researchers.<sup>129</sup>

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<sup>124</sup> Wiesbrock, A. (2010) Court of Justice of the European Union: The Right to Family Reunification of Third-Country Nationals under EU Law, Decision of 4 March 2010, Case C-578/08, *European Constitutional Law Review*, Vol.6, No.3, 462-480, p 471.

<sup>125</sup> *Ibid.*

<sup>126</sup> Evans, A. (1994) Third Country Nationals and the Treaty of European Union, *European Journal of International Law*, Vol.5, No.2, 199-219, p 219.

<sup>127</sup> Cliodhna, M. (2008-2009) Immigration, Integration and Citizenship in European Union Law: The position of Third Country Nationals. – *Hibernian Law Journal*, Vol. 8, 155-184, p 170.

<sup>128</sup> Block, L., Bonjour, S. (2013) Fortress Europe or Europe of Rights: The Europeanization of Family Migration Policies in France, Germany and the Netherlands. – *European Journal of Migration and Law*, Vol. 15, No. 2, 203-224, p 213.

<sup>129</sup> Kees, G. (2006) Family Reunification as a Right under Community Law. – *European Journal of Migration and Law*, Vol. 8, No. 2, 215-230, p 230.

## 4 Implementation of the Directive 2016/801EC in Germany

Member States had time to implement the new Directive until May 2018. In July 2018 several amendments on the recast Directive were done in Germany.<sup>130</sup> The new EU law is now implemented in German Residence Act. The following chapter is analysing the German law after the implementation of the new Directive 2016/801EC and compares it with the German Residence Act before the implementation of the new Directive. The author is aiming to compare the German law and the Directive 2016/801EC in order to state if there is a substantial change or if the changes are just nominal.

### 4.1 Residence permit for studies (Entry requirements)

In order to identify how the new Directive has changed the German law, it is important to compare the German Residence Act before the implementation of the recast Directive with the German Residence Act after the implementation of the new Directive. Part three of the Residence Act is governing Residence of Third Country Nationals for the purpose of studies.<sup>131</sup> Under the Residence Act (*Aufenthaltsgesetz*) students from third Countries can get a residence permit in two ways. If a third country national is willing to study only at a German University, they may be able to be issued with a residence title for the purpose of studying. This permit also applies if a TCN will be studying in other EU Member State as well as at a German institution, but will be spending most of their overall EU residence period in Germany. If the most period of stay is spent in another EU Member State, a TCN should apply for a visa under the Directive 2016/801.<sup>132</sup>

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<sup>130</sup> Monteiro, M. (2018) *Implementation of the Researchers and Students EU Directive (2016/801) in Germany*, Accessible: [http://www.emnluxembourg.lu/wp-content/uploads/2018/08/Implementation-of-the-Researchers-and-Students-EU-Directive-2016.801-in-Germany\\_-Mirjam-Monteiro.pdf](http://www.emnluxembourg.lu/wp-content/uploads/2018/08/Implementation-of-the-Researchers-and-Students-EU-Directive-2016.801-in-Germany_-Mirjam-Monteiro.pdf) , 10 December 2018, p 5.

<sup>131</sup> Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, on 25 February 2008 (Federal Law gazette I p.162), Section 16, paragraph 5.

<sup>132</sup> *Studying and Education in Germany* (2018), Federal Office for Migration and Refugees. Accessible: <http://www.bamf.de/EN/Migration/Studieren/studieren-node.html> , 10 December 2018.

Nowadays the period of a residence permit for the purpose of studying in Germany is at least one and at the most two years. Studying must be the main purpose of the stay and additional courses such as evening or weekend courses do not qualify. Knowledge of the language in which the course of studies is to be conducted is regulated under section 16 subs.1 sentence 4 of the Residence Act.<sup>133</sup> The wording of the German Residency Act before the implementation seems to be the same on this issue.<sup>134</sup> One improvement that is to be noted directly, is that the German law allows TCN on its territory for the purpose of preparation of studies and compulsory training. The implementation of the Directive affected on German law on this issue. This improvement is of course positive as more non-EU national students will come in Germany for studies.

The Residence Act is now defining, what the measures in preparation of studies are. The requirements for preparatory courses are the following: 1. Attendance of a language course in preparation for studies if the TCN has been accepted for full-time studies and the acceptance depends on his attending the preparatory courses, 2. the TCN must prove that he/she has been accepted for the preparatory course.<sup>135</sup> The German law is defining what the preparatory course is and what kind of requirements TCN must fulfill in order to be admitted in Germany. This simplified rules help motivated TCN to enter the territory of Germany and prepare for the future studies. On the other hand, this is to be seen positively for the economical situation of the Country. The language courses promote also the international relationship between students. However, the German law is not perfect on this issue as the German residence Act does not allow TCNs who are admitted for preparatory courses to work. Involvement in the labour market is only possible during holidays.<sup>136</sup>

The main aim of the Directive 2016/801EC is to simplify the admission rules of TCN students and researchers in Member States. The discussion in the previous chapters revealed, that the TCN wishing to study in Germany has to fulfill a number of requirements. The entry requirements for the purpose of studies seem to be the same as it was before the implementation of the new Directive. According to the new visa

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<sup>133</sup> *Ibid.*

<sup>134</sup> Residence Act (Aufenthaltsgesetz, AufenthG)(07/2007), Accessible: <https://www.rigiteataja.ee/tutvustus.html?m=1>, 27 January, 2018.

<sup>135</sup> *Supra nota 131*, Section 16, paragraph 1(2).

<sup>136</sup> *Ibid.*, Section 16, paragraph 3.

requirements TCN students still have to prove that they have sufficient financial resources and pose a German health insurance.<sup>137</sup>

Almost everyone who needs a visa in order to stay legally on the territory of Germany for a period exceeding three months needs to present a proof of financial resources. This proof is known as “Finanzierungsnachweis”. However, there are several ways to provide the requirement resources. The most common way is depositing money into a German blocked account. This is mostly done before arriving in Germany. As usual TCN students should have around 8000 euros for the period of one year and the highest amount they are able to take from the account monthly is 720 euros. If a TCN student has a scholarship award that is recognized under the national German legislation is free to from presenting the proof of so called blocked account. A bank guarantee constitutes also one way to proof financial resources. TCN students who have relatives that are permanent residents in Germany can get a guarantee to cover all expenses from this person.<sup>138</sup>

On the other hand more favorable provisions are to be seen in other member states. For example in Estonia the submission of a document of parents’ income and financial assets allows TCN getting a residence permit.<sup>139</sup>

The discussion in previous chapters revealed that the former students and researchers Directive gave Member State discretion to reject their application even if they fulfilled all the requirements. It is important to see if the German law makes the admission procedure easier. The admission requirements in German Residence Act are completely the same as they were before the implementation of the new Directive. The requirements of the admission are the following: TCN has been accepted by a state or state-recognized or comparable educational institution for full-time studies and part-time studies, he/she has been enrolled in a preparatory language course, he/she has been accepted for a preparatory company traineeship.<sup>140</sup> The new Directive makes it clear in

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<sup>137</sup> Visa and Residence Permit: Applying for the correct visa, Accessible: [https://www.study-in.de/en/plan-your-studies/requirements/visa-and-residence-permit\\_26604.php](https://www.study-in.de/en/plan-your-studies/requirements/visa-and-residence-permit_26604.php), 27 January, 2018.

<sup>138</sup> Proof of financial Recourses, Accessible: <https://www.studying-in-germany.org/proof-of-financial-resources/> 20 November, 2018.

