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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

on the presentation of a proposal for a directive and two proposals for recommendations on the admission of third-country nationals to carry out scientific research in the European Community

Proposal for a

COUNCIL DIRECTIVE

on a specific procedure for admitting third-country nationals for purposes of scientific research

Proposal for a

COUNCIL RECOMMENDATION

to facilitate the admission of third-country nationals to carry out scientific research in the European Community

Proposal for a

COUNCIL RECOMMENDATION

to facilitate the issue by the Member States of uniform short-stay visas for researchers from third countries travelling within the European Community for the purpose of carrying out scientific research

(presented by the Commission)

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

on the presentation of a proposal for a directive and two proposals for recommendations on the admission of third-country nationals to carry out scientific research in the European Community

1. General outline

1.1 Developing research to become the most competitive and dynamic knowledge economy in the world

Since its launch by the Commission in January 2000 the European Research Area has been the lynchpin of the European Union's research policy.[1] It received the backing of the Lisbon European Council in March 2000 and is the keystone of the new strategic objective the European Union has set itself for the coming decade: to become the most competitive and dynamic knowledge economy in the world. To achieve this objective it will be necessary to develop a global strategy to prepare the transition to a knowledge-based society and economy. One of the preferred instruments for achieving this goal is support for the mobility of researchers, as was underlined in a Council Resolution of 10 December 2001. In its Lisbon conclusions the European Council asked the Council and the Commission, together with the Member States where appropriate, to take the necessary "steps to remove obstacles to the mobility of researchers in Europe by 2002 and to attract and retain high-quality research talent in Europe."[2] This desire was reiterated in the Council conclusions of 26 November 2002, which called on "the Member States, in collaboration with the Commission, to strengthen the actions being undertaken to develop the European research area, in particular by: facilitating or continuing to facilitate entry and residence for researchers from third countries." This concern was also shared by the European Parliament, notably in its report of 9 May 2000[3] and a resolution of 18 May 2000.[4]

1.2 Encouraging the mobility of researchers in a globalising world

The mobility of researchers is a key element in the acquisition and transfer of knowledge. The globalisation of the economy, which is more and more knowledge-based, is constantly increasing the international dimension of science. This concern was highlighted in the Commission Communication on the international dimension of the European Research Area[5] and is also at the heart of the Sixth Framework Programme of the European Community for research,

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1 COM(2000)6, 18.1.2000.

2 Point 13 of the conclusions.

3 Report of 9 May 2000 on the Commission communication *Towards a European Research Area* (AF-0131).

4 European Parliament Resolution of 18 May 2002 on the Commission communication *Towards a European Research Area* (A5-0131/2000), p.40.

5 COM(2001) 346 final, 25.6.2001.

technological development and demonstration activities,[6] particularly within the context of the specific programme for Structuring the European Research Area,[7] which sets out to boost mobility by encouraging European researchers to move to other parts of the world and the admission and transfer of researchers from third countries to the European Union. This new dimension to research has been characterised by a major opening-up of possibilities for third-country nationals to take part in the Sixth Framework Programme. The opening of the doors to researchers from outside the European Union has been seen as a key measure to make the Union more attractive for researchers throughout the world in future.

1.3 700 000 researchers are needed by 2010

The Human Resources and Mobility activity that is part of the Commission's Sixth Framework Programme earmarks no less than €1.6 billion for support for the training, mobility and career development of researchers.[8] This is a response to the discovery that the European Union will need 700 000 additional researchers by 2010 if it is to achieve the objective set by the Barcelona European Council to devote 3% of the Member States' GDP to research and technological development by the end of the decade.[9] To satisfy this need it will be necessary to produce interlocking measures to make science attractive to young people at school, improve the career prospects for researchers in the European Union and extend the opportunities for training and mobility. As, however, the European Union is unlikely to produce this considerable number of researchers itself, it will also be necessary to take measures to attract researchers from outside the Union.

1.4 A three-fold approach

This Commission initiative is made up of a proposal for a directive and two proposals for Council recommendations. The first recommendation calls on the Member States to adopt a number of practical measures without delay, since it inevitably takes several years before a directive is in full operation and the adoption of the directive would not on its own be sufficient to meet the European Council's objectives within the time available. This recommendation will therefore make it possible to take action on a number of points in advance of transposal of the directive by calling on the Member States to implement measures which are in keeping with the directive and will make it easier to apply at a later date. This recommendation is in any case justified independently of the directive since, as well as family reunification and operational cooperation, it covers areas which are not dealt with in the proposal for a directive. A second recommendation deals with the more specific question of short-term visas to meet the particular needs of researchers who have to attend conferences or seminars in connection with their work.

