



COUNCIL CONSEIL
OF EUROPE DE L'EUROPE

Committee of Ministers
Comité des Ministres

**Recommendation Rec(2006)9
of the Committee of Ministers to member states
on the admission, rights and obligations of migrant students
and co-operation with countries of origin**

*(Adopted by the Committee of Ministers on 12 July 2006
at the 971st meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Recalling the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, and, in particular, its Article 8, which guarantees the right to respect for private and family life, its Article 14, which sets forth the principle of non-discrimination with regard to the rights granted, Article 2 of Protocol No. 11, which stipulates that no person shall be denied the right to education, Article 2 of Protocol No. 4, which guarantees freedom of movement, Article 1 of Protocol No. 12, which prohibits discrimination, as well as the relevant case law of the European Court of Human Rights;

Recalling the 1997 Convention on the Recognition of Qualifications concerning Higher Education in the European Region, which aims to facilitate the recognition in one state of qualifications granted in another state;

Taking note of the Council Directive of the European Union 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;

Recognising that the right to education is a fundamental principle of human rights, and that higher education, which is instrumental in the pursuit and advancement of knowledge, constitutes an exceptionally rich cultural and scientific asset for both individuals and society;

Considering that for countries of origin and, in particular, for developing countries human capital is an important resource that can contribute to their sustainable development and social and economic progress;

Considering that the mobility of migrant students contributes to peace, mutual understanding and tolerance, and creates mutual confidence among peoples and nations;

Recognising that the mobility of migrant students aims to increase their professional qualifications and skills;

Affirming the need to improve the legal status of migrant students and to facilitate their access to educational institutions and educational resources and to social and economic rights in the member states on conditions similar to those of national students;

Taking into account Recommendation No. R (84) 13 of the Committee of Ministers to member states concerning the situation of foreign students;

Recalling that at the 7th Conference of European Ministers responsible for Migration Affairs of the Council of Europe, the Ministers recommended to the Committee of Ministers to strengthen the dialogue and partnership between member states and, when relevant, with non-member states on migration issues;

Recommends that the governments of member states apply the principles set out below in their legislation and administrative practice.

Recalls that this recommendation does not prevent a member state granting a more favourable legal status to foreign nationals who apply for admission or have already been admitted for study purposes.

Recommends member states to bring the principles of this recommendation to the attention of the relevant bodies in their respective countries through the appropriate channels.

Encourages member states not having yet done so to ratify the European Convention on Social and Medical Assistance and its Protocol (1953), the European Convention on Establishment (1955), the European Convention on the Legal Status of Migrant Workers (1977), the Convention on the Participation of Foreigners in Public Life at Local Level (1992), the European Convention on the Exercise of Children's Rights (1996), the revised European Social Charter (1996) and the European Convention on Nationality (1997).

Appendix to Recommendation Rec(2006)9 on the admission, rights and obligations of migrant students and co-operation with countries of origin

I. Scope of application

1. This recommendation applies to migrant students¹ wishing to pursue studies in an institution of higher education in a member state of the Council of Europe.

2. For the purposes of this recommendation, the term "migrant student" covers any foreign national, including those originating from developing countries and stateless persons where:

– he has been admitted to an institution of higher education in a member state in order to pursue, as his main activity, a course of full-time study; and

– he will pursue or is pursuing a course of study that will lead to the award of a qualification recognised in accordance with the legislation and/or administrative practice of the member state concerned or a preparatory programme for studies of this type; and

– he is requesting admission to the territory of the member state concerned in order to pursue the course of study or has already been so admitted.

3. For the purposes of this recommendation, the expression "institution of higher education" refers to a public or private institution which is recognised, or whose curriculum is recognised by a member state and which is considered to be of higher education level, in accordance with the legislation and/or administrative practice of the member state concerned.

4. Member states may, by adjusting its content accordingly and with due regard to its principles, extend this recommendation to persons seeking admission to their territory, or who are already so admitted, for the purposes of studies other than those mentioned above, including unpaid vocational training aimed at improving their skills.

II. Conditions of admission

1. A migrant student should be admitted to the territory of a member state if he satisfies the conditions set out below.

³ For the purpose of clarity the masculine gender is used to refer to both male and female migrant students throughout the text.

- a. He holds a valid travel document in accordance with the legislation or administrative practice of the member state concerned, including a visa, if necessary.
 - b. He holds a certificate of acceptance as a student at an institution of higher education.
 - c. He is able to demonstrate, if so requested by the member state concerned, a sufficient knowledge of the language in which the course of study he intends to pursue is to be taught.
 - d. He is able to demonstrate that for the duration of his stay he will have the necessary resources to cover his living costs, the costs of his studies and the costs of return to his country of origin.
 - i. Member states may require that the financial resources of the migrant student are at least equal to the minimum monthly amount which each member state establishes and publishes for reference purposes in connection with admission for study purposes.
 - ii. Member states should refrain from requiring the migrant student to deposit a sum of money in a bank account of such an amount as to constitute an unreasonable financial obstacle to his admission.
 - iii. Member states should consider taking into account the resources in kind that the migrant student may have at his disposal during his stay and/or potential earnings from lawful, paid employment as specified in section VII.
 - e. He possesses health insurance covering all the risks, including maternity and invalidity, usually covered by the social security system of the member state concerned, unless he is covered by such insurance in his capacity as a student.
2. The entry and/or stay of a migrant student whose presence would constitute a threat to public order, public security or public health may be refused.