<sup>139</sup> Temporary residence permit for studying, Accessible: <https://www2.politsei.ee/en/teenused/residence-permit/tahtajaline-elamisluba/oppimiseks/index.dot> 20 November, 2018.

<sup>140</sup> *Ibid*, paragraph 1(6).

its preamble, that if the TCN student meets all the general and specific conditions for admissions he/she should be entitled for the admission.<sup>141</sup>

After implementation of the recast Directive the German law seems to be changed but it still does not give clear rules and does not guarantee TCN students and researchers the right to enter in EU even if they fulfill requirements listed in German Residence Act. The author believes that cases of Ben Alaya<sup>142</sup> and Fernhout<sup>143</sup> discussed in previous chapters of this paper does not belong to past and the German authorities are able to reject the application of TCN on study purposes even if he/she fulfills all the requirements.

One argument on this issue is that the recast Directive still does not exactly provide the definition of threat to public policy, public security and public health<sup>144</sup> and give Member States discretion to reject the application of the TCN. Regarding this issue the author suggests clearer definitions. The EU should be able to control Member States when they reject the application and a Member State should be able to follow guidelines on EU level. This guidelines and definition would help German legislators to reject application on the basis of the EU law and the mentioned case law above would be left in past.

In order to achieve simplified Entry rules, the Directive 2016/801EC should give clearer guidelines. In the example of Germany we see that the entry requirements of TCN students in Germany are the same as they were before the implementation of the recast Directive. Simplified admission rules would attract more students to study in European Union.

## **4.2 Employment of TCN students under the German law**

According to the German Law, the temporary residence permit allows the holder to take up employment totaling no more than 120 days or 240 half-days per year and to take

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<sup>141</sup> Directive 2016/801EC, *supra nota* 2, preamble 30.

<sup>142</sup> Judgment of 10 September 2014, Mohamed Ali Ben Alaya v. Bundesrepublik Deutschland C-491/13, EU:C:2014:2187.

<sup>143</sup> Judgment of 5 April 2017, Sarah Fahiman v. Bundesrepublik Deutschland, C-544/15, EU:C:2017:255.

<sup>144</sup> Directive 2016/801EC, *supra nota* 21, Article 7(6).

spare-time student employment.<sup>145</sup> Before the implementation of the recast Directive the wording of the German Residence Act was different. Under the old Directive 2004/114EC the German national law allowed students to work “to take up an employment totaling no more than 90 days or 180 half days per year.”<sup>146</sup> The new Directive allows TCN students to work at least 15 hours.<sup>147</sup>

In this context it can be said, that the implementation is done correctly and the German legislator fulfills the guidelines presented in the Directive. However the Directive grants here Member states again with the authorization to restrict the economic activities for TCN student or TCN citizens who are admitted in Germany for preparatory courses. The Directive is saying that the Member state can take into account the situation in the labor market.<sup>148</sup> The German national law does not include any provisions relating this issue.

The Author thinks that the new Directive and the German Law should be concrete on this issue and define what exactly can be understood under the economic situation of the Member State. The German law is silent on this issue. The Author suggests a controlling mechanism on the EU level. There should exist some barriers according which Member States could prohibit TCN students to work. The German national law should be also developed on this level.

In the example of German law we see that the discretion given to Member State leads to the prohibition of economic activities of those who are attending preparatory courses for studies. As already mentioned above, non-EU nationals residing in Germany for the purpose of preparatory courses are not able to work.<sup>149</sup>

This limitation can definitely be seen as a negative step and due to this the Directive should be restrictive and do not grant Member States with so much discretion. If the new Directive aims to simplify the admission procedure and attract more TCN students in the EU it should also enable people who wish to study and visit a language course in Germany to conduct economic activities. The recast Directive also applies for the non-

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<sup>145</sup> *Supra nota 131*, Section 16, paragraph 3

<sup>146</sup> *Supra nota 134*.

<sup>147</sup> Directive 2016/801EC, *supra nota 2*, Article 24(3)

<sup>148</sup> Directive 2016/801EC, *supra nota 2*, Article 25 (3).

<sup>149</sup> Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory on 25 February 2008, (Federal Law Gazette I p. 162), last amended by Article 3 of the Act of 6 September 2013 (Federal Law Gazette I p. 3556), Section 16, paragraph 3.

EU nationals who are admitted in Member states for the purposes of preparatory studies,<sup>150</sup> so the extra limitation regarding working rights is on the point of author's view undesirable.

### **4.3 Stay of TCN students in Germany for employment purposes**

After the implementation of the Directive 2016/801EC, TCN students have the right to stay in Germany and search a job. According to the German residence Act, after a foreigner has successfully completed his studies, his temporary residence permit shall be extended by up to 18 months for the purpose of seeking employment.<sup>151</sup> The improvement in German legislation after the implementation of the new Directive is directly to be seen as the German law allowed TCN students to stay on its territory for job searching just for 12 months.<sup>152</sup>

However, the German law includes here number of limitations. One important requirement is that the employment should commensurate with the qualification that the TCN has obtained in Germany.<sup>153</sup> Here it is to mention, that the Directive 2016/801EC allows German authorities to impose this restriction. It is written directly in Article 25 of the Directive that “the Member State may require that the employment the third-country national is seeking or the business he or she is in the process of setting up correspond to the level of research or of studies completed.”<sup>154</sup> Germany includes this requirement directly in its policy. At once, the aim of the legislator is clear but the new Directive does not include any guidelines how the correspondence of the employment to the acquired degree can be proved and due to this fact German authorities remain a huge discretion.

Another issue on this matter is that even after the implementation of the new Directive TCN students and researchers should fulfill several requirements in order to get a residence permit for employment. The new Directive is guaranteeing that TCN students and researchers can stay in the MS for some period of time to search a job but the

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<sup>150</sup> Directive 2016/801EC, *supra nota 2*, Article.3 (3).

<sup>151</sup> *Supra nota 131*, Section 16, paragraph 5.

<sup>152</sup> *Supra nota 134*.

<sup>153</sup> *Ibid.*

<sup>154</sup> Directive 2016/801EC, *supra nota 2*, Article 25 (7).

Directive is lacking to guarantee TCN students and researchers with the right of future employment.

The German law seems to be unchanged on this issue. According to the section 39 of the Residence Act, a residence title which permits employment may only be granted with the approval of the Federal Employment Emergency. The Federal Employment Emergency grants the residence permit only if “no German workers, foreigners having the same legal status as German workers with regard to the right to take up employment other foreigners who are entitled to preferential access to the labor market under the law of the European Union are available for the type of employment concerned”.<sup>155</sup> Furthermore, the occupation should be justifiable in terms of labor market policy and integration aspects.<sup>156</sup>

It can be concluded, that the implementation of the new Directive is not resulting in simplified rules and TCN students and researchers still have to fulfill provisions of the Residence Act in order to get a residence permit for employment. The implementation of the new Directive grants TCN students and researchers just with the right to reside in Germany and to search for a job but even if they will get a job it will be still questionable if the German authorities would grant them with the residence permit for employment.

The implementation of the new Directive should result in more favorable provisions. TCN students and researchers did not have the right to stay in Germany after their studies before the entry into force of the Directive 2016/801EC. Nowadays they can stay in Germany for 18 months but the German authorities remain a huge discretion on rejecting their application for residence permits. As retaining foreign students and researchers is an EU policy goal,<sup>157</sup> the new Directive should limit the discretion of German authorities.

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<sup>155</sup> *Supra nota 131*, Section 39, paragraph 1(b).

<sup>156</sup> *Ibid*, Section 39, Paragraph 2(2).

