



AD HOC QUERY ON 2021.1 Article 15 of the Directive (EU) 2016/801 - voluntary service scheme or trainees

Requested by EMN NCP France on 7 January 2021

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden (22 in Total)

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1. Background information

France would like to know which MS has implemented Article 15 of the Directive (EU) 2016/801 related to an approval procedure for higher education institutions, education establishments, organisations responsible for a voluntary service scheme or entities hosting trainees.

2. Questions

1. Please indicate whether your MS has implemented an approval procedure for higher education institutions, education establishments, organisations responsible for a voluntary service scheme or entities hosting trainees? YES / NO

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2. if YES, can you please briefly describe the approval procedure?

We would very much appreciate your responses by **5 February 2021**.

3. Responses

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		Wider Dissemination ²	
	EMN NCP Austria	Yes	1. No (see Art. 64 Settlement and Residence Act as well as Bassermann, Attracting and Retaining International Students in Austria, p. 29 et seq.) 2.
	EMN NCP Belgium	Yes	1. No, Belgium did not transpose Art. 15 of Directive 2016/801. The provision has been interpreted as having regard to a specific approval procedure for higher education institutions wishing to host students from third countries, different from the existing lists of recognised and subsidised higher education institutions established by the Communities in Belgium.

¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."





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			2. N/A
	EMN NCP Bulgaria	Yes	1. No 2. N/A
	EMN NCP Croatia	Yes	1. No 2. N/A
	EMN NCP Cyprus	Yes	1. Yes. 2. The law transposing the Directive (EU) 2016/801 provides that there is an approval procedure. However it states the approval is granted according to the national law. This means in practice that no additional approval is required, other than the initial registration at the national competent authority of higher education institutions, education establishments, (by the Ministry of Education, Culture, Sports and Youth) organisations responsible for a voluntary service scheme (by Ministry of Interior) or entities hosting trainees (by Research & Innovation Foundation).
	EMN NCP Czech Republic	Yes	1. No, the Czech Republic has not introduced an approval procedure for higher education institutions, education establishments, organisations responsible for a voluntary service scheme or entities hosting trainees. It is voluntary. 2. N/A


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	EMN NCP Estonia	Yes	1. No. 2. N/A
	EMN NCP France	Yes	1. France has not implemented any approval procedure for higher education institutions hosting foreign students. 2. n/a
	EMN NCP Germany	Yes	1. No. 2. n/a
	EMN NCP Hungary	Yes	1. YES 2. Traineeship - Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals Host entities are required to notify the immigration authority in advance of their intention to set up and operate a traineeship program, and shall report changes in the information thus provided. Host entities shall submit the notification by way of electronic means following electronic identification. This notification shall include: a) the host entity's name, registered office and tax number; b) the name and the beginning and end of the traineeship program; c) the content of the traineeship program.





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			<p>The immigration authority shall refuse the registration of a host entity and/or a traineeship program, and shall remove the host entity and/or the traineeship program from the records if the notification does not meet the requested conditions or the trainee is admitted for purposes other than the scope of activities shown in the register of companies of the host entity. The immigration authority may request the opinion of the ministries concerned having regard to the nature of the employment, including trade associations, and also from the employment authority and the government employment agency. The requested party shall send its opinion to the immigration authority within five working days.</p> <p>If the host entity fails to comply with the notification requirement, the immigration authority shall bring a resolution - taking into account the gravity of the infringement - to remove the host entity from the register of host entities and shall ban the host entity in question from hosting trainees for up to one year.</p> <p>Voluntary service scheme - Act LXXXVIII of 2005 on Volunteers</p> <p>The host entity must notify in advance the Ministry responsible for family policy on the admission of volunteers at least 15 days before the start of the voluntary activity. The Ministry shall keep the register of data submitted in the interest of public access of host organizations and the protection of volunteers. The registration data is passed to job safety and labour inspection authorities to determine whether the utilization of volunteers is in compliance with legal rules.</p> <p>If non-compliance is determined by the authorities, the Ministry may prohibit the admission of volunteers for the entity for up to one year.</p>
	<p>EMN NCP Ireland</p>	<p>Yes</p>	<p>1. Ireland does not participate in EU Directive 2016/801.</p> <p>2.</p>

