



Visas for third-country students: Improvements with Directive (EU) 2016/801 and exchange of good practices



Introduction

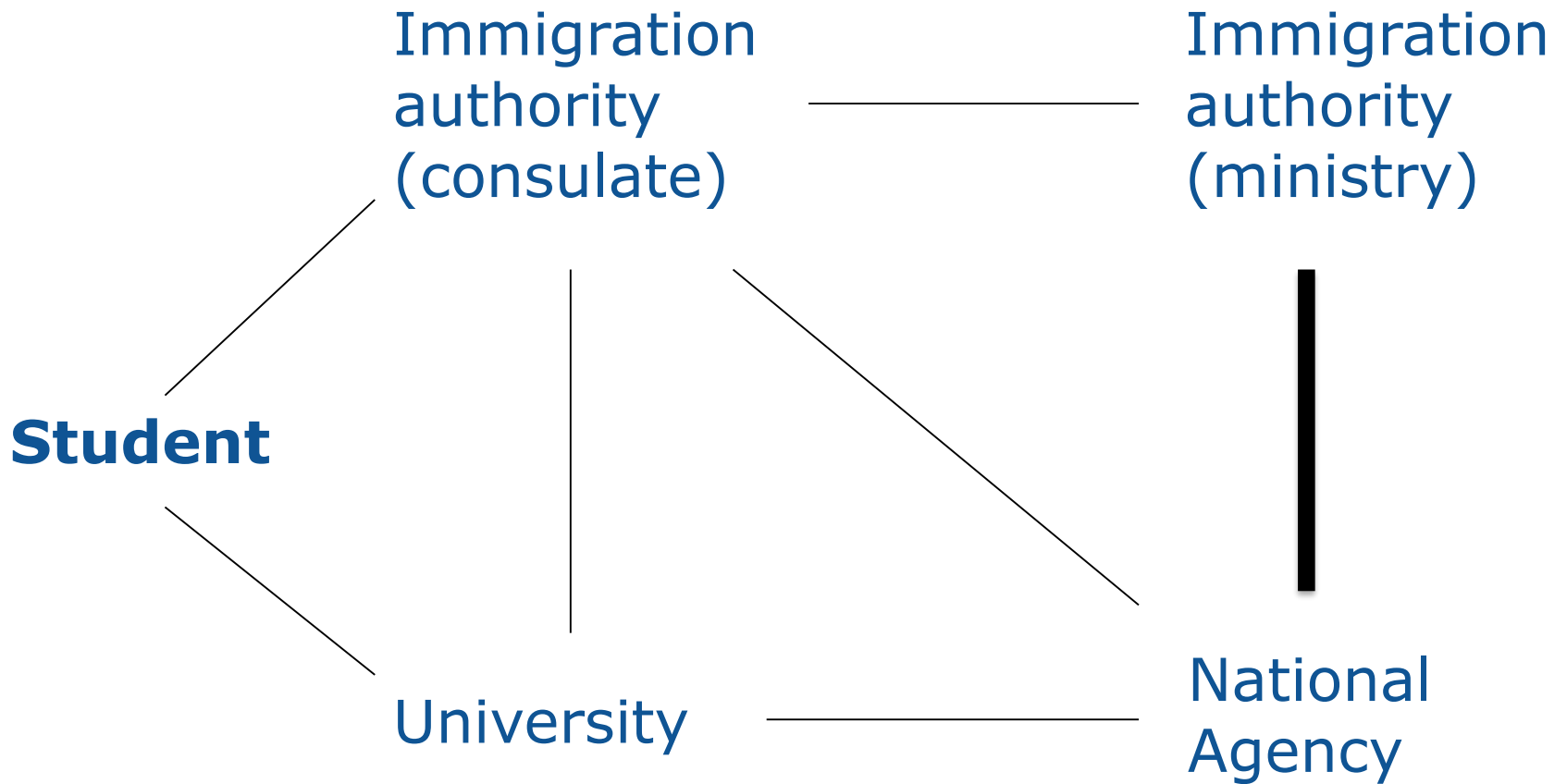
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Context

- *More than **80,000** Erasmus+ participants from Partner Countries since 2015*
- *Visas, affected by **immigration and security** context*
- *Commission **letters** to Permanent Representations in 2015 and 2018*
- ***Guidelines** to NA Directors in 2017*

Two types of cases

- *Related to the **capacity** of Programme Countries to be represented in third countries*
- *Related to the **policy** applied, which has to be compatible with Directive (EU) 2016/801*





Directive (EU) 2016/801

Hélène Calers, European Commission
DG Migration and Home Affairs
Legal migration and integration

Students and Researchers Directive

Directive (EU) 2016/801 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (recast)

Adopted on 11 May 2016

Deadline for transposition: 23 May 2018

Previous instruments:

- Students – Directive 2004/114/EC
- Researchers – Directive 2005/71/EC

Ireland will keep on applying Directive 2005/71/EC

UK and DK: opt out



Students and Researchers Directive

Applicable to:

- Third-country nationals, ie non-EU or EEA nationals
- Coming to one of the 25 Member States applying the Directive (ie not UK, IE or DK)
- For more than 90 days (if coming for less than 90 days, the Schengen acquis is applicable)

Admission conditions for students

- Travel document
- If minor: parental authorisation
- Sickness insurance
- Sufficient resources
- Proof of acceptance by HEI

Member States have the option to add:

- Proof of payment of the fee for the application
- Address
- Proof of payment of the HEI fees
- Proof of sufficient knowledge of the language of the course

Procedures

- Approval procedure for host entities
Member States may decide to provide or not for an approval procedure. If so, facilitated and quicker procedure
- Processing time of application: maximum of 90 days (60 days if approved host entity)
- Type of authorisation: long-stay visa or residence permit
- Duration of authorisations: 2 years if under a Union programme

During the stay

- Students have access to the labour market
 - **Employed / self-employment**
 - **Allowed to work minimum of 15 hours a week**
 - **Member States may take into account the situation of their labour market in exceptional circumstances**
- Equal treatment with nationals in line with the Single Permit

Intra-EU mobility for students

- Students under programmes or agreements between higher education institutions: up to 360 days per Member State
 - **On the basis of the authorisation issued by the first Member State**
 - **Notification or no procedure**
 - **If notification: procedure depends on Member State of destination**
 - To be done by HEI or student
 - Documents
 - 30 days to object. If no objection, mobility can take place
- Other students: new application

Job-searching or entrepreneurship

- Stay in the Member State for a period of **9 months** following the completion of research or studies
- Member States may limit it to students with a Masters level
- No right to get a work permit



More information

DG Migration and Home Affairs – European Commission
http://ec.europa.eu/dgs/home-affairs/index_en.html

European Migration Network
www.emn.europa.eu

EU Immigration Portal
<http://ec.europa.eu/immigration>

OeAD | Erasmus+ International Activities

How to navigate third-country nationals through the jungle of legislation

Gerhard Volz

Head Higher Education Erasmus+
National Agency Erasmus+ Education, OeAD-GmbH

with the support of **Miriam Forster & Peter Gaunerstorfer**

Legal Department of the OeAD-GmbH



Erasmus+

General considerations

EU Directive (EU) 2016/801

adopted in Austria as of 2018 (effective as of 1st September)

Legal frameworks are complex –

- numerous links to laws on foreigners (entry, residence, foreign employment for students and researchers);
- principle of subsidiarity between European and national legislation depending on the scope of activities;
- Law on Foreigners is a fragmented and politically sensitive branch of law – subject to continuous change;
- *sometimes* not free of individual (mis-)interpretation.

Mandate/Tasks of the Legal Department

OeAD legal department is involved through

- commenting on draft legislation in all fields of education which possibly concern foreign beneficiaries;
- meetings and continuous exchange with Ministries in charge as well as implementing authorities in order to ease the rules enforcement as much as possible;
 - e.g. through transmission of lists of future scholars, or/and
 - ex-ante information on certain schemes and grant calls
- continuous exchange of experience as well as counselling for host institutions (HE institutions, research bodies etc.);

Mandate/Tasks of the Legal Department

OeAD legal department is involved through

- direct counselling for individual cases (mail, phone, in person);
2018: cca. 2,000 inquiries so far;
- consultations & intervention (if needed) in problem cases through distinct contact partners within the authorities;
- regular lectures for HE institutions regarding entry and residence regulations for students and researchers;
- offering a range of generally accessible information
 - website: general information + specific database on foreign law;
 - newsletters on legal implications for foreigners (*Fremdenrechts-Newsletter*)

Success Story I (Erasmus+)

- An **Uzbek Erasmus Mundus** grant holder was asked to legalize a number of documents in order to obtain an Austrian residence title. Legalization of Uzbek documents require specific verification proceedings that lead to high expenses.
- The scholarship holder concerned did not have the funds to cover these expenses in addition to the necessary **flight** to the Austrian Embassy in **Moscow**.
- The OeAD was subsequently able to convince the Austrian authorities in charge to partially waive some of the fees as a gesture of goodwill which led to a reduction from 417 to “only” 297 Euros.

Success Story II (nationally funded grant)

- A newly-wed **Pakistani scholarship holder** wanted his wife to visit him during his research stay in Vienna. The wife therefore applied for a visa at the Austrian Embassy. The authority was hesitant on issuing a visa as some of the answers to the many questions concerning **health insurance** and the planned **duration of stay** seemed to be “insufficient”.
- The OeAD legal department (in close cooperation with the Austrian authorities in charge) managed to assist in resolving the remaining doubts and to sufficiently prepare all necessary documents.