<sup>157</sup> De Lange, T. (2018). Welcoming talent? A comparative study of immigrant entrepreneurs' entry policy in France, Germany and the Netherlands, - *Comparative migration studies*, Accessible: <https://link.springer.com/article/10.1186/s40878-018-0092-4#citeas> 27 January, 2018.

#### 4.4 Intra-EU mobility rights of students in Germany

The most significant improvement that the implementation of the Directive 2016/801EC has done in Germany is that TCN students do not have to apply for residence permit if they already are admitted in another Member State for studies and if they wish to conduct part of their studies in Germany. According to the German law in this case there is no need to apply for a German residence permit.<sup>158</sup> This change is a positive step as the students now have the possibility to visit not only one but two Member States. Students will not have to apply for the residence permit once more and they will spare money and time. Furthermore, the simplified mobility rights will give students valuable experience and knowledge.

However, if we look closer in the German legislation after the implementation, we will be able to see that the wording of the German Residence Act still results in complicated procedures. The German legislation is requiring from the TCN student 1. Evidence that he/she is admitted for studies in another Member State, 2. Evidence that the TCN wishes to carry his/her part of studies in Germany, 3. Acceptance letter from the University, 4. Evidence of the subsistence.<sup>159</sup>

The last requirement is not clear. It should be more specific. The German law is not talking about the amount of financial resources. This will lead to confusion and the German authorities will be able to reject the Intra-EU mobility right of TCN student. The German law is stating that a TCN should submit the notification as soon as a TCN becomes aware that he/she wants to go in Germany.<sup>160</sup> This provisions regulating the notification procedure does not include any specific dates and it leads to confusion. It should be more detailed in order to avoid future practical problems.

In conclusion it can be said, that the Mobility provision in German law after the Implementation of the recast Directive is significantly improved, but they still need further examination and development.

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<sup>158</sup> Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, on 25 February 2008 (Federal Law gazette I p.162), Section 16(a), Paragraph 1(b).

<sup>159</sup> *Ibid*, Section 16(a), Paragraph 1 (1), (2), (3), (4).

<sup>160</sup> *Ibid*, Section 16(a) Paragraph 2.

## 4.5 Entry requirements for TCN researchers in Germany

After the implementation of the recast Directive, the German law has not changed the requirements for TCN researchers that have to be fulfilled in order to get a researchers residence permit. The law today requires the following criteria's: the researcher should be admitted from the recognized research organization or he/she should have made an agreement with the research organization. The research organization should cover costs incurred by public bodies up to six months after termination of the admission agreement for costs incurred by public bodies up to six months in case of the deportation or subsistence of researcher.<sup>161</sup>

In this part of the Law the new Directive is correctly implemented. However, no changes and no simplified rules can be noted. The requirement of the research organization to undertake costs seem a bit unclear. It should be more concrete and the amount of money should be known. This would help TCN researchers to find research organizations easier.

TCN citizens who enjoy International protection, temporary protection, are deported from Member States, whose research constitutes a part of Doctoral studies, who hold an EU long-term residence permit, who hold EU blue card cannot get residence permit on the research purposes.<sup>162</sup> The German law is changed on this issue as the old law before the implementation of the new Directive did not include such provisions. These provisions make clear who cannot benefit from the researchers residence permit. It should be regarded as a positive step.

The new directive and the German law do not qualify doctoral students as researchers. The recast Directive says that "Where appropriate, Member States should be encouraged to treat doctoral candidates as researcher for the purpose of this Directive"<sup>163</sup> The Directive does not say what are the grounds of treating doctoral students as researchers. In the case of Germany, the authorities did not incorporate in their national law any provisions regarding this matter. One could advise the need of compulsory guidelines on EU level in order to avoid different rules in different EU Member States.

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<sup>161</sup> Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, on 25 February 2008 (Federal Law gazette I p.162), Section 20, Paragraph 1 (1), (2).

<sup>162</sup> *Ibid*, Section 20, Paragraph 6.

<sup>163</sup> Directive 2016/801EC, *supra nota* 21, preamble (12).

The Recast Directive lists in Art.10 the requirements of the hosting agreement. Article 10 of the recast Directive is not compulsory. It leaves Member States free choice.<sup>164</sup> The German law does not contain such requirements. It does not include any writing about this issue. It is questionable according which requirements a TCN researcher can present a hosting agreement. If German law had incorporated the Article 10 of the Directive it would be clear what kind of guidelines a researcher has to follow when signing the hosting agreement. This would make the examination of the hosting agreement easier. The author thinks that the Article 10 of the new Directive should be compulsory in order to avoid future confusions regarding the hosting agreement of researcher.

The German law issues residence permit for research purposes at least for one year. The same rule is written in the German legislation before the implementation of the new Directive.<sup>165</sup> However, the German law today says that if the researcher takes part in a Union multilateral Programme the residence permit can be issued for two years.<sup>166</sup> This allows researchers to take part into multilateral program without applying for a residence permit another time. In this way a researcher can save up time and money.

#### **4.6 Intra-EU mobility of TCN researchers in Germany**

Section 20a of the German Residence Act is dealing with the Intra-EU mobility right of TCN researchers. According to the Section 20a a TCN researcher has to present several documents in order to enter Germany.<sup>167</sup>

The mobility rules are completely new in the German law. At first one may think that the Implementation of the new recast Directive resulted in simplified mobility rules in Germany. However, the notification procedure that is required from German law makes the mobility not really easy. There are several requirements that have to be fulfilled. The notification procedure can continue too long and the documents from researchers should be proved from the Federal Office for Migration and Refugees. In the notification forwarded to the Federal Office for Migration and Refugees the TCN researcher has to prove that he/she has a residence permit, a valid passport, hosting agreement, health

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<sup>164</sup> Directive 2016/801EC, *supra nota* 2, art.10.

<sup>165</sup> Residence Act (Aufenthaltsgesetz, AufenthG) (07/2007), Section 16, paragraph 1(a), Accessible: <https://germanlawarchive.iuscomp.org/?p=281>, 27 January, 2018.

<sup>166</sup> *Supra nota* 131, Section 20, Paragraph 20.

<sup>167</sup> *Supra nota* 131., Section 20a, Paragraph 1.

insurance and sufficient financial resources.<sup>168</sup> The researcher does not have to apply for the new residence permit in Germany but the requirements that he/she has to fulfil does not make their mobility easier. The Directive should be reorganised on this issue. The example of Germany shows that the recast Directive does not really deliver simplified rules for TCN who want to benefit from Intra-EU mobility.

Section 20b of the German Residence Act includes new rules about the mobile researchers. According to this section researchers who wish to conduct their research in one or more Member States can get directly the residence permit for researchers.<sup>169</sup> This improvement is very positive as the aim of the new Directive to attract more highly qualified people in EU is fulfilled.

#### **4.7 Economic Activities of TCN researcher in Germany**

Hailbronner argues that next to the advantages there are some disadvantages that make the old researchers Directive 2005/71EC unattractive.<sup>170</sup> For example the fact that after the research period is ended the TCN researchers do not have any right to stay in the territory of Germany for work or job seeking.<sup>171</sup> Here it should be mentioned, that the new Directive 2016/801 has set out the right for non-EU researchers to reside on the territory of Member State after their studies or research.

The researchers now have the right to stay in Germany for nine months after they finish their research and search a job.<sup>172</sup> The new Directive and its implementation here deliver new possibilities for TCN researcher.