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6 OJ L 232, 29.8.2002, p.1.

7 OJ L 294, 29.10.2002, p.44.

8 OJ L 294, 29.10.2002, p.50.

9 Commission communication *Investing in research : an action plan for Europe,* 30.4.2003 (COM(2003)226).

1.5 Developing partnerships with third countries

The European Union supports the idea of admitting a large number of researchers from outside the Union. This would make it possible to greatly extend its scientific cooperation and partnership networks all over the world. This desire to encourage the admission and mobility of researchers will, however, have to take account of the need for flanking measures to prevent a new brain drain from less developed countries. In addition to the measures on short-term visa policy introduced in the recommendation in order to promote the international mobility of researchers, and the request to the Member States to ensure that their measures to encourage third-country researchers to visit and work in the EU do not undermine the fight against the brain drain from the emerging or developing countries, other measures must be studied against the background of the partnership with countries of origin mentioned in the conclusions to the Tampere Summit as necessary components of a comprehensive migration policy. In its Sixth Research Framework Programme the Community has already decided to provide reintegration grants for researchers coming from developing or transition countries,[10] and it will look into the possibility of adopting other measures to encourage the development of expatriate communities of scientific researchers working on their countries' development in the fields of science, technology and higher education. Reflection on this subject has moved on at European level with the publication on 3 December 2002 of the Commission communication on integrating migration issues in the European Union's relations with third countries,[11] which provided the basis for the Council to adopt its conclusions on the question of migration and development on 19 May 2003, asking the Commission to present a report and concrete proposals for the end of 2004.

2. Background and compatibility of the proposal with other Commission initiatives

2.1. Proposals in line with the European Research Policy

The question of further opening up research programmes to third-country nationals was examined when the European Research Area was launched. In 2000, in response to the mandate from the Lisbon European Council, the Commission set up a high-level expert group to identify obstacles to the mobility of researchers and to draw up proposals for removing such obstacles. On 20 June 2001 the Commission responded to the group's report of 4 April 2001[12] by adopting a Communication proposing a mobility strategy for the European Research Area[13] in which it makes a number of practical suggestions, some of which relate to legal or statutory aspects and in particular the concept of creating a specific residence permit for third-country researchers. The Commission has developed close ties with Ministries of Justice or Home Affairs in the Member States in implementing this Communication. Following a questionnaire sent to the Member States and the candidate countries which revealed that, although nine of the fifteen Member States had adopted measures to facilitate the admission of third-country researchers, only two of them had introduced a

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10 Marie Curie human resources and mobility actions.
11 COM(2002)703.
12 http://europa.eu.int/comm/research/fp5/pdf/finalreportmobilityhleg.pdf
13 COM(2001)331.

specific admission procedure, additional fact-finding missions were carried out by the Commission in several Member States in the course of 2003. These measures enabled the Commission to propose a number of policy options which led to the current proposals for a directive and recommendations following discussions with experts in the Member States.

2.2. Proposals to complement Community immigration policy instruments

In its Communication of 22 November 2000 on a Community immigration policy[14] the Commission clearly opts for the controlled reopening of legal immigration channels according to various parameters and depending on the categories of migrants concerned. These parameters include Member States' requirements. This approach is particularly appropriate in the case of researchers, who make up a special category of well-qualified migrants of the type which the EU most needs and will derive the most benefit from welcoming. Researchers are often required to move around frequently for professional reasons and to settle for varying periods of time in several different countries over the course of their career. They will derive general benefit from advances in Community migration policy, including the uniform short-stay visa – which allows them to move around freely within the Schengen area for a maximum of three months – and the right of residence in the other Member States granted under certain conditions by the directive on the status of long-term residents to third country nationals after they have been legally resident in the EU for five years.[15]