III. Residence permits²

1. A residence permit issued to a migrant student should be valid for a minimum of one year, unless the duration of the course is less than one year.
2. A residence permit should be renewed if the migrant student continues to meet the conditions of admission specified in section II and is making sufficient progress in his studies in accordance with the legislation or administrative practice of the member state concerned.
3. A residence permit may be withdrawn or not renewed if the migrant student no longer satisfies the conditions set out in section II and/or it was fraudulently obtained.
4. A residence permit may be withdrawn or not renewed if the migrant student fails to abide by the rules governing employment specified in section VII.

IV. Procedure

1. With a view to establishing a fast-track admission procedure, member states should, where possible, encourage formal agreements between the national authority responsible for admitting migrant students to their territory and institutions of higher education.
2. Member states should publish information on the average length of time that is required to process duly completed applications for admission.

⁴ The term "residence permit" covers any permission to stay on the territory of the member state.

3. All decisions concerning applications for admission to the territory or for the renewal of residence permits should be taken and communicated to the migrant student within a reasonable time and, in any event, not so as to hinder his course of study.

4. In the event of a negative decision the migrant student should be informed of the available legal remedies and the relevant time limits provided for by the legislation of the member state concerned.

V. Appeals

Member states should, in accordance with their legislation, provide migrant students with the right to contest all decisions concerning the student's admission to the territory or the grant of a residence permit.

a. In the case of a refusal to admit to the territory of the host country, the member state concerned should, as far as possible, enable the migrant student to benefit from a simplified or accelerated administrative appeals procedure.

b. In the case of the refusal, non-renewal or withdrawal of a residence permit, there should be a right to appeal to an administrative body or, where possible, to a court.

VI. Access to rights

1. Migrant students lawfully present on the territory of a member state and/or to whom a residence permit has been issued should be entitled to enter and exit the state.

Member states should facilitate the freedom of movement of migrant students, as provided by national legislation, by establishing, wherever possible, a fast-track procedure with regard to entry, exit and transit visas.

2. During their stay, migrant students should have access to health care.

Member states should allow migrant students to contract health insurance covering all risks (including maternity and invalidity).

Migrant students temporarily without sufficient resources should have access to social and medical assistance as provided by national legislation and international agreements in force.

3. Migrant students should have access, under conditions provided by the national legislation in the host country, to student university accommodation or, if none is available, to social housing.

4. Migrant students admitted to a member state should have the possibility to pursue part of their course of study in an institution of higher education situated in another member state or to take part in an exchange programme in accordance with the national legislation of the member states concerned.

VII. Employment opportunities

1. Outside their study time, migrant students should be entitled to be employed or undertake self-employed economic activity. This possibility to work should be subject to the national legislation or administrative practice applicable to the relevant activity in the host country and, where appropriate, in accordance with bilateral agreements and/or the migrant student's contract. The situation of the labour market in the host country may be taken into account in deciding whether or not to allow migrant students to work.

a. Where necessary, member states should grant migrant students and/or employers prior authorisation in accordance with national legislation.

b. In order to improve the qualifications and professional skills of migrant students, member states should facilitate work that is related to their studies.

c. Member states should allow migrant students to work full-time during the holiday period of their institution of higher education.

2. Member states may allow the migrant student to look for work after completing his studies and be employed for a limited period of time if this possibility is foreseen in the national legislation of the host country.

However, if the migrant student has benefited from a co-operation programme or scholarship, before granting him permission to work, the member state concerned should contact the authorities of the student's country of origin.

3. Member states should ensure that migrant students, before they accept an employment offer, have access to all necessary information regarding the conditions of work and stay in the host country.

4. Member states should consider extending the above-mentioned principles to vocational training.

VIII. Co-operation with countries of origin, including member states – return and reintegration

1. Member states should co-operate closely with countries of origin with a view to establishing together training and qualification programmes of particular interest for these countries, a preferential system of scholarships and programmes aimed at facilitating the successful reintegration of migrant students in their countries of origin.

2. Member states should adopt, if necessary, measures aimed at encouraging migrant students to return to their countries of origin after completing their programme of study, especially those who have benefited from co-operation programmes or scholarships financed either by their country of origin or by the host country.

3. Where possible, member states should consider establishing, in co-operation with countries of origin, a special fund to facilitate the return and the reintegration of migrant students.

4. Member states should conclude agreements with countries of origin with a view to ensuring that skills and/or diplomas acquired by migrant students in the host country are recognised in their own country of origin.

IX. Transparency

Each member state should make available to the public, in particular on the Internet, a full range of detailed and regularly updated information on the institutions of higher education covered by this recommendation and the courses of study to which foreign nationals can be admitted, as well as the conditions and procedures for entry and stay on its territory for study purposes and the rights of migrant students.

X. Bilateral or multilateral agreements governing the admission of migrant students

Member states should ensure that the principles of this recommendation are respected in all multilateral or bilateral agreements with other member states or non-member states governing the admission of migrant students.