However, the problem here is exactly the same as in the case of students. TCN researchers must fulfill several requirements in order to stay in Germany for employment. The researchers still need to be allowed from Federal employment Agency.<sup>173</sup> Section 18 of the Residence Act says directly, that the admission of foreign employees shall be geared to the requirements of the German economy, considering the

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<sup>168</sup> *Supra nota 131.*, Section 20a, Paragraph 1

<sup>169</sup> Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, on 25 February 2008 (Federal Law gazette I p.162), Section 20b.

<sup>170</sup> Heilbronner, K., (2011) Die EU-Forscherrichtlinie und ihre Umsetzung im deutschen Ausländerrecht, *Wissenschaftsrecht*, Vol. 44, No. 1, 1-22,

<sup>171</sup> *Ibid.*

<sup>172</sup> *Supra nota 131*, Section 20, Paragraph 7.

<sup>173</sup> *Supra nota 131*, Section 39.

situation on the labor market situation and the need of unemployment.<sup>174</sup> It is true that before the implementation of the recast directive the German law did not give any possibility TCN to stay in Germany and search for a job but today the TCN researchers have also very limited possibilities to do so. For this reason the changes that the recast Directive is delivering in Germany on this issue can be regarded as small improvements.

#### **4.8 Family Reunification of TCN students and researchers in Germany**

As the right to family is one of the most important rights of migrants in EU<sup>175</sup> it is important to see if the new Directive simplifies the family reunification rules for TCN students and researchers. The family reunification of TCN students is not simplified. The German Law does not have any favorable provisions on this issue either. Only TCN researchers can exercise the right to family without additional difficulties. The spouses of the researchers do not have to present additional documents in order to come in Germany and the TCN researcher do not have to prove that he/she is earning enough money.<sup>176</sup>

Moreover, the German law is stating that if the foreigner is entitled to stay in the federal territory according to short-term mobility, the spouse shall not need a residence title if it has been established that the spouse stayed in the other member state of the European Union lawfully as the foreigner's dependent. The requirements stipulated in Section 20a (1), sentence 1, nos. 1 3 and 4, and the grounds for rejection pursuant to section 20c shall apply accordingly to the spouse.<sup>177</sup>

This should lead to simplified rules for TCN researchers. The recast Directive has delivered significant improvements in Germany regarding this matter. On the other hand, the family reunification rules regarding TCN students remain the same and no change is to be noted between the German legislation before and after implementation of the recast Directive. TCN students still need to fulfill all the requirements written down in

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<sup>174</sup> *Ibid.* Section 18, Paragraph 1.

<sup>175</sup> Trifonidou, A., (2009), Family Reunification Rights of Migrant Union Citizens: Towards a more Liberal Approach, *European Law Journal*, Vol.15, No.5, 634-653, p636.

<sup>176</sup> Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, on 25 February 2008 (Federal Law gazette I p.162), Section 30, Paragraph 7.

<sup>177</sup> *Ibid.* Section 30, Paragraph 5.

Section 30 of the German Residence Act.<sup>178</sup> The author believes that the existence of family life improves the quality of the learning process and suggests new amendment in the recast Directive. The family reunification should be possible to be exercised even for the Family Members who are not citizens of the European Union.<sup>179</sup>

After looking through the German legislation it can be said, that the new Directive has gone some distance towards accomplishing its intended objectives, but its affect could be further augmented. After the implementation of the recast Directive, the German law<sup>180</sup> replaced the weak rules on family reunion for researchers and grants them with a fully-fladged right to family reunion. There are shorter deadline to process applications and family members have a longer period of authorised stay. However the German law is not talking about the new rules for TCN students who are willing to bring their family members in Germany.<sup>181</sup>

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<sup>178</sup> *Ibid.* Section 30, Paragraph 1-2.

<sup>179</sup> Craig, P., G, De Burca, (2011), *EU Law: Text Cases and Materials*, 5<sup>th</sup> ed. Oxford, Oxford University Press, p744.

<sup>180</sup> Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, on 25 February 2008 (Federal Law gazette I p.162) ,Section 30.

<sup>181</sup> *The new Directive on immigration of students and researchers: a small step or a big leap forward?* (2015). Accessible: [https://eulawanalysis.blogspot.com/2015/11/the-new-directive-on-immigration-of.html?m=1&fbclid=IwAR2EGXdWXA4pWKHNS6I5a2vOOQgrY7UUxgc3\\_4\\_m22wvColq1jHt4sR07HA](https://eulawanalysis.blogspot.com/2015/11/the-new-directive-on-immigration-of.html?m=1&fbclid=IwAR2EGXdWXA4pWKHNS6I5a2vOOQgrY7UUxgc3_4_m22wvColq1jHt4sR07HA) 11 December, 2018.

## 5 Implementation of the Directive 2016/801EC in Estonia

The recast Directive 2016/801EC is already implemented in Estonian legislation. The following chapter analyses the developments that are done after the implementation. In Estonian legislation serious changes were made in recent years.<sup>182</sup> The changes relate to student mobility, doctoral studies, simplified admissions procedure and family mobility.<sup>183</sup> The author is aiming to state whether the changes after the implementation simplify the Entry requirements of TCN students and researchers in Estonia. After analyzing the Implementation of the recast Directive, it is interesting to see how the Estonian authorities implemented the new rules.

### 5.1 Entry and Stay of TCN students and researchers

The Estonian Alien act is defining that the TCN can get a residence permit for study purposes.<sup>184</sup> The person willing to come to Estonia for study purposes has to present valid travel document, adequate legal income, health insurance and invitation from the higher institutional organization recognized by the state.<sup>185</sup> The author examined what kind of financial resources are required in Estonia, compared it with the requirements in Germany and came into the conclusion that the Estonian legislation has more flexible rules. Art.9 of the Aliens Act points out, that the legal income for residence permit can be parental benefit.<sup>186</sup> As discussed above, for German residence permit TCN students should put money in bank. Just the parental benefits are not enough. The new Directive gives Member States freedom to decide how the financial resources can be proved from TCNs. The author believes that the Estonian rules on this issue simplify the admission procedure of the students. For this reason, the author suggests that the new Directive should include restrictive guidelines about the financial resources of students.

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<sup>182</sup> Amendments to the Aliens Act, Assessable:  
[http://ti.ee/fileadmin/user\\_upload/Amendments\\_to\\_Aliens\\_Act\\_2017.pdf](http://ti.ee/fileadmin/user_upload/Amendments_to_Aliens_Act_2017.pdf) 28 December, 2018.

<sup>183</sup> *Ibid.*

<sup>184</sup> Alien Act RT I, 03.07.2013,4. §12(2).

<sup>185</sup> Temporary residence permit for studying, Assessable:  
<https://www2.politsei.ee/en/teenused/residence-permit/tahtajaline-elamisluba/oppimiseks/>, 28 December 2018.

<sup>186</sup> Alien Act RT I, 03.07.2013, 4. §9.

