EUROPEAN PARLIAMENT

2004 *2009*

Committee on Industry, Research and Energy

2004/0061(CNS)

22.2.2005

OPINION

of the Committee on Industry, Research and Energy

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a Council directive on a specific procedure for admitting third-country nationals for purposes of scientific research
(COM(2004)0178 – C6-0011/2004 – 2004/0061(CNS))

Draftsman: Nikolaos Vakalis

PA_Leg

SHORT JUSTIFICATION

I. Summary of the proposal

Background: In Lisbon the European Union set itself the ambitious goal of becoming the most competitive knowledge-based economy in the world by 2010. Since Europe has so far failed to deliver and time is running out, it is absolutely necessary that new measures are introduced if we still want to achieve the Lisbon targets.

The recently released KOK report calls for immediate measures to be taken in the field of research with the ultimate purpose of constructing a European Research Area attractive enough to compete successfully with corresponding areas in the rest of the world.

Europe will need up to 700 000 more researchers until 2010 for this purpose. One of the measures that may contribute to this end is the facilitation of the admission of third-country nationals in the EU through simplified procedures for awarding residence permits and visas (in addition to further measures which should be envisaged for facilitating the repatriation of highly qualified Europeans currently working as researchers outside the Union).

The Commission's proposal: The present proposal introduces a threefold legal framework:

1) A proposal for a Directive introducing a special admission mechanism for third-country researchers.

2) Two proposals for Recommendations aiming respectively at: (i) introducing during the period needed for the transposition of the Directive into national law certain concrete measures to facilitate the admission of third-country researchers, and (ii) regulating the specific issue of short-term visas for researchers.

II. Draftsman's comments

Your draftsman welcomes the Commission's proposal and believes that the proposed instrument can be one of the means to attract and maintain researchers in Europe.

General goal:
a. Your draftsman stresses that the proposed legal instrument should be the means for attracting mainly two categories of researchers in the EU: 1) highly qualified and world-wide renowned researchers working currently in other parts of the world, and 2) young talented researchers from developing countries who will be given an opportunity to carry out research in Europe before returning to their home countries, so that Europe becomes the reference point for their further research work.

b. Your draftsman points out that **the present proposal should fully trust the research organisations and the research community in general** and therefore adopt, as far as possible, a "facilitating" approach towards them and their work instead of the "tentative" approach characterising immigration policy.

Public & private sector: It is important that the concept of "research organisation" covers not only the public, but also the private sector, since there is currently a lack of measures facilitating research by the latter despite the Barcelona target of 2% of GDP private spending on R&D. At this point, the special needs of SMEs should be given thorough consideration.

Research organisations: Research organisations play a central role in the whole admission procedure, thus easing the role of the immigration authorities. Your draftsman welcomes the proposed legal instrument as a step towards the creation of an ideal environment for research in the EU, and especially towards conditions of complete autonomy for research organisations to select research teams and set up laboratories or research centres. In return for these prerogatives, research organisations remain the financially responsible party.

Enhancing Europe's attractiveness to third-country researchers: It is of particular importance that admitted researchers enjoy special status in the hosting country and in the EU in general. Thus:
- It is vital that the admission of such researchers is independent of the requirement for a work permit.
- Mobility of such researchers within the European Research Area is instrumental to the success of the latter and must be given due consideration.
- Family members of the researcher should be granted a residence permit for the same period of time as that for which the researcher is admitted.

Bureaucracy & national impediments: Your draftsman fears that the proposed mechanism will be hampered by existing bureaucratic procedures relating, e.g., to recognition of diplomas, health and social security arrangements, tax measures etc. He draws the attention of the Member States to such complexities and to the fact that measures need to be taken in order to minimise the negative impact of such requirements on third-country researchers.

Financial support: Your draftsman feels that, in order to give real incentives for the attraction of distinguished researchers from third countries, such a proposal needs to be combined with adequate financing measures linking it to the Community research policy (e.g. both the current 6th Framework Program and the future 7th Framework Program).

Urgency for action: Given the Lisbon commitments and the limited time available, adoption of the legislative package must take place as soon as possible. If it acts quickly, Europe can also profit from the currently restrictive immigration policy of the USA.

Your draftsman regrets that the Council has already reached a political agreement on the present proposal disregarding effectively the Parliament's role in the consultation process.