To meet the challenges facing the EU in the field of research, specific Community rules on the admission and mobility of third-country researchers are needed. The proposal for a Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities also made specific provision for the adoption of Community measures especially for researchers.[16] Whether or not third-country researchers admitted to the EU can bring members of their family to join them is an essential aspect of the problem of mobility. As family reunification of third-country nationals has just been dealt with in a directive adopted by the Council on 22 September 2003,[17] this issue is not addressed in the proposal for a directive but in the first proposal for a recommendation. This initiative supplements the proposal for a Directive on the conditions of entry and residence of third country nationals for the purposes of studies, vocational training or voluntary service,[18] which covers students enrolling in a higher education establishment in the European Union to study for a doctorate. "Doctoral students", who are a special category of researcher, are therefore excluded from the scope of this proposal unless they are employed as researchers in their host organisation in another capacity (for example, if they have an employment contract

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14 COM(2000)757.

15 Cf. Chapter III – Residence in the other Member States – of the Directive 2003/109 of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ L 16, 23.01.2004, p. 44).

16 COM(2001)386 (OJ C 332, 27.11.2001, p. 248).

17 Directive 2003/86 of 22 September 2003 on the right to family reunification (OJ L 251, 3.10.2003, p.12).

18 COM(2002)548 (OJ C 45, 25 February 2003, p.18).

to write their thesis). All third-country researchers who can be admitted to the European Union are therefore covered by legislative initiatives as promised by the Commission in response to the amendments proposed by Parliament in relation to unpaid researchers[19] in its legislative resolution of 3 June 2003 on the proposal for a Council directive on the conditions of entry and residence of third-country nationals for the purposes of studies, vocational training or voluntary service.[20]

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19 An unpaid researcher will be covered by this Directive provided that he has sufficient resources to cover his living expenses and return journey in accordance with Article 5(2)(b). The same will apply to students enrolled to study for a doctorate at a higher education establishment in their country of origin who might come to the EU to do part of their research for their doctorate.

20 EP 332.951, p.46.

Proposal for a COUNCIL DIRECTIVE on a specific procedure for admitting third-country nationals for purposes of scientific research

EXPLANATORY MEMORANDUM

1. PRESENTATION OF THE PROVISIONS OF THE PROPOSAL FOR A DIRECTIVE

The proposal for a directive seeks to create a special procedure for admitting third-country nationals for the purpose of carrying out scientific research. It revolves around three key elements:

1.1. Central role of research organisations

Following the example of a number of Member States, the proposal provides for the introduction of a special admission mechanism for researchers from non-member countries. The unique feature of this is that it gives authorised research organisations a role in the procedure leading to the issue 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 research project is credible, particularly as regards the financial aspects, and whether the person has the necessary skills to see it through. This task will be assigned to the research organisations, which will thus play an essential role in the admission procedure by signing with the third-country national concerned a hosting agreement offering guarantees concerning the ability to complete the envisaged research and the conditions, in particular the financial aspects, in which the research will be conducted. The hosting agreement is reminiscent of the fast-track procedure for issuing residence permits proposed by the Commission for students and pupil exchanges[21]; there is a fundamental difference, however, in that it actually triggers the admission procedure. As the name suggests, 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 issue of the residence permit by the immigration authorities. Note that it does not determine the legal status of the researcher in relation to the host organisation; this will be laid down in a separate legal instrument which, depending on the individual case, could be an employment contract, a fellowship, etc.

1.2. Division of roles between research organisations and Member States

The admission procedure envisaged does not impinge on the powers of the Member States' immigration authorities, which will still have to be involved for a researcher to be admitted. The respective roles of the host research organisation and the competent authority of the Member State must therefore be clearly laid down. The research organisation will have to check the conditions which have to be fulfilled for it to be able to sign a hosting agreement: this could be the existence of a

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[21] See Article 21 of the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purposes of studies, vocational training or voluntary service (COM(2002)548, 7 October 2002; OJ C 45, 25 February 2003, p. 40).

research project meeting the requirements of Article 5 and accepted by the host organisation, evidence that the researcher is in possession of adequate resources and health insurance for the duration of the stay, and an undertaking by the host organisation to meet the researcher's living expenses, health costs and return travel costs. The Member States will check the identity of the third-country nationals and their travel documents and ascertain that they do not constitute a threat to public order, public security or public health. Such threats will concern not only the person of the third-country national but also the purpose of the research envisaged, for instance whether the work could be sensitive from a military angle and for that reason could be considered a threat to public security. The Member States will also check that a hosting agreement satisfying the requirements of Articles 5(2) has been signed and that the host organisation has formally undertaken to meet the costs of the researcher. Member States have the power to check whether the hosting agreement has been signed by the research organisation in compliance with the terms laid down in Article 5, in particular as regards the researcher's financial resources and health insurance. As the objective is to simplify the procedure, this double check on the conditions laid down in Article 5 will be performed by Member States only in exceptional or problem cases. The admission procedures are based instead on the trust to be built up between Member States and research organisations.