The Estonian Alien Act is granting TCNs the right to get an Estonian residence permit for preparatory courses.<sup>187</sup>

The Estonian Alliance Act added one additional rule after the implementation of the recast Directive regarding the entry requirements of researchers. From May 2018, there is no need to conclude a hosting agreement “There is no need to conclude a hosting agreement if upon entering into the employment contract between an alien and the research and development institution the conditions provided for in subsection 183 (1) of this Act are followed and the employment contract includes the data prescribed in the regulation established on the basis of this Act.”<sup>188</sup>

The implementation of the recast Directive has also simplified the admission to and residence in Estonia of au pairs from third countries. The author believes that the improvements will increase the number of people who learn Estonian language and they will also stay for educational purposes in Estonia. The result will be that Estonia will gain valuable highly skilled migrants in the next years. From May 2018, a non-EU national who wishes to come to Estonia to learn the language and to get to know Estonian culture can get a short term residence permit for au pairing.<sup>189</sup>

## **5.2 Employment of students and researchers**

The Estonian Alien Act is providing, that a TCN student who has been issued a residence permit for study, can take employment in Estonia without a specific permit on condition that such employment does not interfere with the studies.<sup>190</sup> The Estonian law grants TCN students with the employment right like other non-EU nationals residing legally in Estonia. Unlike the German law it is not limiting how many hours a TCN student can work. The only limit is that this employment should not interfere with studies. However, there are no specific guidelines how a student, who wants to take up an employment in Estonia, can prove that employment is not interfering studies. It should be noted, that before 2013 the employment provisions for students differed a bit. It allowed students to take employment only on the basis of a work permit and only

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<sup>187</sup> Alien Act RT I, 03.07.2013,4. §162(3).

<sup>188</sup> Alien Act RT I, 03.07.2013,4. §82(2)

<sup>189</sup> Alien Act RT I, 03.07.2013,4. §106<sup>1</sup>

<sup>190</sup> Alien Act RT I, 22.2010, 108. §175

outside of school hours on condition that such employment does not interfere with the studies of a student.<sup>191</sup>

Nowadays students from third countries can start working in Estonia without additional work permit. The simplified rules on employment attract more students to go for study purposes to Estonia. After the implementation of the new Directive in Estonian law significant changes regarding the working permit of TCN students can be noted. From May 2018 the Estonian Alien Act is directly saying, that the persons who have been admitted to the studies in an educational institutions have the right to work.<sup>192</sup>

The author believes that the provisions regarding the employment of students of the recast Directive are correctly implemented in Estonian law. However, the Estonian law is not identifying how many hours a student may work in a week. The recast Directive says that each Member State should define how many hours a TCN student can work.<sup>193</sup> It can be argued that the Estonian law should define the maximum hours of student employment. Nowadays students have the right to take up a full-time employment that would interfere the study purposes. Due to this reason the recast Directive should be more restrictive and should oblige Member states to define the maximum hours of employment of students.

Another crucial issue is that the recast Directive allows TCN students to stay in the Member State for job searching after they finish their studies and obtain Bachelor, Master or Doctoral degrees. Nevertheless, these provisions are not obligatory as the article 25 points out that the TCN students shall have the opportunity to stay in Member State.<sup>194</sup> The Estonian Alien Act is granting students the possibility to stay in Estonia after they finish their studies for the purpose of job searching.

We saw, that the German law allowed non-EU national students to stay in Germany after finishing their studies for job search purposes for 18 months. Such provisions are also available in Estonian law. According to the Alliance act the non-EU national students and researchers are able to stay in Estonia under short-term employment. Short term employment in Estonia is permitted for up to 270 days within 365 consecutive

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<sup>191</sup> Alien Act RT I, 22.2010, 108 §175(2).

<sup>192</sup> Alien Act RT I, 22.2010, 108 §105 (6).

<sup>193</sup> Directive 2016/801EC, Article 3(3), *supra nota* 21.

<sup>194</sup> Directive 2016/801EC, *supra nota* 21, article 25 (1).

days.<sup>195</sup> Before the implementation of the Directive students could just stay for 183 days.<sup>196</sup> The author estimates the changes in the Estonian law positively and thinks that not only foreign students but also Estonia can benefit from these new rules. Students who obtained degree in Estonia will now use their knowledge and skills in Estonia.

Moreover, the Alien Act makes an amendment that allows researchers and students to start up a business after the end of the period of validity of their residence permit.<sup>197</sup>

Compared to German law, the Estonian law is more flexible on this issue as it excludes foreigners, who have come to study in Estonia and wish to stay here to work, from immigration quota.<sup>198</sup> In this way students can get a residence permit for a job easily. Due to this fact, the author claims, that the recast Directive should not give the countries the opportunity to reject foreigners application for employment regarding the economic situation of the country in question.<sup>199</sup>

The example of Estonia shows that due to simplified employment rules more and more students are coming to study in Estonia and start up a business. Maybe the other Member State should also incorporate the same rules. However, it is still questionable how this will affect the overall economic situation of the Member states and if it will be beneficial for other countries as well.

Having reviewed the improvements on this field it can be said that Estonia has transferred the provisions of the recast directly correctly. Nevertheless, it is difficult to say how this works in practice as the law is quite new and has barely caused new case law.

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<sup>195</sup> Alien Act RT I, 22.2010, 108, §106 (1<sup>3</sup>)

<sup>196</sup> The Riigikogu supported the amendment of the Aliens Act, Assessable: <https://www.riigikogu.ee/en/sitting-reviews/riigikogu-supported-amendment-aliens-act/>, 29 December, 2018.

<sup>197</sup> *Ibid.*

<sup>198</sup> New laws: Estonia makes it even easier for international students to work! , Assessable: <https://www.workinestonia.com/estonia-makes-it-even-easier-for-intl-students-to-work/>, 29 December, 2018.

<sup>199</sup> State to simplify arrival of third-country university students in Estonia, Assessable: <https://news.err.ee/683740/state-to-simplify-arrival-of-third-country-university-students-in-estonia>, 31 December, 2018.

### 5.3 Intra-EU mobility and family reunification

“Mobility rights are as a pull factor to make the EU as a more attractive place.”<sup>200</sup> One of the most important improvements of the recast Directive is that it enables TCN students and researchers to carry out part of their studies in another Member State without applying for an additional residence permit. The wording of the article 27 gives the impression that the new Intra-EU mobility provisions are not obligatory. Member States can enable students to conduct part of their studies in another Member State without applying for a new residence permit but they are not to do so.

According to the Estonian law, researchers and students can move in the European Member State without having to apply for a residence permit of the host Member State.<sup>201</sup> Researchers can stay in Estonia under a residence permit or visa issued in another Schengen country until the end of the validity of the document and students can study in Estonian institutions of higher education for up to 360 days on the basis of such a permit.<sup>202</sup>

The Estonian Alien Act is not delivering any improvements on the family reunification of TCN students. The situation is exactly the same like in Germany and the author thinks that the same improvements that were suggested in previous chapter should be made in the recast Directive as well as in Estonian legislation.

The family reunification provisions of TCN researchers appear to be changed. If a researcher is coming in EU under the agreement the family Member of the researcher can come under the same conditions.<sup>203</sup>

The implementation in German and Estonian legislation leads to significant improvements on the admission conditions of TCN students and researchers. It also enables them to stay and work in mentioned states under simplified requirements. Researchers and students can exercise the Intra-EU mobility without applying for a new residence permit. The Hypothesis of the thesis is due to this fact partially proven.

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<sup>200</sup> Barnard, C., (2013), *The Substantive Law of the EU: The Four Freedoms*, Oxford, Oxford University press, 4<sup>th</sup> ed. p563.

<sup>201</sup> The Riigikogu supported the amendment of the Aliens Act, Assessable: <https://www.riigikogu.ee/en/sitting-reviews/riigikogu-supported-amendment-aliens-act/> , 29 December, 2018.

<sup>202</sup> *Ibid.*

<sup>203</sup> State to simplify arrival of third-country university students in Estonia, Assessable <https://news.err.ee/683740/state-to-simplify-arrival-of-third-country-university-students-in-estonia> , 31 December, 2018.

Instead of new rules in the national legislations the students and researchers still have to fulfill several conditions that make the Intra-EU mobility, family reunification and employment difficult.

