



## Do the refugees have the right to volunteer in Germany, if they reside in another Member State?

by Maria Kozhuharska and Radostin Ivanov

On the 11th of May 2016 the European Parliament together with the Council of Europe accepted a new Directive 2016/801<sup>1</sup> which sets out European Union rules on the conditions of entry and residence for non-EU citizens for different purposes. These aims, among with study, research and trainings, include voluntary service of a non-EU national in the territory of a Member State. The main goal of the Directive is to harmonise the legislation between the different Member States in order for the third-country nationals to be treated on an equal footing with EU citizens in every EU country. However, in practise... the situation is slightly different.

According to the Directive the EU states must ensure that non-EU citizens are able to participate as volunteers in the European Voluntary Service, replaced by European Solidarity Corps (ESC) from 2018, and each country can decide if this opportunity will be available for a voluntary service outside the ESC. However, from the scope of the Directive are excluded third-country nationals who seek international protection or who are beneficiaries of international protection. Does this mean that asylum seekers and refugees already recognised as such are restricted from participation in the ESC as volunteers?

Generally, this directive does not interfere with the right of the Member States to provide possibilities for a voluntary service to third-country nationals who fall outside its scope, but then will be applicable the respective domestic legislation or another EU instrument, if available. In most cases with other EU directives the ground for exclusion is that the status of the third-country nationals is already regulated by other directives and the current one cannot serve "as a basis for applying for a change of status (e.g. from asylum-seeker to student)"<sup>2</sup>. Moreover, the purpose of the movement of non-EU citizens who fall under the scope of this concrete directive differs from the aim of movement of refugees and asylum seekers. Even if the current directive is meant to facilitate the movement of non-EU nationals on the territory of the European Union, it could be applicable only for those who are willing to come in the EU in order to study, research, volunteer only for a certain period of time and then to go back to their country of origin. This could be seen in the preamble of the Directive, where it is written that its purpose is to enrich both countries: the receiving and the sending, in addition to the person benefiting from it, because the receiving country receives a qualified

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<sup>1</sup> [Directive \(EU\) 2016/801 — entry and residence conditions for non-EU nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing](#)

<sup>2</sup> Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of studies, vocational training or voluntary service - [https://www.europarl.europa.eu/registre/docs\\_autres\\_institutions/commission\\_europeenne/com/2002/0548/COM\\_COM\(2002\)0548\\_EN.pdf](https://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/com/2002/0548/COM_COM(2002)0548_EN.pdf)



citizen and the sending - an experienced person who will later return to his home country and enrich it with the acquired knowledge<sup>3</sup> (as stated in point (13) from the preamble "Implementation of this Directive should not encourage a brain drain"). Moreover, in Art.3 under the definition of a volunteer is written "a third-country national who is *admitted* to the territory of a Member State *to participate in a voluntary service scheme*" (emphasis added). The same is stated in the contextual analysis by the European Commission: "The main rationale for Directive (EU) 2016/801 was to ... offer a coherent legal framework for those third-country nationals *who come to the EU for the purpose of ... voluntary service in the European Voluntary Service*"<sup>4</sup> (emphasis added) - a rational, remaining from the previous directive, concerning the volunteers<sup>5</sup>. The opposite is valid for refugees or asylum seekers: their aim when coming to a European country is seeking international protection. They are not able to return to their country of origin, firstly, because of the fear of persecution, and secondly, because such a return will presumably be taken as a change in the living conditions there and their international protection will be lifted.

Therefore, when a person with international protection, living in an EU country, is interested in participating in a voluntary service in another Member State less than 90 days, he is not falling under this Directive as he can freely move in the Schengen Zone without a visa. As for the people who are still searching for international protection (the asylum seekers), according to the EU Regulation Dublin III they cannot move outside the territory of the Member State in which they have applied for an asylum until their asylum claim is approved. When they have the status of recognised refugees and would like to move in the EU for more than 90 days (before obtaining long-term resident status<sup>6</sup>), they need to comply either with other applicable EU rules, or with the national legislation of the respective Member State<sup>7</sup>, where they are willing to do the voluntary service.

