



The rights of legal immigrants

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Legal basis in the EC Treaty



Article 63 (3) (a):

The Council, acting in accordance with the procedure referred to in Article 67, shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt:

3. measures on immigration policy within the following areas:
 - (a) conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion

➤ Entry and stay exceeding 3-months period

Directives in question:



- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification *OJ L 251 of 03.10.2003, p. 12*
- Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long term residents *OJ L 16 of 23.01.2004, p. 44*
- Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service *OJ L 375, 23.12.2004, p. 12*
- Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research *OJ L 289, 3 November 2005 p. 15*

Transposition deadlines:



- Directive 2003/86/EC – **3 October 2005**
- Directive 2003/109/EC – **23 January 2006**
- Directive 2004/114/EC – **12 January 2007**
- Directive 2004/71/EC – **12 October 2007**

How to read these directives?



- Undefined notions to be defined by MS
- Structure of Directives
- “may” and “shall” clauses
- exceptions

Undefined notions to be defined by MS



Limitations:

- *Effet utile* of the Directive
- Non-discriminatory applicability

Structure of Directives



- Role of preambles
- Scope
- Conditions to comply with
- Procedural rules
- Rights granted
- Conditions for withdrawal



Particularities of each directive

Directive 2003/86/EC

Scope

- Negative list of Article 3(2)
 - only refugees
- No family members of an EU citizen (Article 3(3))
- Definition of the family (minimum) (Article 4):
 - Children
 - Spouse
 - Age limits
 - Different rules for refugees (Article 10)

Directive 2003/86/EC

Conditions to comply with

- Conditions for sponsor vs. conditions for family members
- Standard conditions (Articles 6, 7 (1)):
 - Accommodation
 - Sickness insurance
 - Stable and regular resources
 - Public policy, security and health
- Reasonable prospects of permanent residence condition plus one year residence (Article 3(1))
- Integration measure vs. integration condition (Articles 4(1), 7(2))
- Special rules for refugees (Article 12)

Directive 2003/86/EC

Procedural rules



- Person applying (Article 5(1))
- Place and time to apply (Articles 5(3), 8)
- Evidence accepted (Article 5(2))
- Length of the procedure (Article 5(4))
- Some further exceptions for refugees (Article 11)
- Way of notification (Article 5(4))
- Right to mount a legal challenge (Article 18)

Directive 2003/86/EC

Rights granted



- Residence and residence permit (Article 13(2))
- Access to key rights (under certain exceptions) (Article 14)
- Autonomous status after 5 years (Article 15)

Directive 2003/86/EC

Withdrawal conditions (Article 16)



- Conditions for grant of the right not satisfied plus

Directive 2003/109/EC

Scope (Article 3)



- Legally residing third country nationals
- Negative list of Article 3(2)
 - No refugees

Directive 2003/109/EC

Conditions to comply (Articles 4, 5, 6)

- 5 years of residence (Article 4(1))
 - Rules to calculate the period (Article 4)
- Stable and regular resources
- Health insurance
- Integration condition (not measure)
- Public policy and security

Directive 2003/109/EC

Procedural rules (Articles 7(1)-(2), 10)



- Person and place of application
- Evidence
- Length of procedure
- Way of notification of a decision
- Content of withdrawing and rejecting decisions
- Right to mount a legal challenge

Directive 2003/109/EC

Rights granted



- Permanent residence (Article 7(3), 8(1))
- Residence permit (Article 8(2))
- Equal access to socio-economical rights (Article 11)
- Reinforced protection against expulsion (Article 12)
- Right to settle in other Member State (Chapter III):
 - More favorable conditions clause (Article 13)
 - Conditions to comply (Article 15, 17, 18)
 - Family members may follow (Article 16)
 - Procedural rules (Article 15(4), 19(1), 20)
 - Rights in other Member State (Article 21)
 - Withdrawal conditions (Article 22)

Directive 2003/109/EC

Withdrawal conditions (Article 9)



- Fraud
- Expulsion (if possible)
 - Public policy and security
- Absence (from Community, from Member State)
 - Reacquisition procedure
- Public policy
- Withdrawal without expulsion

Directive 2003/109/EC

National contact points - Article 25



- Appointed by Member State
- Person or unit in the national administration
- Communication only through *one* address with other contact points
- Type of information to be exchanged (Articles 19(2), 22(2), 23(1))

Directive 2004/114/EC

Scope (Article 3)



- **Obligatory:**
 - Students
- **Optionally**
 - Pupil exchange
 - Unremunerated training
 - Voluntary services

Directive 2004/114/EC

Conditions to comply with



- General conditions to all groups (Article 6)
- Specific conditions to every particular group (Articles 7, 9, 10, 11 respectively)

Directive 2004/114/EC

Procedural rules (Chapter V)



- Length of procedure
- Way of notification
- Right to mount a legal challenge

Directive 2004/114/EC

Rights granted

- Rights granted to all groups (Articles 12(1)-15):
 - Residence
 - Residence permit
- Additional rights granted to students (Articles 8, 17):
 - Rights to work (within time limit)
 - Right to pursue studies in another Member State
 - Conditions

Directive 2004/114/EC

Withdrawal conditions



- Applicable to all groups (Article 16):
 - Fraud
 - Conditions for grant of the right not satisfied
- Additional applicable to students (Article 12(2)):
 - Lack of progress in studies
 - Non-respect of the rules concerning employment

Directive 2005/71/EC

Scope



- Persons willing to carry a research project (Article 3(1))
- Definition of research (Article 2(b))
- Negative list of Article 3(2)
 - No overlapping with Directive 2004/114/EC

Directive 2005/71/EC

Conditions to comply with (Article 7)



- Travel document
- Public security, policy and health
- Financial responsibility
- Hosting agreement
 - Form conditions and procedure for signing the agreement (Article 6)
 - Definition of research organization and its approval (Articles 2(c), 5)

Directive 2005/71/EC

Procedural rules (Chapter V)



- Person/entity to apply
- Time to apply
- Length of procedure
- Way of notification of a decision
- Right to mount a legal challenge

Directive 2005/71/EC

Rights granted



- Residence and residence permit (Article 8)
- Teaching (hours limit possible) (Article 11)
- Equal treatment with regards to certain socio-economic rights (Article 12)
- Carry out research in another MS (Article 13)
 - Conditions

Directive 2005/71/EC

Withdrawal conditions (Article 10)



- Fraud
- Conditions for grant of the right not satisfied
- Residing for other purpose than the one to which authorisation was granted



More information available on:
http://europa.eu.int/comm/justice_home/

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