

Procedure file

Basic information		
CNS - Consultation procedure Directive	2004/0061(CNS)	Procedure completed
Scientific research: admission to the Community by third-country national researchers, improving mobility Repealed by 2013/0081(COD)		
Subject 2.20.01 Freedom of movement, right of residence, identity checks 3.50.06 Research staff, researchers		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	LIBE Civil Liberties, Justice and Home Affairs		05/10/2004
		PSE PEILLON Vincent	
	Committee for opinion	Rapporteur for opinion	Appointed
	ITRE Industry, Research and Energy		07/10/2004
		PPE-DE VAKALIS Nikolaos	
Council of the European Union	Council configuration	Meeting	Date
	Justice and Home Affairs (JHA)	2683	12/10/2005
	Competitiveness (Internal Market, Industry, Research and Space)	2665	06/06/2005
	Competitiveness (Internal Market, Industry, Research and Space)	2653	18/04/2005
	Justice and Home Affairs (JHA)	2618	19/11/2004
	Justice and Home Affairs (JHA)	2588	08/06/2004
European Commission	Commission DG	Commissioner	
	Justice and Consumers		

Key events			
16/03/2004	Legislative proposal published	COM(2004)0178	Summary
08/06/2004	Debate in Council	2588	
15/09/2004	Committee referral announced in Parliament		
19/11/2004	Debate in Council	2618	
16/03/2005	Vote in committee		
	Additional information		Summary

16/03/2005			
18/03/2005	Committee report tabled for plenary, 1st reading/single reading		
01/04/2005	Committee report tabled for plenary, 1st reading/single reading	A6-0054/2005	
12/04/2005	Results of vote in Parliament		
12/04/2005	Decision by Parliament	T6-0087/2005	Summary
18/04/2005	Debate in Council	2653	
06/06/2005	Debate in Council	2665	
12/10/2005	Act adopted by Council after consultation of Parliament		
12/10/2005	End of procedure in Parliament		
03/11/2005	Final act published in Official Journal		

Technical information

Procedure reference	2004/0061(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
	Repealed by 2013/0081(COD)
Legal basis	EC Treaty (after Amsterdam) EC 063
Stage reached in procedure	Procedure completed

Documentation gateway

Legislative proposal		COM(2004)0178	16/03/2004	EC	Summary
Economic and Social Committee: opinion, report		CES1434/2004 OJ C 120 20.05.2005, p. 0060-0063	27/10/2004	ESC	
Committee of the Regions: opinion		CDR0168/2004 OJ C 071 22.03.2005, p. 0006-0010	17/11/2004	CofR	
Committee opinion	ITRE	PE350.101	22/02/2005	EP	
Committee report tabled for plenary, 1st reading/single reading		A6-0054/2005	01/04/2005	EP	
Text adopted by Parliament, 1st reading/single reading		T6-0087/2005 OJ C 033 09.02.2006, p. 0026-0146 E	12/04/2005	EP	Summary
Follow-up document		COM(2011)0901	20/12/2011	EC	Summary

Additional information

European Commission	EUR-Lex
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Final act

Scientific research: admission to the Community by third-country national researchers, improving mobility