## 6 Conclusion

Following research was orientated to test the hypothesis that the new Directive 2016/801EC of the European Parliament and the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purpose of research, studies, training voluntary service, pupil exchange, schemes or educational projects and au pairing does not solve the problems which existed in the old students and researchers Directives. Aim of the author was to identify problems of the Directive 2004/114EC and Directive 2005/71EC and to compare this two directive with the new Directive. Furthermore, the author aimed to examine the implementation of the Directive in Germany and the Netherlands and to suggest how named states improve their control on immigration and prevent infringing fundamental human rights of third country national students and researchers. In order to provide conclusive remarks and suggest recommendations, logical review of the research might be useful.

The first chapter analyzed the former students Directive 2004/114EC and compared its articles to the new Directive 2016/801EC. According to the former Directive non-EU nationals who wish to study in EU should fulfill several requirements in order to reside legally on the territory of Member States. However, the case law of EU showed that MS have the right to withdraw the application of TCN student even if he/she fulfills all the general and specific conditions paved down in the mentioned Directive. The named case revealed, that the equal treatment and the right to family of TCN students are not fully guaranteed under the Directive 2004/114/EC. The most important problem of this Directive is that it grants Member states broad discretion to reject application of non-EU nationals who intend to come in EU for the purpose of studies. The reason of this broad discretion is that the Directive does not define the meaning of “threat to public security” and in this way Member States can interpret the wording in different ways.

This problem is not solved neither in the new recast Directive 2016/801. The right to family is given to TCN under the European Convention of Human Rights however neither Directive 2004/114EC nor Directive 2016/801 does not guarantee this right. Furthermore, the first chapter criticized the former students Directive not to grant TCN

with the opportunity to stay in EU after finishing their studies. Union brings TCN students and researchers in the European Union but later does not maintain these valuable resources. In this point of view the new Directive solves this problem and grants non-EU national students the right to stay in EU after finishing their studies and search for a job. The provisions in recast Directive look more favorable nowadays. The last part of the first chapter is discussing the former researchers Directive and compares it with the new articles of Directive 2016/801EC. After the examination the author concluded, that the former researchers Directive was attracting just a little number of institutions. Some difficulties were attributed to the bureaucratic requirements imposed by the Directive upon the issuance of a researchers permit. Under the Directive 2005/71EC Intra-EU mobility of researchers was not guaranteed. The new Directive includes intra-EU mobility provisions for researchers and their family members and from May 2018 TCN researchers can benefit from these new simplified provisions.

The second chapter examined the recast Directive 2016/801EC and identified its benefits. The new Directive merges the former Students and Researchers Directives and makes major changes in both of them. It applies to school pupils, unpaid trainees and volunteers and two new groups of migrant's au pairs and paid trainees. However the rules on au pairs remain optional. The author examined the provisions and wording of the new Directive and stated that the Directive guaranteed the admissions of students and researchers from third countries but not completely while it grants Member States the right to reject the application if they have the suspicious that a person may be a threat to public policy, public security and public health. However, the Union does not show Members States the ways of defining what the threat to public policy, public security and public health means.

Another issue of the Directive is a new right for students and researcher to stay after their study or research on the territory of Member states and to search for self-employment or a job. The Commission proposed that the period of job searching should be 12 months and the MSs can ask migrant after six months that they have a real future job opportunities. The current Directive allows students to work for at least 15 hours a week. However, the problem that existed in past EU case law still remains unsolved. Member States can limit the right to work under the labor-market preference test. The new Directive improves the Intra-EU mobility rights of researchers but if the researcher

stays more than three months in another Member State the second state has the right to require a new hosting agreement and a researcher will have to provide all the documents and to fulfill all the requirements that he/she had to fulfill when he/she entered the first Member State. Intra-EU mobility rights of students are undeniably simplified but the Union fails to provide clear provisions. Member states still remain the right to impose different requirements that burden the mobility right of non-EU national students. Furthermore, the mobility can be exercised only if the student participates in bilateral agreement between universities and if the mobility is funded from EU such as Erasmus mundus. The directive does not simplify intra EU mobility for students who want to conduct part of their studies as a guest student and not as a part of Erasmus program. The author argues that Intra-EU mobility is guaranteed but the different Member States impose different requirements that lead to confusion.

After analyses of the recast Directive, comparing it with the former students and researchers Directives, examining the case law of the Court of the Justice of the European Union, author has fulfilled the aim of the research and identified why the new Directive does not solve the obstacles that existed in the last years. The Hypothesis of the Thesis is partially proven. The new rules are nominal and formal in practice. The German and Estonian examples show that the implementation of the Directive is resulting in different rules in different Member States and TCN students and researchers does not really benefit from simplified rules on Intra-EU mobility and Family reunification.

Following research shows importance for further studies in legal and political levels. Legal research is needed in order to see if the human rights of TCN students and researchers are violated in the European Union. Political research would be useful to see if the new Directive improves relations between the EU and third countries. Stronger relations between the EU and Third countries such as Georgia are not economically beneficial but also develop cultural diversity and closer contact between people. In order to fulfill this aim the new Recast Directive should include clear provisions and it should not leave Member States so much discretion. The author suggests clearer definitions of like public security, public health and public policy. In order to avoid implementation differences and to make Intra-EU mobility even more flexible it is importance that the guidelines on the EU level become restrictive for all Member states.



## List of References

### Books

1. Craig, P., G, De Burca, (2011), *EU Law: Text Cases and Materials*, 5<sup>th</sup> ed. Oxford, Oxford University Press.
2. Barnard, C., (2013), *The Substantive Law of the EU: The Four Freedoms*, 4<sup>th</sup> ed. Oxford, Oxford University press.

### Scientific Articles

3. King R., Ruiz-Gelices E. (2003). International student migration and the European 'Year Abroad': Effects on European Identity and Subsequent Migration Behavior. - *International Journal of population geography*, Vol.9, No.3, 230-252.
4. Hysmans J. (2000). The European Union and the Securitization of Migration. – *Journal of Common Market Studies*, Vol.38, No.5, 751-77.
5. Kostakopoulou T. (2000). The protective Union: Change and Continuity in Migration law and Policy in Post Amsterdam Europe. – *Journal of Common Market Studies*, Vol.38, No.3, 497-518.
6. Guild, E., Mitsilegas, V. (2001). Immigration and Asylum Law in Europe. – *Brill Nijhoff*, Vol. 30, 175-192.
7. Hardy, J. (2012). The Objective of Directive 2003/86 Is to Promote the Family Reunification of Third Country Nationals. – *European Journal of Migration and Law*, Vol. 14, No. 4, 439-452.
8. Roel, F. (2017) An Analysis of the BenAiaya Case (C-491/13): When Conditions of the Students Directive are met, that Directive Confers Entitlement to Student visa, without Leaving the National Authorities Any Discretion in that Regard. – *European Journal of Migration and Law*, Vol. 17, No.1, 147-155.
9. Stehlik, V. (2017) Discretion of Member States Vis-à-vis Public Security. - *DE GRUYTER*, Vol.17, No.2, 127-142.
10. Andrade, G. (2013) The Legal Feasibility of the EU's External Action on Legal Migration: The Internal and the External Intertwined. – *European Journal of Migration and Law*, Vol. 15, No. 3, 236-282,