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	EMN NCP Italy	Yes	<p>1. No. Italy has implemented the Directive (EU) 2016/801 with the Legislative Decree n. 71/2018, but no specific approval procedure for higher education institutions and others has been adopted (art. 15 represents a “may provision”).</p> <p>2.</p>
	EMN NCP Latvia	Yes	<p>1. Latvia has not introduced any approval procedures for higher education institutions, education establishments, and organizations responsible for a voluntary service scheme or entities hosting trainees and is not planning to introduce them in the nearest future.</p> <p>2. N/a</p>
	EMN NCP Lithuania	Yes	<p>1. No.</p> <p>2. N/A</p>
	EMN NCP Luxembourg	Yes	<p>1. YES.</p> <p>2. The procedures for approving higher education institutions, education establishments, and the organization responsible for a voluntary service scheme are regulated by the amended law of 19 June 2009 on the organization of higher education and the law of 31 October 2007 on volunteering.</p> <p>1. Voluntary service schemes:</p> <p>Article 3 of the amended law of 31 October 2007 lays down the procedure for these institutions'</p>

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			<p>approval.</p> <p>Bodies under public or private law established in Luxembourg may be approved by the Minister responsible for Youth, as host organisations offering voluntary services to young people in Luxembourg or as sending organisations offering voluntary services to young people abroad.</p> <p>The organization must file a request in which it specifies the reasons justifying invoking volunteers, the nature of the missions to be entrusted to them and the organisation's capacity to take charge of the volunteers. The manager(s) of the organisation applying for approval must meet the requirements of good repute, which is assessed on the basis of their criminal record, to be established by means of an extract from the criminal record or a certificate in its place (affidavit).</p> <p>The applicant must also prove its capacity to organise voluntary services by establishing that it has the human, organisational resources and financial capacity to organise voluntary services for the person or persons it assigns to a particular voluntary service.</p> <p>The Minister based on the opinion of the Voluntary service support committee (see article 7 of the law) will grant approval to the applicant. This approval shall be granted for a period of three years and may be renewed for consecutive terms of the same duration. The authorisation sets the maximum number of volunteers that the organisation may occupy.</p> <p>This approval may be withdrawn if the organization ceases to fulfil the conditions of approval or if, by its actions, it endangers the safety of the volunteer or his physical or mental health. It may also be withdrawn when the organisation does not respect its commitments resulting from the voluntary agreements concluded with the volunteers.</p> <p>The approved organisation shall provide the National Youth Service with a copy of each voluntary service agreement, an annual report on the volunteers' activities, and a final report on each voluntary service. It may at any time be audited by the National Youth Service and shall make all supporting documents and evidence available to it.</p>
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			<p>2. Higher education institutions</p> <p>Articles 27 to 35 of the amended Law of 19 June 2009 deal with the procedure for the accreditation of foreign higher education institutions.</p> <p>Any higher education diploma issued on the territory of the Grand Duchy of Luxembourg by a foreign, public or private, higher education institution, under the sole responsibility of this institution by opening a subsidiary in Grand Duchy of Luxembourg or within the framework of a partnership with a Luxembourg body, shall be issued within the framework of an academic programme accredited in the Grand Duchy of Luxembourg.</p> <p>The latter shall be provided by an institution accredited in the Grand Duchy of Luxembourg. (Art.27)</p> <p>The used accreditation procedure shall allow assessing the morality of the promoters, the morality and the qualifications of the directors of the foreign higher education institution as defined under article 27 and the qualifications of the teachers, the level, the content and the scientific nature of the courses, the appropriateness of the academic programme, the names and modalities of the diplomas, the material soundness of the institution and the relation between its services and its financial requirements. The quality standards in this regard shall comply with the best international accreditation practices. (Art.28)</p> <p>The accreditation of an academic programme is subject to the joint accreditation of the institution providing such programme.</p> <p>A higher education institution may be accredited in one of the following two categories:</p> <ol style="list-style-type: none">1. university of subsidiary of a university,2. specialised higher education institution or subsidiary of a specialised higher education institution. <ol style="list-style-type: none">1. academic programmes leading to the “brevet de technicien supérieur” (Advanced Technician Certificate);2. academic programmes leading to the Bachelor’s degree;3. academic programmes leading to the Master’s degree;
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			<p>4. academic programmes leading to the PhD.</p> <p>Academic programmes leading to one of these diplomas and degrees are recognised in the Grand Duchy of Luxembourg by virtue of the accreditation granted to the institutions and academic programmes. (Art.28bis.)</p> <p>Accreditation applications are considered admissible if the foreign higher education institution intending to provide one or more academic programmes either through the creation of a subsidiary in the Grand Duchy of Luxembourg or within the frame of a partnership with a Luxembourg body, meets the following conditions:</p> <ol style="list-style-type: none">1. it is a legal entity and provides academic programmes at higher education level;2. it conducts teaching and research activities;3. it has resources with regard to staff, infrastructure and equipment adapted to higher education and research;4. it has a business and operating plan covering the planned duration of the accreditation as well as an impact study on the opportunity of the training. (Art.29) <p>The minister in charge of higher education appoints a quality assurance agency specialised in the accreditation of higher education institutions and academic programmes registered with the European Quality Assurance Register for Higher Education (EQAR). The agency performs the assessment for the accreditation of the institution and the academic programme in compliance with the provisions of articles 28, 28bis and 28ter. The accreditation criteria are specified by grand ducal regulation.</p> <p>On the basis of a report, the agency submits a proposal to the minister regarding the accreditation.</p> <p>The Minister is assisted by an advisory group comprising five members with extensive knowledge in the accreditation of higher education institutions and academic programmes. (Art.30)</p> <p>The Minister takes one of the following decisions:</p> <ul style="list-style-type: none">• accreditation;
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			<ul style="list-style-type: none"> • accreditation with conditions; • refusal of accreditation. (Art.31) <p>The accreditation is valid for five years. The same term applies for the accreditation with conditions provided that the latter were met within the imparted deadlines.</p> <p>The accreditation is extended for a further period of five years if the conditions necessary for obtaining such accreditation continue to be fulfilled (reaccreditation procedure).</p> <p>The accreditation is withdrawn in case the activity is voluntarily stopped for more than one year or in case the accreditation is not used for more than two years after it was granted. (Art.33)</p>
	EMN NCP Netherlands	Yes	<p>1. Yes, article 15 of Directive (EU) 2016/801 has been partially implemented.</p> <p>2. Article 15 of Directive (EU) 2016/801 has been partially implemented: only recognized sponsors (erkend referenten) can apply for a resident permit for cultural exchange (which includes voluntary service scheme) or study.[1] Recognized sponsorship is not mandatory for companies or institutions that want to apply for a residence permit for trainees.</p> <p>In the Netherlands recognition as a sponsor is divided into 4 categories: for labour, research, study and cultural exchange. Each category recognition must be applied for separately. Educational institutions and exchange organisations, can file a request to become a recognized sponsor.</p> <p>To become a recognized sponsor, they have to meet certain general conditions and also certain specific conditions, depending on the category/purpose of the recognition.</p> <p>The general conditions[2] for all organisations (including companies who are hiring researchers and highly-skilled migrants) are:</p> <ul style="list-style-type: none"> • The organisation is listed in the Commercial Register in the Netherlands. This is not needed if the Commercial Registers Act 2007 does not require this.