AMENDMENTS

The Committee on Industry, Research and Energy calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission[1]	Amendments by Parliament
Amendment 1 Recital 4	
(4) The number of researchers which the Community will need to meet the target set by the Barcelona European Council of 3% of GDP invested in research is estimated at 700 000. This target must be met through a series of interlocking measures such as making scientific careers more attractive to young people, extending the opportunities for training and mobility in research, improving the career prospects for researchers in the Community and opening the Community up to third-country nationals who could potentially be admitted for research purposes.	(4) The number of researchers which the Community will need to meet the target set by the Barcelona European Council of 3% of GDP invested in research is estimated at 700 000 ***by 2010***. This target must be met through a series of interlocking measures such as making scientific careers more attractive to young people, extending the opportunities for training and mobility in research, improving the career prospects for researchers in the Community and opening the Community up to third-country nationals who could potentially be admitted for research purposes.
Justification	
Specification of the timeframe set by the Barcelona European Council must be made in order to stress the urgency of the proposed legislation	
Amendment 2 Recital 5	
(5) This Directive is intended to contribute to achieving these goals by fostering the admission and mobility for research purposes of third-country nationals for stays of more than three months, in order to make the Community more attractive to researchers from around the world and to boost its position as an international centre for research.	(5) This Directive is intended to contribute to achieving these goals by fostering the admission and mobility for research purposes of third-country nationals for stays of more than three months, in order to make the Community more attractive to researchers from around the world**,** ***especially those with the highest qualifications,*** and to boost its position as an

[1] Not yet published in OJ.

international centre for research.

Justification

If the EU is to compete successfully with its main competitors on the world stage in the field of research, it will have to create conditions that will motivate highly qualified scientists from the US and other non-European countries to carry out their research activities in Europe.

Amendment 3
Recital 12

(12) It is important to foster the mobility of ***researchers*** as a means of developing and consolidating contacts and networks between partners at world level.	(12) It is important to foster the mobility of ***third-country nationals admitted for the purposes of carrying out scientific research in the EU*** as a means of developing and consolidating contacts and networks between partners ***and establishing the role of the European Research Area (ERA)*** at world level.

Justification

It is essential to stress the importance of mobility and the necessary link to the European Research Area. The latter has to "earn" its role and meaning at world level and has to be seen as a pole for quality research.

Amendment 4
Recital 14 a (new)

	(14a) This Directive could make a significant improvement in the field of social security as the non-discrimination principle could also apply to persons coming to a Member State directly from a third country. Rights beyond those already provided in existing Community legislation in the field of social security for third-country nationals who move between Member States may be granted in order to facilitate the required mobility of such researchers in the ERA.

Justification

Social security requirements can significantly hinder integration of third-country researchers in the hosting Member State and considerably impede their mobility in the EU.

Amendment 5
Recital 15 a (new)

(15a) The Community should provide, also within the framework of current and future Framework Programmes, for concrete measures to support research organisations and researchers who sign a hosting agreement. Through its funding policy the Community should encourage multi-annual research programs, providing an adequate time horizon for planning research activities, including personnel requirements and securing the necessary financial resources.

Justification

The proposed legal framework needs to be combined with appropriate financing measures so that it yields substantial results. The EU needs to promote, through its research policy, multi-annual research projects completed with the aid of hosting agreements in order to maximise the benefits of the proposed legal instruments for the ERA.

Amendment 6
Article 2, point (b)

(b) "Researcher" means a third-country national holding a postgraduate (master's or equivalent) degree admitted to the territory of a Member State of the European Union for the purposes of conducting a research project at a research organisation;	(b) "Researcher" means a third-country national holding a postgraduate (***at least*** master's or equivalent) degree admitted to the territory of a Member State of the European Union for the purposes of conducting a research project at a research organisation;

Justification

It is important for the purposes of the Directive that the definition of the term "researcher" be the widest possible to be found in existing Community legislation, while guaranteeing a minimum level of higher qualification.

Amendment 7
Article 2, point (d)

(d) “Research organisation” means any public establishment or private firm which conducts research and which has been approved for the purposes of this Directive by a Member State in accordance with the latter’s legislation or administrative practice;	(d) “Research organisation” means any public establishment or private firm which conducts research ***as a principal or ancillary activity*** and which has been approved for the purposes of this Directive by a Member State in accordance with the latter’s legislation or administrative practice; ***any small and medium-sized enterprise which has had at least one research project approved for Community financing shall be considered as a “research organisation” for the purposes of this Directive;***

Justification

It is important that the scope of the proposed legislation encompass also the public organisations and (especially) the private firms that are involved in research in addition to their principal activity. In that framework, it is especially important to promote SMEs, which do not usually have R&D departments, as host organisations for third-country researchers.