PURPOSE : a specific procedure for admitting third-country nationals into the EU for scientific research purposes **PROPOSED ACT :** Council Directive. **CONTENT :** this proposed Council Directive seeks to fulfil the Lisbon Agenda's pledge to make the European Union the most competitive and dynamic knowledge-based economy in the world by 2010. It proposes to do so by making it easier for third country nationals to conduct research in the European Union. As part of the Lisbon Agenda 3% of national GDP should be devoted to R&D by 2010. To realise such an ambitious target the European Research Area would need to find an estimated 700 000 extra researchers. In the tight time frame available this is not feasible. The proposed Directive, therefore, seeks to facilitate the stay of third-country researchers in the European Union to help fill the gap. Moreover, talented researchers from non-member countries would help contribute towards making Europe the most knowledge-based economy in the world. The Directive has been drawn up by the Commission's Research Directorate but in close collaboration with the Ministries for Justice and Home Affairs in the Member States. In order to offer easier access to live and work in the EU for third-country nationals the Directive has been drawn up along the following lines: - The proposed Directive provides for the introduction of a special admission mechanism for researchers from non-member countries. Significantly, it is an authorised research organisation - and not the Member State, who plays the leading role in the procedure leading to the issuing of a residence permit. The aim is to facilitate the admission and mobility of researchers by relieving the immigration authorities in the Member States of the task of checking whether the person has the necessary skills as well as the financial means to live and work in Europe. - The authorised research organisation will be responsible for signing "hosting agreements" with third-country nationals. A hosting agreement should offer guarantees such as the ability to complete the proposed research as well as funding and/or financial guarantees. The signing of a hosting agreement will automatically trigger the admission procedure. Essentially, it is a legal contract by which the organisation undertakes to host the researcher and the researcher undertakes to complete the research project on the terms laid down and subject to the issuing of a residence permit by the immigration authorities. A separate legal instrument will be needed to determine the legal status of the third-country national (i.e. employment contract, fellowship, scholarship etc.) - The admission procedure would not impinge on the powers of the Member States immigration authorities. Thus, for example, the authorised research organisation would be responsible for assessing the research to be undertaken, the financial status of the applicant, health insurance, length of stay etc. The Member States in turn would be responsible for checking the identity and travel documents of the researcher and to ascertain whether or not they present a threat to public order, public security or public health. A threat could also include the proposed research project. The admission procedures are drawn up in such as way as to ensure that trust is built up between the research organisation and the immigration authorities. - A research organisation could mean any type of public or private establishment or firm conducting research, such as a university, a laboratory, a research centre, a foundation, a firm, an international organisation or non-governmental organisation etc. Any research organisation wishing to grant hosting agreements has to be approved. Approval arrangements differ according to whether they are involved in research as a principle activity or as an ancillary activity. An additional requirement is imposed on private organisations in order to limit the risks of the procedure being abused. If a researcher stays on illegally, the research organisation would be responsible for any extra costs incurred. Any research organisation seen to be abusing their status can have their status withdrawn by the Member States. - The proposed Directive offers a broad interpretation of a "researcher". Thus, a third-country national applying for research work need not necessarily be defined as a "researcher" in their country of origin. They could also include high-level professionals, experts or young graduates. Their application must come complete with a proposed research project, its duration, funding proposals etc. - A simplification of the conditions under which researchers can be admitted as migrants is planned. Although their tax status may vary depending on domestic law all third-country researchers will benefit from a uniform status under alien legislation. - Mobility is seen as vital to many researchers. Consequently, this Directive proposes easier mobility within the EU for non-member country researchers. The Directive allows researchers in possession of a residency permit and a passport or travel document to pursue activities related to their research project in a second Member State during the period of validity of their permit. The simplified admission procedure can easily be relaunched in the Member State in which the researcher wishes to prolong his or her research, by signing a new hosting agreement. Further, providing that he or she is in the country legally, the Directive allows for "on-the-spot" applications for a residence permit. This allows researchers to extend a short stay into a long stay. In order to speed up the procedure Member States must issue the residence permit within thirty days of the submission. - Lastly, the proposed Directive fulfils the twin principles of subsidiarity and proportionality. The Directive is binding as regards the general principles whilst giving Member States the freedom to choose the most appropriate means for applying these principles in their domestic legislation. The Directive is being proposed alongside two related Recommendations (CNS/2004/0062 and CNS/2004/0063).?

Scientific research: admission to the Community by third-country national researchers, improving mobility

EP: decision of the committee responsible, 1st reading/single reading

The committee adopted the report by Vincent PEILLON (PES, FR) broadly approving the proposal under the consultation procedure, subject to a number of amendments which took account of the text of the political agreement reached by the Council on 19 November 2004:

- approval of 'host' research organisations should not be granted for an unlimited period, but instead for a renewable period of 5 years.