11. Hoogenboon, A. (2013) Turkish Nationals and the Right to study in the European Union: A Progressive Interpretation. – *European Journal of Migration and Law*, Vol. 15, No.4, 387-412.
12. Ruffer, G., (2011). Pushed beyond recognition the liberality of family reunification polices in the EU., *Journal of Ethnic and Migration studies*, 6 July 2011, Vol. 37, No.6, 935-951.
13. Mazilu-Babel, M.,(2012) The right to Family reunification in relation to third country nationals within the European Union, *European Integration- Realities and Perspectives*, Vol. 7, 166-173.
14. Heilbronner, K., (2011) Die EU-Forscherrichtlinie und ihre Umsetzung im deutschen Ausländerrecht, *Wissenschaftsrecht*, Vol. 44, No. 1, 1-22.
15. Jesse, M., (2016). The civil citizens of Europe: *Legal realities for Immigrants in Europe and the Legal Potential for their Integration. Vol.11, Leiden: Boston p 209.*
16. Roots, L. (2009). Impacts of the Lisbon Treaty on the Development of EU Immigration Legislation. – *Croatian Yearbook of European Law and Policy*, Vol. 5, 261-282.
17. Block, L., Bonjour, S. (2013). Fortress Europe or Europe of Rights: The Europeanization of Family Migration Policies in France, Germany and the Netherlands. – *European Journal of Migration and Law*, Vol. 15, No. 2, 203-224.
18. De Lange T. (2014). Third Country National Students in the EU: Caught between Learning and Working. *International Journal of Comparative Labour Law and Industrial Relations*, Vol. 31, No. 4, 453-472.
19. Szigeti, B. (2014). European Dilemmas of Family Reunification. - *Hungarian Yearbook of Internationals Law and European law*. Vol.2014, 369-376.
20. Staver, A. (2013). Free Movement and the Fragmentation of Family Reunification Rights, *European Journal of Migration and Law*, Vol.15, No.1, 69-90.
21. Iris, G. (2005), Family Reunification of European Community Nationals, *Croatian Yearbook of European Law and Policy*, Vol.1, 163-202, p192-193.
22. Tottos, A. (2014) Legal Issues of Harmonizing European Legal Migration. – *Hungarian Yearbook of International Law*, Vol. 2014, 343-368.
23. Tottos, A. (2013) The Intra-EU Mobility Right of Third-Country Nationals in the European Union. – *Studia Iuridica Auctoritate Universitatis Pecs Publicata*, Vol.151, 239-254.

24. Sánchez, S. (2013). Fundamental Rights Protection for Third Country Nationals and Citizens of the Union: Principles of Enhancing Coherence. – *European Journal of Migration and Law*, Vol 15, No.25, 137-153.
25. Doukas, I. (2008). Non-Discrimination on Grounds of Nationality: The Position of Third Country Nationals within the EU. – *Cambridge Student Law Review*, Vol.4, No.1 1-10.
26. Elise, M. (2011) Enhancing the Protection of Third-Country Nationals against Discrimination: Putting EU Anti-Discrimination Law to the Test. – *Maastricht Journal of European and Comparative Law*, Vol.18, No.1-2, 136-156.
27. Kees, G. (2006) Family Reunification as a Right under Community Law. – *European Journal of Migration and Law*, Vol. 8, No. 2, 215-230.
28. Brinkmann, G. (2015) Equal Treatment on the Ground of Nationality for EU migrant Workers. – *European Journal of Migration and Law*, Vol.17, No.2, 239-258.
29. Wiesbrock, A. (2010) Court of Justice of the European Union: The Right to Family Reunification of Third-Country Nationals under EU Law, Decision of 4 March 2010, Case C-578/08, *European Constitutional Law Review*, Vol.6, No.3, 462-480.
30. Evans, A. (1994) Third Country Nationals and the Treaty of European Union, *European Journal of International Law*, Vol.5, No.2, 199-219.
31. Kees, G. (2014). Recent Developments in EU law on Migration: The Legislative Patchwork and the Court's Approach. – *European Journal of Migration and Law*, Vol. 16, No. 3, 313-336.
32. Cliodhna, M. (2008-2009) Immigration, Integration and Citizenship in European Union Law: The position of Third Country Nationals. – *Hibernian Law Journal*, Vol. 8, 155-184.
33. Trifonidou, A., (2009), Family Reunification Rights of Migrant Union Citizens: Towards a more Liberal Approach, *European Law Journal*, Vol.15, No.5, 634-653.

### **European Union Legislation**

34. Directive 2004/114 EC of the Council of the European Union of 13 December 2004 on the conditions of admission of third-country nationals for the purpose of studies, pupil exchange, unremunerated training or voluntary service, OJ L 375, 23.12.2004, p12-18.
35. Directive 2016/801 EC of the European Parliament and the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the

purpose of research, studies, training, voluntary service, pupil exchange, schemes or educational projects and au pairing, OJ L 132, 21.5.16, p21-57.

36. Directive 2005/71 EC of the European Parliament and the Council of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, OJ L 289, 3.11.2005, p15-22.
37. Directive 2003/86/EC of the Council of European Union of September 22, 2003 on the right to Family reunification, L 251, 12-18.
38. Treaty on Functioning on European Union, OJC 326, 26.10.2012, p 47- 390.
39. Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJL 251, 3.10.2010, p 12-18.

### **Normative Documents**

40. Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, on 25 February 2008 (Federal Law gazette I p.162).
41. Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, on 25 February 2008, in version of 30 October, 2017.
42. Alien Act RT I, 03.07.2013,4.
43. Alien Act RT I, 22.2010, 108.

### **Other Sources**

44. Attracting and retaining foreign students: Workshop overview and conclusion.-*EMN Annual Conference in 2017 'The EU in the global race for talents: Challenges and solutions in strengthening the EU's competitiveness*, 21-22 September 2017, Tallinn, Estonia, Tallinn University, 1-8.
45. *Tuition Fees at Universities in Europe in 2018- Overview and Comparison*, Accessible: <https://www.mastersportal.com/articles/405/tuition-fees-at-universities-in-europe-in-2018-overview-and-comparison.html> 09 January, 2018.
46. *Das Infoportal zu ausländischen Bildungsabschlüssen*, Accessible: <https://anabin.kmk.org/kurzanleitung/ich-moechte-feststellen-ob-meine-auslaendische-hochschule-in-deutschland-anerkannt-ist.html> 20 November, 2018.
47. *Das Infoportal zu ausländischen Bildungsabschlüssen*, Accessible: <https://anabin.kmk.org/kurzanleitung/ich-moechte-feststellen-ob-meine->