Amendment 8
Article 2, point (e a) new

	(ea) "Family members" means the spouse, and children (including step, adopted and foster children) of the researcher, and the parents (including step-parents) of the researcher and the spouse.

Justification

This relates to Article 7, paragraph 1a (new) on family members. In order to attract researchers to locate in the EU, it is essential to make it easier for family members of researchers to enter and reside in the EU. Unlike Directive 2003/86/EC on the right to family reunification, which refers to permanent immigration, this permission is limited in time to the researcher's stay in the EU.

Amendment 9
Article 3, paragraph 2

2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for persons to whom it applies. Member States ***may*** apply this Directive to third-country nationals requesting admission for the purposes of teaching in a higher education establishment within the meaning of the Member States’	2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for persons to whom it applies. Member States ***shall*** apply this Directive to third-country nationals requesting admission for the purposes of teaching in a higher education establishment within the meaning of the Member States’

legislation or administrative practice.	legislation or administrative practice.

Justification

It is important that Member States grant a special status to highly-qualified researchers for teaching purposes as well, as carrying out high-quality research and lecturing at higher education level (e.g. universities) are intrinsically linked.

Amendment 10
Article 4, paragraph 3

3. Member States shall approve for an unlimited period public and private organisations whose main tasks consist in conducting research and Member States' higher education establishments within the meaning of their legislation or administrative practice.	***3. The approval granted to a research organisation, public or private, shall be for a minimum period of five years. Member States may grant approval for a longer period. Research organisations for which approval is refused shall receive a full justification for that refusal.***

Justification

Private and public organisations must be treated equally, especially as the Union requires from the private sector to drastically boost its spending for research. The period of five years is an adequate length of time, enabling the national authorities to periodically reevaluate whether the organisation in question is conducting research in a proper way. However, Member States may want to grant approval for a longer period of time in order to avoid additional bureaucracy, especially if these Member States have other mechanisms in place to control conducted research. Transparency will be served by establishing the right for full justification in case of refusal.

Amendment 11
Article 4, paragraph 4

4. Member States shall approve public organisations for an unlimited period if they conduct research activities in addition to their main tasks.	***deleted***

Justification

It is important that the scope of the proposed legislation encompass also the public organisations and (especially) the private firms that are involved in research in addition to their principal activity. In that framework, it is especially important to promote SMEs, which do not usually have R&D departments, as host organisations for third-country researchers.

Amendment 12
Article 4, paragraph 5

5. Member States shall approve private firms for a period of five years, renewable, if they conduct research activities in addition to their corporate purpose.	***deleted***

Justification

It is important that the scope of the proposed legislation encompass also the public organisations and (especially) the private firms that are involved in research in addition to their principal activity. In that framework, it is especially important to promote SMEs, which do not usually have R&D departments, as host organisations for third-country researchers.

Amendment 13
Article 4, paragraph 6

6. When applying for approval, the research organisation shall give the host Member State an undertaking that they will assume responsibility for residence costs, health costs, and the cost of return in respect of the researchers it hosts and to issue them with the statement referred to in Article 5(3). The research organisation shall remain responsible for these costs for ***one year*** after the date of expiry of the hosting agreement referred to in Article 5 or the date on which the organisation informs the Member State of an event rendering it impossible to implement the hosting agreement in accordance with Article 5(4), for as long as the researcher has not left the territory of the European Union	6. When applying for approval, the research organisation shall give the host Member State an undertaking that they will assume responsibility for residence costs, health costs, and the cost of return in respect of the researchers it hosts and to issue them with the statement referred to in Article 5(3). The research organisation shall remain responsible for these costs for ***six months*** after the date of expiry of the hosting agreement referred to in Article 5 or the date on which the organisation informs the Member State of an event rendering it impossible to implement the hosting agreement in accordance with Article 5(4), for as long as the researcher has not left the territory of the European Union.

Justification

It is felt that the establishment of financial responsibility for a period of a year would be an unfair and disproportionate obligation for the research organisations.

Amendment 14
Article 4, paragraph 7

7. Within two months of the date of expiry of the hosting agreements concerned, the	7. Within two months of the date of expiry of the hosting agreements concerned, the

approved research organisations shall provide the authority designated for the purpose by the Member States with confirmation that the work has been carried out for each of the research projects in respect of which they have signed a hosting agreement pursuant to Article 5.	approved research organisations shall provide the authority designated for the purpose by the Member States with confirmation that the work has been carried out for each of the research projects in respect of which they have signed a hosting agreement pursuant to Article 5. ***The competent authority is expected to possess sufficient expertise to monitor in basic terms the successful execution of the work.***

Justification

The ability of the competent authority to verify in basic terms the successful completion of the research work carried out under a hosting agreement will enhance the credibility of the scheme.