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			<ul style="list-style-type: none">• If the organization is an au pair agency located in an EU/EEA Member State, then the au pair agency is registered in the commercial register of that Member State. This is not required when registration in the commercial register is not necessary or possible.• The continuity and solvency of the organisation is sufficiently guaranteed.• The organisation may not be bankrupt. Nor may there be a suspension of payment.• The organisation, the directors and other natural persons/legal entities involved in the organisation are reliable.• The organisation meets the Code of Conduct that applies to that organisation. For example, an organisation in job placement or that provide manpower, should be registered with the Stichting Normering Arbeid (Association Labour Standards). <p>Additional specific conditions for educational institutions[3] depend on the sort of the school. For example, with regard to higher education schools, the following criteria have to be met:</p> <ul style="list-style-type: none">• the educational institution offers accredited (NVAO quality mark) higher education (higher professional education or university education) as referred to in the Higher Education and Research Act.• One of the following situations applies:<ul style="list-style-type: none">○ The educational institution has signed the Code of Conduct for international students in Higher Education.○ the educational institution provides educational programmes in relation to the development cooperation policy of the Dutch Ministry of Foreign Affairs.○ the educational institution provides educational programmes in relation to the Cultural Policy Act. <p>Additional specific conditions for cultural exchange[4] are:</p> <ul style="list-style-type: none">• The organization has a cultural objective.• The organisation is implementing an exchange program that has been approved by the Minister for Migration.
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			<p>The sponsor then fills out the request forms, pays for the request, and then awaits whether or not the Immigration and Naturalization Service (Immigratie en Naturalisatie Dienst, IND) grants the request. After the organisation has been recognised, it will be entered in the Public Register for Recognised Sponsors.</p> <p>Once a sponsor has become recognized, it can request residence permits for third country nationals who will move to the Netherlands as, student, researcher or as an au pair or for voluntary work within the context of the European Solidarity Corps.</p> <p>[1] Staatsblad 2018, 107 Overheid.nl > Officiële bekendmakingen (officielebekendmakingen.nl) [2] https://ind.nl/en/Pages/General-conditions-recognised-sponsors.aspx [3] https://ind.nl/en/study/Pages/Educational-institution.aspx [4] https://ind.nl/en/exchange/Pages/Exchange-agency.aspx</p>
	<p>EMN NCP Poland</p>	<p>Yes</p>	<p>1. yes, (since 30.03.2019)</p> <p>2. Course of the proceedings: The basis for the interested party to apply for approval for the purposes of admitting foreigners to undertake or continue studies and for the purposes of conducting scientific research or development works constitute art. 144 paragraph 4 and art. 151 paragraph. 4 of the Act of 12 December 2013 on foreigners (Journal of Laws of 2020, item 35, as amended). According to the above mentioned articles of Act on foreigners, both a unit conducting the studies for the purposes of admitting foreigners for the purpose of undertaking or continuing studies as well as a scientific for the purposes of admitting foreigners for the purpose of conducting research or development work, are approved at the request of those units. In both cases the unit must meet the following all conditions:</p>