1.3. Assumption of responsibility by research organisations

The research organisations empowered to use the special admission procedure have been defined in broad terms on the basis of the European Union's research requirements. As the effort to be made to achieve the 3% of GDP target for investment in research[22] largely concerns the private sector, it is necessary to include that sector. For the purpose of this proposal, a research organisation should accordingly be understood to 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. Because of the prerogatives granted to research organisations and their collaboration with the immigration authorities, measures will be taken to check their reliability and to ensure that they assume their responsibilities in performing their tasks. In this connection the proposed directive requires organisations to be approved before they can apply the special procedure. The approval arrangements differ according to whether they are involved in research as a principal activity or as an ancillary activity, and an additional requirement is imposed on private firms in order to limit the risks of the procedure being abused. In return for the prerogatives granted, the proposed directive makes the research organisation financially responsible for the researcher's living expenses, health costs and return travel costs, should any of these have to be borne by the host state, or if the researcher were to remain illegally in the European Union after expiry of the residence permit. Finally, the proposal allows Member States to refuse to renew or to withdraw the approval of a research organisation which fails to meet the conditions required or which signs research agreements with persons who do not satisfy the admission conditions, who

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[22] Commission communication *More Research for Europe: towards 3% of GDP* (COM(2002)499) and Commission staff working paper in support of this Communication (SEC(2002)929) of 11 September 2002.

misuse their researcher status to work for purposes other than their research project or who remain illegally in the European Union after expiry of their residence permit.

1.4. A broad interpretation of the concept of researcher, adapted to the needs of the European Union

Given that the European Union will have a serious shortage of researchers in the coming years, it was not thought to be appropriate to restrict the procedure to persons who already have the status of researcher in their country of origin. The stress has been placed instead on the purpose of admission, namely carrying out a research project, which should enable the European Union to temporarily host as researchers high-level professionals or experts who are not necessarily involved in research in their country of origin, or young graduates who are needed in the European Union, in particular for the exact sciences. The qualifications of persons for whom admission is sought, and the scientific value of the research planned, will in principle be assessed exclusively by the research organisations, with due respect for the minimum requirements set in this connection by the directive, namely a post-graduate degree[23] and the presentation of a project setting out the purpose of the research, its duration and funding. The directive provides for its scope to be extended to include people who might be admitted for the purpose of teaching in a higher education establishment in order to fit in with the practices of the Member States concerned.

1.5. A residence permit not linked to the status of the researcher

In addition to a fast admission procedure, one of the other major benefits that this directive will offer third-country researchers and research organisations is the simplification of the conditions under which they can be admitted as migrants. The Commission noted in 1996, in its Green Paper *Education - training - research: the obstacles to transnational mobility*[24], that one of the difficulties encountered by researchers lies in the many different types of status which may be imposed on them (employees or self-employed, student, scholarship-holder, etc.). Although this directive will not put an end to the differing social or tax status of researchers in the domestic law of Member States, it will give them a uniform status in aliens legislation. The proposal is to create a specific avenue for admission for researchers whereby third-country nationals can be admitted, regardless of the type of legal relationship (employment contract, scholarship, etc.)[25] they have with the host research organisation. The researchers admitted on the basis of an employment contract will not then have to obtain a work permit in Member States still requiring one in their case, even though the state of the market no longer justifies this for research. Similarly, given the needs of the European Union, any form of quotas set by Member States having the effect of limiting the number of researchers who can be admitted under this directive is not compatible with it. It should be stressed that traditional avenues of admission for researchers (employee or self-employed, student, placements, scholarships, etc.) will continue to exist alongside the new

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23 i.e. a Masters degree within the meaning of the term under the Bologna process on the harmonisation of studies in Europe.