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<sup>3</sup> "The Directive is key to contributing to mutual enrichment for the migrants concerned, their country of origin and the host Member State." - [https://www.europarl.europa.eu/registre/docs\\_autres\\_institutions/commission\\_europeenne/com/2011/0587/COM\\_COM\(2011\)0587\\_EN.pdf](https://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/com/2011/0587/COM_COM(2011)0587_EN.pdf)

<sup>4</sup> Legal Migration Fitness Check, Contextual analysis: Intervention logic Directive specific analysis, European Commission, p.32 - [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/legal-migration/201903\\_legal-migration-check-annex-1cii-icf\\_201806.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/legal-migration/201903_legal-migration-check-annex-1cii-icf_201806.pdf)

<sup>5</sup> "Those who must be included are third-country nationals who apply to be admitted to the territory of a Member State for the purpose of studies ... or voluntary service." – Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purposes of studies, vocational training or voluntary service /\* COM/2002/0548 final - CNS 2002/0242 - [https://www.europarl.europa.eu/registre/docs\\_autres\\_institutions/commission\\_europeenne/com/2011/0587/COM\\_COM\(2011\)0587\\_EN.pdf](https://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/com/2011/0587/COM_COM(2011)0587_EN.pdf)

<sup>6</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents - <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32003L0109&from=en>

<sup>7</sup> As clarified in the Qualification Regulation proposal - <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal->



As we already saw, currently there is no “other applicable EU rules”, that arrange the right of beneficiaries of international protection to participate as volunteers in the ESC in other Member States, mainly because of the formulation of Directive 2016/801 which purpose excludes the refugees from its scope. But is this the right path of integration third-country nationals within the European Union? Does this exclusion comply with the European principle of “full integration of beneficiaries of international protection”<sup>8</sup> - a principle, because of which the Long-term Residence Directive was amended to extend its scope particularly to beneficiaries of international protection? The European legislation is changing dynamically in order to fulfil the integration goals, emphasized back in 1951 by the Convention relating to the Status of Refugees<sup>9</sup>. “Integration is a continuum”, states the UNHCR<sup>10</sup>.

Therefore, the amendments do not stop with the alteration of the Long-term Residence Directive. In 2016 the European Commission submitted a Proposal for a new Directive for third-country employees<sup>11</sup> which will replace the existing EU Blue Card Directive<sup>12</sup> mainly because it excludes the refugees from its scope. Isn't it time the Directive 2016/801 which currently regulates the right of third-country nationals of a voluntary service to be changed? Especially since it already replaces two previous directives for third-country citizens (for students<sup>13</sup> and researchers<sup>14</sup>) the second of which did not exclude the beneficiaries of international protection from its scope.

What is the current situation now, when there is no such EU Directive for refugees' voluntary service in the ESC? They will have to rely on equal treatment provisions in the relevant EU instruments, in international conventions or in national law. Therefore we need to follow the

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[implementation-package/docs/20160713/proposal\\_on\\_beneficiaries\\_of\\_international\\_protection\\_-\\_subsidiary\\_protection\\_eligibility\\_-\\_protection\\_granted\\_en.pdf](#)

<sup>8</sup> Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection - <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32011L0051&from=EN>

<sup>9</sup> The 1951 Convention relating to the Status of Refugees and its 1967 Protocol - <https://www.unhcr.org/3b66c2aa10>

<sup>10</sup> Discussion Paper - [https://www.unhcr.org/cy/wp-content/uploads/sites/41/2018/02/integration\\_discussion\\_paper\\_July\\_2014\\_EN.pdf](https://www.unhcr.org/cy/wp-content/uploads/sites/41/2018/02/integration_discussion_paper_July_2014_EN.pdf)

<sup>11</sup> Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0378>

<sup>12</sup> Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009L0050>

<sup>13</sup> 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 - <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:375:0012:0018:EN:PDF>

<sup>14</sup> Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research - <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:289:0015:0022:EN:PDF>

respective domestic legislation of each country, especially when the Directive 2016/801 itself does not require for Member States to reject an application from a third-country citizen if



he/she is a refugee and gives the freedom for them to provide possibilities for a voluntary service outside its scope. However, as the ESC is a European instrument, let's take a look first at its structure and principles.

The European Solidarity Corps is a EU initiative which creates opportunities for young people to volunteer or work in projects that benefit communities and people around Europe.

According to its programme guide, the requirements for those who want to apply as volunteers include age (between 18 and 30) and legal residence in a EU Member State or any other from the exhaustive list<sup>15</sup>. Leaving aside the fact that the latter consists of not a small number of countries outside the EU, the term "residing" used in the ESC Guide should not be narrowly interpreted as citizenship but expansively, including temporary residence permit which every refugee recognised on EU territory receives. The foundation for this interpretation can be found in the preamble of the ESC Regulation where it is stated: "Participants and participating organisations should feel that they belong to a community of individuals and entities committed to enhancing solidarity across Europe *and beyond*." (emphasis added)<sup>16</sup>.