- [auslaendische-hochschule-in-deutschland-anerkannt-ist.html](#) 20 November, 2018.
48. *Access to the first degree courses at German universities*, Accessible: [https://www.anerkennung-in-deutschland.de/html/de/anerkennung\\_im\\_hochschulbereich.php](https://www.anerkennung-in-deutschland.de/html/de/anerkennung_im_hochschulbereich.php) 20 November, 2018.
49. *Temporary residence permit for studying*, Accessible: <https://www2.politsei.ee/en/teenused/residence-permit/tahtajaline-elamisluba/oppimiseks/index.dot> 20 November, 2018.
50. Commission Report COM/2011/587 final to the European Parliament and the Council on the application of Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, Accessible: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52011DC0587> 20 November, 2018.
51. *Students and researchers Directive: What is it and who can benefit from it?* Accessible: <https://www.euraxess.ie/information/content/europe/students-and-researchers-directive-what-it-and-who-can-benefit-it> , 20 October, 2018.
52. *New Directive improves mobility within the EU for researchers and students from third countries. (2017)* Accessible: <https://ind.nl/en/news/Pages/New-directive-improves-mobility-within-the-EU-for-researchers-and-students-from--%E2%80%98third-countries%E2%80%99.aspx>, 15 October, 2018.
53. Puhaka, A., *The Directive helps improve the Status of researchers from outside the EU and EEA Countries*. Accessible: [http://www.acatiimi.fi/8\\_2017/7.php](http://www.acatiimi.fi/8_2017/7.php), 15 October, 2018.
54. *The new Directive on immigration of students and researchers: A small step or a big leap forward?* (2015), Accessible: [https://eulawanalysis.blogspot.com/2015/11/the-new-directive-on-immigration-of.html?m=1&fbclid=IwAR1wZubt1soFKW7k94Naz04PWWi0gB8ldnNmW05KI\\_72jJUD\\_5i6TsDyMpY](https://eulawanalysis.blogspot.com/2015/11/the-new-directive-on-immigration-of.html?m=1&fbclid=IwAR1wZubt1soFKW7k94Naz04PWWi0gB8ldnNmW05KI_72jJUD_5i6TsDyMpY), 20 October 2018.
55. *Family Reunification of Third-country nationals in the EU (2016)*, Accessible: <http://www.emncz.eu/files/books/177.pdf>, 5 November 2018.p 7.
56. Pascouau, Y. (2013). *Intra-EU mobility of third-country nationals State of play and prospects*, *European Policy centre*.
57. Pascouau, Y. (2013) *Intra-EU mobility: The second building block of EU labor migration policy*. – *European policy center*, 1-3.
58. Janosi, A. *Public security public policy and public health as potential grounds for imposing restrictions on the right of free movement of persons*. Accessible

- [https://www.law.muni.cz/sborniky/cofola2008/files/pdf/evropa/janos\\_i\\_andrea.pdf](https://www.law.muni.cz/sborniky/cofola2008/files/pdf/evropa/janos_i_andrea.pdf), 26 November 2018.
59. Carrera, S., Atger, F., Guild, E., Kostakopoulou, D. (2011) *Labor immigration policy in the EU: A renewed Agenda for Europe 202*, 1-15. Accessible: [https://www.researchgate.net/profile/Theodora\\_Kostakopoulou/publication/228120887\\_Labour\\_Immigration\\_Policy\\_in\\_the\\_EU\\_A\\_Renewed\\_Agenda\\_for\\_Europe\\_2020/links/0deec52661b20908c0000000/Labour-Immigration-Policy-in-the-EU-A-Renewed-Agenda-for-Europe-2020.pdf](https://www.researchgate.net/profile/Theodora_Kostakopoulou/publication/228120887_Labour_Immigration_Policy_in_the_EU_A_Renewed_Agenda_for_Europe_2020/links/0deec52661b20908c0000000/Labour-Immigration-Policy-in-the-EU-A-Renewed-Agenda-for-Europe-2020.pdf) , 5 November 2018.
60. Family Reunification of Third-country nationals in the EU (2016), Accessible: <http://www.emncz.eu/files/books/177.pdf>, 5 November 2018.
61. Pascouau, Y. (2013) Intra-EU mobility: The second building block of EU labor migration policy. – *European policy center*, p1-3.
62. Janosi, A. *Public security public policy and public health as potential grounds for imposing restrictions on the right of free movement of persons*, Accessible: [https://www.law.muni.cz/sborniky/cofola2008/files/pdf/evropa/janos\\_i\\_andrea.pdf](https://www.law.muni.cz/sborniky/cofola2008/files/pdf/evropa/janos_i_andrea.pdf) , 16 November 2018.
63. Brouwe, E. R., Vries, K., (2017), *Third country nationals and discrimination on ground of nationality: article 18 TFEU in the context of article 14 ECHR and EU migration law: Time for the new approach*, 123-146 Accessible: <http://sim.rebo.uu.nl/wp-content/uploads/2015/04/Brouwer-and-de-Vries-Third-country-nationals-and-discrimination.pdf> , 16 November 2018.
64. Mazzeschi, M. (2017) Workers Mobility within Schengen: A Comparative Study of 17 Countries Requirements. – *European Centre for Research Training and Development*, Vol. 5, No.2, 14-20.
65. Monteiro, M. (2018) *Implementation of the Researchers and Students EU Directive (2016/801) in Germany*, Accessible: [http://www.emnluxembourg.lu/wp-content/uploads/2018/08/Implementation-of-the-Researchers-and-Students-EU-Directive-2016.801-in-Germany\\_-Mirjam-Monteiro.pdf](http://www.emnluxembourg.lu/wp-content/uploads/2018/08/Implementation-of-the-Researchers-and-Students-EU-Directive-2016.801-in-Germany_-Mirjam-Monteiro.pdf) , 10 December 2018.
66. *Studying and Education in Germany* (2018) Accessible: <http://www.bamf.de/EN/Migration/Studieren/studieren-node.html> , 10 December 2018.
67. *Citizens of third Countries: Researchers* (2018), Federal Office for Migration and Refugees. Accessible: <http://www.bamf.de/EN/Migration/Arbeiten/BuergerDrittstaat/Forscher/forscher-node.html> 11 December, 2018.
68. *Intra EU-mobility: Stay in the Netherlands as a student or researcher under Directive (EU) 2016/801*, Accessible: [https://ind.nl/en/work/working\\_in\\_the\\_Netherlands/Pages/Intra-EU-mobility-](https://ind.nl/en/work/working_in_the_Netherlands/Pages/Intra-EU-mobility-)

[as-a-student-or-researcher-under-Directive-\(EU\)-2016801.aspx](#) 11 December, 2018.

69. *July infringements package: Key decisions (2018)*, European Commission Fact Sheet. Accessible: [http://europa.eu/rapid/press-release\\_MEMO-18-4486\\_en.htm](http://europa.eu/rapid/press-release_MEMO-18-4486_en.htm) , 10 December 2018.
70. Monteiro, M. (2018) *Implementation of the Researchers and Students EU Directive (2016/801) in Germany*, Accessible: [http://www.emnluxembourg.lu/wp-content/uploads/2018/08/Implementation-of-the-Researchers-and-Students-EU-Directive-2016.801-in-Germany\\_-Mirjam-Monteiro.pdf](http://www.emnluxembourg.lu/wp-content/uploads/2018/08/Implementation-of-the-Researchers-and-Students-EU-Directive-2016.801-in-Germany_-Mirjam-Monteiro.pdf) , 10 December 2018, p 5.
71. *Studying and Education in Germany (2018)*, Federal Office for Migration and Refugees. Accessible: <http://www.bamf.de/EN/Migration/Studieren/studieren-node.html> , 10 December 2018.
72. Visa and Residence Permit: Applying for the correct visa, Accessible: [https://www.study-in.de/en/plan-your-studies/requirements/visa-and-residence-permit\\_26604.php](https://www.study-in.de/en/plan-your-studies/requirements/visa-and-residence-permit_26604.php), 27 January, 2018.
73. De Lange, T. (2018). Welcoming talent? A comparative study of immigrant entrepreneurs' entry policy in France, Germany and the Netherlands, - Comparative migration studies, Accessible: <https://link.springer.com/article/10.1186/s40878-018-0092-4#citeas> 27 January, 2018.
74. Temporary residence permit for studying, Assessable: <https://www2.politsei.ee/en/teenused/residence-permit/tahtajaline-elamisluba/oppimiseks/> , 28 December 2018.
75. The Riigikogu supported the amendment of the Aliens Act, Assessable: <https://www.riigikogu.ee/en/sitting-reviews/riigikogu-supported-amendment-aliens-act/> , 29 December, 2018.
76. State to simplify arrival of third-country university students in Estonia, Assessable <https://news.err.ee/683740/state-to-simplify-arrival-of-third-country-university-students-in-estonia> , 31 December, 2018.