However, Member States may grant approval for a longer period;

- to guard against abuses, research organisations should be required to bear any costs arising from unlawful stays by researchers for a period of 6 months after the expiry of the agreement;

- to simplify administrative formalities, Member States should issue a residence permit for the duration of the hosting agreement rather than issuing it for one year at a time and renewing it;

- whereas the Council wanted certain measures on family reunification to be optional for Member States, such as the right for direct family members (spouse or partner, children under 21 or dependent parents) to join the researcher, the committee added a new Article 7a making such provisions mandatory. It added that the host Member State should be free to apply more favourable conditions;

- as mobility is an essential factor in the transfer of knowledge and formation of scientists' networks, the visa holder should be allowed to conduct part of his/her research work in another Member State. However if the researcher wishes to stay there for more than three months, the second Member State may require a new hosting agreement.

Scientific research: admission to the Community by third-country national researchers, improving mobility

The European Parliament adopted a resolution drafted by Vincent PEILLON (PES, FR) broadly approving the proposal with some amendments. (Please see the summary of 16/03/05.) The amendments adopted aim mainly to create more favourable conditions for family reunification for foreign researchers working in the Union. To make the administrative formalities easier, Parliament proposed to bring the duration for which the residence visa is granted into line with the duration of the agreement between the researcher to a research body (instead of a duration equal to or more than one year, with the option of annual renewal, as the Commission proposed). Parliament set an upper limit of five years on the accreditation of research bodies entitled to provide host conventions to foreign researchers (which may be extended by 30 days at the request of the person concerned) and made such bodies financially responsible if the researcher remains illegally in the territory once the convention has expired. During the period of validity of his residence permit, the researcher may apply for a new hosting agreement in the same or another Member State. The new application shall be treated by a simplified procedure, which does not include examination of the condition stipulated in Article 5(2)(a)(ii), provided that the initial research organisation provides written confirmation that the work has been carried out satisfactorily up to the time of submission of the new application.

Finally, Parliament stipulated that the Commission should produce a report every two years.

Scientific research: admission to the Community by third-country national researchers, improving mobility

PURPOSE : to contribute to the achievement of the Lisbon objectives by making it easier for researchers easier to enter and move within the Community, in order to increase the attractiveness of the Community for researchers throughout the world.

LEGISLATIVE ACT : Council Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research

CONTENT : The Council adopted a Directive on a specific procedure for admitting third-country nationals for purposes of scientific research and a Recommendation to facilitate the admission of third-country nationals to carry out scientific research in the EU. The Directive and the Recommendation are completed by a third text: a Recommendation to facilitate the issue by Member States of uniform short-stay visas for researchers from third countries, which was adopted by the Council on 18 July 2005

The Directive lays down the conditions for the admission of third-country researchers to the

Member States for more than three months for the purposes of carrying out a research project under hosting agreements with research organisations.

The aim of the Directive is to foster the admission and mobility for research purposes of third country nationals in order to make the EU more attractive to researchers from around the world and to boost its position as an international centre for research.

The main elements of the directive are as follows:

Conditions for admission: the directive makes provisions for an accelerated admissions procedure for researchers from third countries. The specific procedure for researchers is based on collaboration between the research organisations and the immigration authorities in the Member States: it gives the former a key role in the admission procedure with a view to facilitating and speeding up the entry and residence of third-country researchers in the Community while preserving Member States' prerogatives with respect to immigration policing. Researchers are no longer required to produce a work permit in addition to a residence permit.

Hosting agreement: A research organisation wishing to host a researcher signs a hosting agreement with the latter whereby the researcher undertakes to complete the research project and the organisation undertakes to host the researcher for that purpose. Research organisations may sign hosting agreements only if the following conditions are met: the research project has been accepted by the relevant authorities in the organisation; during his/her stay the researcher has sufficient monthly resources to meet his/her expenses and return travel costs; during his/her stay the researcher has sickness insurance for all the risks normally covered for nationals of the Member State concerned; the hosting agreement specifies the legal relationship and working conditions of the researchers.

Equal treatment and mobility between Member States: Holders of a residence permit shall be entitled to equal treatment with nationals as regards: recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures; working conditions, including pay and dismissal; branches of social security; tax benefits; and access to goods and services and the supply of goods and services made available to the public. A third-country national who has been admitted as a researcher will be allowed to carry out part of his/her research in another Member State under the conditions set out in the Directive.