In addition, the ESC principles as comprehensively written in its Guide, incorporate equal treatment, equal opportunities and non-discrimination, as well as social inclusion which must be promoted by facilitating the access to young people with fewer opportunities. The latter include people in a disadvantaged position because of different obstacles, one of which are cultural differences. According to the Guide these are related precisely to immigrants or refugees.

Are these principles incorporated in the German legislation? The ESC Regulation follows the direct application in Germany as a Member State but, nevertheless, every country has the authority to establish its own position regarding the residence permits issued to ESC volunteers. According to the German Residence Act a residence permit is generally required for an ESC volunteer service but such is not issued to foreigners who enjoy international protection in another Member State<sup>17</sup>.

What is the reading of that law? Does it mean that a refugee cannot participate in an ESC voluntary service in Germany? Or are they still allowed to do it, but do not need a second

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<sup>15</sup> European Solidarity Corps Guide, 2020, p.12-13 -

[https://ec.europa.eu/youth/sites/youth/files/european-solidarity-corps-guide\\_2020\\_en.pdf](https://ec.europa.eu/youth/sites/youth/files/european-solidarity-corps-guide_2020_en.pdf)

<sup>16</sup> Regulation (EU) 2018/1475 of the European Parliament and of the Council of 2 October 2018 laying down the legal framework of the European Solidarity Corps - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1475>

<sup>17</sup> Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Aufenthaltsgesetz - AufenthG), § 19f (1) - [https://www.gesetze-im-internet.de/aufenthg\\_2004/\\_19f.html](https://www.gesetze-im-internet.de/aufenthg_2004/_19f.html)

residence permit as they already have one, issued by the Member State which provided them with an international protection? The unclear text of the law brings a lot of questions,



especially since it does not correspond with Germany's most comprehensive policy approach among all European countries to facilitate young asylum seekers and refugees in their path to youth activities<sup>18</sup>.

Because all of the above mentioned, the German legislation should be clarified - is it required to use a notification procedure like in the case for students and short-term researchers<sup>19</sup> or can refugees participate as volunteers in the ESC, even if outside the scope of the previously reviewed Directive 2016/801, or are they not allowed to take part in the ESC volunteer programmes at all?

In all cases the need for a legal change, both on European and German level, is obvious, because it is against the principles of the Union and the ESC for the refugees to be hindered to exercise their rights. On the contrary, each Member State's legislation must resolve "any administrative issues that create difficulties in obtaining visas and residence permits", as stated in the ESC Regulation in order to provide equal access and easily accessible opportunities to engage in high-quality solidarity activities, in particular for the participation of young people with fewer opportunities.

Otherwise the goal of the Directive, stated in its proposal - "to facilitate the intra-Union mobility of third-country national volunteers where volunteering programmes cover more than one Member State" will remain unfulfilled<sup>20</sup>.

"Does that contribute to the 'vigorous integration policy' our political leaders had in mind in Tampere?"<sup>21</sup> is a question asked by more than one migration activist. Unfortunately, currently the answer is just one legal paradox.

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<sup>18</sup> Integrating asylum seekers and refugees into higher education in Europe. National policies and measures, Eurydice (Education, Audiovisual and Culture Executive Agency), p. 13 - <https://op.europa.eu/en/publication-detail/-/publication/f1bfa322-38cd-11e9-8d04-01aa75ed71a1/language-en/format-PDF/>

<sup>19</sup> Implementation of the Researchers and Students EU Directive (2016/801) in Germany, September, 2018 p.8 - [http://www.emnluxembourg.lu/wp-content/uploads/2018/08/Implementation-of-the-Researchers-and-Students-EU-Directive-20016.801-in-Germany\\_-Mirjam-Monteiro.pdf](http://www.emnluxembourg.lu/wp-content/uploads/2018/08/Implementation-of-the-Researchers-and-Students-EU-Directive-20016.801-in-Germany_-Mirjam-Monteiro.pdf)

<sup>20</sup> Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing COM/2013/0151 final - 2013/0081 - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52013PC0151>

<sup>21</sup> Equal treatment of workers from third countries: the added value of the Single Permit Directive, *Kees Groenendijk*.

*Immigration, Integration and the Law: The Intersection of Domestic, EU and international legal regimes, Clíodhna Murphy.*