Amendment 15
Article 4, paragraph 9

9. A Member State may refuse to renew or decide to withdraw the approval of a research organisation which no longer meets the conditions laid down in paragraphs 2 to 7 or which has signed a hosting agreement with a third-country national in respect of whom the Member State has applied Article 8(1). Where approval has been refused or withdrawn or where it has not been renewed on the basis of Article 8(1), the organisation concerned may not reapply for approval before five years from the date of publication of the decision on withdrawal or non-renewal.	9. A Member State may refuse to renew or decide to withdraw the approval of a research organisation which no longer meets the conditions laid down in paragraphs 2 to 7 or which has signed a hosting agreement with a third-country national in respect of whom the Member State has applied Article 8(1). Where approval has been refused or withdrawn or where it has not been renewed on the basis of Article 8(1), the organisation concerned may not reapply for approval before five years from the date of publication of the decision on withdrawal or non-renewal. ***Research organisations will not be held responsible for violations of the conditions specified in Article 6(a) and 6(d) unless there are grounds for suspecting their collusion in unlawful acts of the researcher.***

Justification

Research organisations should not be obliged to check compliance with conditions which clearly exceed their competences and lie within the remit of the competent authorities of the Member States.

Amendment 16
Article 5, paragraph 4

4. The hosting agreement shall automatically lapse if the legal relationship between the researcher and the research organisation is terminated. Research organisations shall promptly inform the authority designated for the purpose by the Member States of any occurrence likely to prevent implementation of the agreement.	4. The hosting agreement shall automatically lapse if the legal relationship between the researcher and the research organisation is terminated. ***In such cases and if the researcher is in possession of a valid passport or equivalent travel document and does not constitute a threat to public policy, public security or public health, the residence permit shall remain effective for a period up to three months allowing the researcher to apply for and conclude a new hosting agreement.*** Research organisations shall promptly inform the authority designated for the purpose by the Member States of any occurrence likely to prevent implementation of the agreement.

Justification

The article, as proposed by the Commission, cancels the advantage of mobility for the researchers in question. Our goal should not be only to facilitate admission of researchers, but also to keep them in the EU and the ERA. Therefore, we should provide for adequate time for third-country researchers to apply in loco after completion of the project for which they have been initially admitted.

Amendment 17
Article 7

Duration of residence permit	***Residence permits and visas***
Member States shall issue a residence permit for one year ***or more and shall renew it annually if the conditions laid down in Articles 5 and 6 are still met. If the research project is scheduled to last less than one year, the residence permit shall be issued for the duration of the project.***	Member States shall issue a residence permit for ***a minimum period of*** one year***. If the research project is scheduled to last more than one year, the residence permit shall be issued for the duration of the project.***
	Member States shall grant residence permits to the family members of a researcher on request. The duration of validity of such residence permits shall be the same as that of the residence permit issued to the researcher, insofar as the period of validity of the travel documents of

	the family member permits. Short-term three-month visas shall also be granted to the reearcher's relations and close friends where vouched for by the researcher.

Justification

The article as proposed by the Commission contradicts the main objective of the proposal for a Directive and would lead to unnecessary bureaucracy and waste of time, particularly in the light of the safeguards provided in Article 8. The idea is to simplify procedures for researchers as far as possible. It seems logical to base the period of validity of the residence permit on the duration of the agreement, while guaranteeing a minimum residence period of one year.

In order to attract researchers to locate in the EU, it is moreover essential to make it easier for close family members to relocate with them and for the same length of time. The researcher's extended family and friends should be permitted to visit for short periods without being subject to unwarranted red tape, difficulties at immigration or even refused entry. The researcher will, however, be required to be responsible in terms of financial support and security for any short-term visitors.