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			<p>1) the unit conducting the studies has existed for at least 5 years before submitting the application and during that time it conducted activities consisting in conducting studies (respectively: the research unit has existed for at least 5 years before submitting the application and during this time it has been conducting research activities independently and continuously;</p> <p>2) it is not against the national defense or security or the protection of public safety and order;</p> <p>3) it is not against the interest of the Republic of Poland.</p> <p>The minister responsible for internal affairs, before issuing a decision on approving the unit, addresses the Commander in Chief of the Border Guard, the Police Commander in Chief, the Head of the Internal Security Agency and the minister responsible for foreign affairs, and, if necessary, also to other authorities (e.g. the minister competent for science and higher education), to provide information on whether there are circumstances relevant to the assessment of compliance with the provisions of the Act of Foreigners.</p> <p>The basis for applying for approval for the admission of foreigners to undertake an internship is included in Art. 157a paragraph. 6 of the Act on Foreigners, while art. 157 g of paragraph 1. 1 point 3 above the Act concerns applications for approval for the admission of foreigners as volunteers. In both cases, the entity concerned must meet the conditions set out in the Act relating to its activities and other conditions that are essentially the same for all applicants. The proceedings along with the opinion-giving phase are analogous to that described above, with the exception of the minister responsible for science and higher education.</p> <p>Termination of the procedure:</p> <p>The procedure is completed by issuing a decision on the basis of which the unit conducting the studies is approved for the purposes of admitting foreigners to undertake or continue studies, in accordance with the Act, the maximum approval period is 5 years; a similar solution is adopted for research units admitting foreigners. On the other hand, the internship organizer for the purpose of admitting foreigners to undertake an internship is approved for a period of 2 years; similarly, the organizational unit hosting volunteers.</p> <p>Additional information:</p>
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			<p>The applicant has the right to appeal against a negative decision (respectively: application for reconsideration of the case or for taking legal action). In case of objections from the opinioning entities, it is possible to approve the applicant for a period shorter than the maximum specified in the Act. This allows the opinion bodies to "re" verify the case. Generally, those seeking approval for an internship or voluntary service are NGOs, but research entities and research institutes and universities also apply for approval. Thus, it is possible for one applicant to submit the will to be approved as the entity accepting foreigners in all cases or selected cases indicated in the Act (according to the business profile).</p>
	EMN NCP Portugal	Yes	<p>1. No. The directive was transposed but there is no approval procedure as such.</p> <p>2. NA</p>
	EMN NCP Slovakia	Yes	<p>1. No.</p> <p>2. N/A</p>
	EMN NCP Slovenia	Yes	<p>1. No, the approval procedure has not yet been implemented.</p> <p>2.</p>
	EMN NCP Spain	Yes	<p>1. No. The Royal Decree-Law 11/2018, of August 31st (https://www.boe.es/buscar/doc.php?id=BOE-A-2018-12131) has carried out the transposition, among others, of the EU Directive 2016/801 of 11</p>

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			<p>May 2016 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.</p> <p>This Royal Decree-Law has modified or derogated the current legislation/regulation on these matters (Law 14/2013, of the 27th September, for supporting entrepreneurs and their internalization (https://www.boe.es/buscar/act.php?id=BOE-A-2013-10074) and the Royal Decree 557/2011, of 20th April, current Regulations of the Organic Law 4/2000, on rights and liberties of aliens in Spain and their social integration (https://www.boe.es/buscar/act.php?id=BOE-A-2011-7703), but has not established a specific approval procedure for higher institutions, education establishments, organisations responsible for a voluntary service scheme or entities hosting trainees.</p> <p>We are currently working to implement this type of procedure, although we are at a very preliminary stage</p> <p>2.</p>
	<p>EMN NCP Sweden</p>	<p>Yes</p>	<p>1. No</p> <p>2. Not applicable</p>