Applications for residence permits: Member States are encouraged to authorise third country researchers who are already legally in their territory to present an application for a residence permit for research directly to the authorities without having to return to their country of origin.

ENTRY INTO FORCE: 23/11/2005.

TRANSPOSITION : 12/10/2007.

Scientific research: admission to the Community by third-country national researchers, improving

The Commission presents a report on the application of Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research.

To recall, the overall aim of the Directive is to reduce obstacles to the entry and residence in the EU of third-country national researchers and to grant them intra-EU mobility rights. The Directive introduced a mechanism that was new to the then existing EU acquis in the area of migration. Specifically approved research organisations could conclude hosting agreements with researchers on the basis of which a researcher would no longer require a work permit in addition to a residence permit.

This report assesses the application of the Directive.

The legal analysis shows that Member States have transposed most of the key elements of the Directive, be it the approval of research organisations, hosting agreements or application procedures. However, the report sets out the need for improvement in certain areas - through enhanced transposition, possible amendments to the Directive and better guidance and information provision.

Definitions: basic definitions such as 'researcher' and 'research organisation' need to gain a uniform understanding in all Member States bound by the Directive. While a majority of Member States have defined 'research' and 'research organisation' in line with the Directive, less than half of Member States have done so for the definition of 'researcher'. To complete the European Research Area and increase the attractiveness of Europe as a research destination, it is important that all Member States interpret and apply the definitions in a uniform way.

Researchers rights: Member States' effective implementation of the Directive is paramount, in particular by providing clear and unambiguous definitions of researchers' rights, safeguarding them in the event of the withdrawal of a research organisation's approval, and by making clear distinctions between permits for researchers and other types of permits. The directive provides for the lapsing of the hosting agreement if a researcher is not admitted to the country or if the legal relationship between the researcher and the research organisation is terminated. Most Member States have complied. The transposition is incomplete in 2 Member States, where the lapsing of researchers residence permits is regulated rather than the lapsing of their hosting agreements.

Possible amendments to the Directive: the report points to a number of areas in which the Directive may need to be amended. These include:

- clear definitions regarding the legal quality and format of hosting agreements : in the hosting agreement the researcher undertakes to complete the research project and the research organisation undertakes to host the researcher for that purpose. Member States have addressed this provision in different ways, with the majority of countries applying only the hosting agreement, others requiring an employment contract instead of or in addition to the hosting agreement while 2 countries require only an employment contract;
- a more uniform way of updating and publishing the list of research organisations : in some Member States there are no legal obligations to publish the list, and others publish the list only in official documents which can be difficult to access. 'Regular update' is interpreted in different ways, with some updates being done only on an annual basis;
- laying down of time limits for deciding on an application: Member States are required to adopt a decision on a researchers admission as soon as possible and - where appropriate - to provide for accelerated procedures. Transposition is fully compliant in most countries, with some using the wording of the Directive whereas others set explicit time limits and 5 Member States have no provision.

The reinforced [Global Approach to Migration and Mobility](#) (GAMM) provides an appropriate context to strengthen the application of the Directive. The partnership frameworks under the GAMM, in particular mobility partnerships, will offer opportunities to attract researchers from key partner regions such as the Southern and Eastern Neighbourhood.

The need to improve and promote the Directive is underlined also by the low numbers of researchers admitted under the Directive (6,945 in 2010, many coming from India, China, the United States, the Russian Federation and Japan). This is in stark contrast to the challenges at stake. In order to meet the Europe 2020 target of increasing R&D investment to 3% of GDP, one million additional researchers will be needed. The Council calls for larger numbers of talented people to be attracted to and encouraged to remain within the European Research Area.

Attention should also be given to the objective set in the Strategy for equality between women and men 2010-2015, as there is still a large gender imbalance among researchers.

Improvements can be made in several ways. Provision of information and raising awareness of the possibilities the Directive offers are important and the Commission is playing its part, mainly through the EURAXESS portal and the network of EURAXESS Service Centres as well as the Immigration Portal. Moreover, the mobility partnerships and other cooperation tools and partnership frameworks under the GAMM will be used to further improve the provision of information and awareness raising to priority partner countries.