Amendment 18
Article 13, paragraph 1

1. A holder of a residence permit issued under this Directive may, under cover of the permit together with a valid passport or equivalent travel document, conduct part of his research project on the territory of another Member State, provided the latter does not regard him as a threat to public policy, public security or public health. If necessary, bearing in mind the time needed to conduct this part of the research, a new hosting agreement shall be signed, on the basis of which the researcher shall be issued a residence permit in the second Member State.	1. A holder of a residence permit issued under this Directive may, under cover of the permit together with a valid passport or equivalent travel document, conduct part of his research project on the territory of another Member State, provided the latter does not regard him as a threat to public policy, public security or public health. If necessary, bearing in mind the time needed to conduct this part of the research, a new hosting agreement shall be signed, on the basis of which the researcher shall be issued a residence permit in the second Member State. ***Member States shall not require the researcher to leave their territory in order to submit an application for a visa or a residence permit.***

Justification

This additional provision is necessary in order to ensure the right for application in loco and foster the advantages of mobility.

Amendment 19
Article 13, paragraph 2a (new)

2a. 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.

Justification

This additional provision is necessary in order to facilitate the passage of third-country researchers from one research programme that has been completed to another one taking place in the same or a different Member State, enhancing thus researcher mobility.

Amendment 20
Article 15, paragraph 1

1. The relevant authorities in the Member State shall notify the applicant in writing, in accordance with the notification procedures laid down in the relevant national legislation, of their decisions regarding his application for admission or for the renewal of his residence permit at the latest within 30 days of the date on which the application was submitted. Member States shall lay down in national legislation the consequences for the authorities concerned of failing to take a decision by this deadline. In exceptional cases involving complex applications, the deadline may be extended.	1. The relevant authorities in the Member State shall notify the applicant in writing, in accordance with the notification procedures laid down in the relevant national legislation, of their decisions regarding his application for admission or for the renewal of his residence permit at the latest within 30 days of the date on which the application was submitted. Member States shall lay down in national legislation the consequences for the authorities concerned of failing to take a decision by this deadline. In exceptional cases involving complex applications, the deadline may be extended***, but in no case by more than an additional 30 days. The applicant shall receive full justification for any such extension***.

Justification

This additional provision is necessary in order to avoid that such a possibility (as initially proposed) is applied by Member State authorities excessively, leading to unnecessary delays

in admissions.

Amendment 21
Article 17

Each Member State shall ensure that the most comprehensive information possible, regularly kept up to date, is made publicly available, via the internet in particular, on the research organisations, approved under Article 4, with which researchers may conclude a hosting agreement, and on the conditions and procedures for entry and residence on its territory for the purposes of conducting research, as adopted under this Directive.	Each Member State shall ensure that the most comprehensive information possible, regularly kept up to date, is made publicly available, via the internet in particular, on the research organisations, approved under Article 4, with which researchers may conclude a hosting agreement, and on the conditions and procedures for entry and residence on its territory for the purposes of conducting research, as adopted under this Directive. ***Member States may require the hosting organisations to publish a list of the researchers admitted. Such a list shall contain only the information necessary for the unambiguous identification of the researchers.***

Justification

This additional provision will contribute to the required transparency.

PROCEDURE

Title	Proposal for a Council directive on a specific procedure for admitting third-country nationals for purposes of scientific research
References	COM(2004)0178 – C6-0011/2004 – 2004/0061(CNS)
Committee responsible	LIBE
Committee asked for its opinion Date announced in plenary	ITRE 15.9..2004
Enhanced cooperation	
Drafts(wo)man Date appointed	Nikolaos Vakalis 7.10.2004
Discussed in committee	23.11.2004 18.1.2005 21.2.2005
Date amendments adopted	21.2.2005
Result of final vote	for: 42 against: 0 abstentions: 0
Members present for the final vote	Šarūnas Birutis, Jan Březina, Renato Brunetta, Jerzy Buzek, Joan Calabuig Rull, Pilar del Castillo Vera, Giles Chichester, Gianni De Michelis, Lena Ek, Nicole Fontaine, Adam Gierek, András Gyürk, David Hammerstein Mintz, Ján Hudacký, Romana Jordan Cizelj, Werner Langen, Anne Laperrouze, Pia Elda Locatelli, Angelika Niebler, Reino Paasilinna, Pier Antonio Panzeri, Herbert Reul, Paul Rübig, Britta Thomsen, Patrizia Toia, Catherine Trautmann, Claude Turmes, Nikolaos Vakalis
Substitutes present for the final vote	Daniel Caspary, Dorette Corbey, Neena Gill, Norbert Glante, Edit Herczog, Peter Liese, Toine Manders, Lambert van Nistelrooij, Vittorio Prodi, John Purvis, Manuel António dos Santos, Esko Seppänen, Alyn Smith, Hannes Swoboda
Substitutes under Rule 178(2) present for the final vote	