24 COM(1996)462, 2 October 1996, p. 11.

25 Except, however, for the status of doctoral student, which would be outside the scope of this initiative.

special admission procedure and can be used by research organisations or by third-country nationals who do not fulfil the conditions of this directive.

1.6. The mobility of researchers in the European Union

Steps must be taken to promote mobility so that third-country nationals can pursue a research project in several different Member States without running into difficulties in gaining admission to these countries. The directive allows researchers in possession of a residence 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 residence permit and subject to considerations of public order, public security and public health. In addition, the directive contains a provision to ensure that researchers wanting to go to a second Member State in connection with another research project will not have to return to their country of origin to apply for an extension to their stay in another Member State, as is sometimes the case nowadays. The simplified admission procedure envisaged by this directive 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. In such cases Member States will naturally be inclined to reduce their checks because they know that another Member State has already carried out checks. The special procedure introduced by this directive can also be used by third-country nationals who are already resident in the European Union, including long-term residents. Long-term residents have not been excluded from the scope of this directive because the conditions provided for in the Directive on the status of third-country nationals who are long-term residents[26] granting a right of residence in the other Member States, are less advantageous than those laid down in this directive.

1.7. A simplified, streamlined procedure

The directive allows an application for a residence permit to be made on the spot when the third-country national is on the territory of the host Member State, provided that he or she is in the country legally. This option gives the necessary flexibility to the admission procedure by allowing researchers to extend a short stay to a long stay. Under the proposal it is for Member States to decide whether the application for a residence permit is made by the researcher or the research organisation. Provision is made for the application to be presented by the research organisation because of the role given to such organisations in the admission procedure, but the residence permit itself will ultimately always be issued to the third-country national concerned, who for this purpose will have to go in person to the competent authority. Member States will have to issue the residence permit within 30 days of submission of the application. This deadline, which is shorter than that provided for in other directives, is justified on the one hand because admission procedures must be particularly speedy for researchers if they are to remain attractive, and on the other as the checks which Member States have to carry out will be simplified by the upstream collaboration with the research organisations.

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[26] Article 14 ff.

Finally, with a view to the promotion in third countries of research opportunities available in Europe, Member States are asked to make additional efforts at transparency in order to ensure access in countries of origin to information about the special admission procedure. This task for Member States will be helped by the Internet Researchers' Mobility Portal[27] that the Commission opened on 10 July 2003 in collaboration with the Member States and third countries associated in setting up the European research area.

2. CHOICE OF LEGAL BASE FOR THE PROPOSED DIRECTIVE

2.1. The legal base has been chosen in the light of the objective for the proposed directive, which is to regulate the conditions and procedures under which third-country nationals can enter and reside in the territory of the Member States for the purpose of carrying out scientific research. It is not, therefore, concerned with the conditions for admission to research organisations, which remain the responsibility of the Member States and, in many cases, the organisations themselves. The legal base chosen is Article 63(3)(a) and (4) of the Treaty establishing the European Community, as amended by the Treaty of Amsterdam, which entered into force on 1 May 1999.

2.2. This proposal must therefore be adopted under the procedure laid down in Article 67 of the EC Treaty: by the Council acting unanimously after consulting the European Parliament. Because it is based on Title IV of the Treaty, Denmark will not take part in the adoption of the proposal, and the directive will not be binding upon or applicable to Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community. Nor will it apply to the United Kingdom and Ireland, under Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, unless these countries decide otherwise, according to the arrangements laid down in the Protocol.

3. SUBSIDIARITY AND PROPORTIONALITY

3.1. The European Community does not have exclusive competence in Title IV of the EC Treaty “Visas, asylum, immigration and other policies related to free movement of persons", with the result that it can only intervene, according to the principles of subsidiarity and proportionality, if and in so far as the measure or objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. Action by the Community may not go beyond what is necessary to achieve the objectives of the Treaty.

3.2. The proposed directive satisfies these three criteria. The objective set by the European Council was to facilitate “entry and residence for researchers from third countries”. As noted above in point 2.1, only nine Member States have adopted

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27 http://europa.eu.int/eracareers/index_en.cfm.

measures aimed at facilitating the admission of such researchers, and only two have introduced a special admission procedure. There are many differences between the measures taken by these nine Member States, which could make it more difficult for researchers from non-member countries to come to the European Union and restrict their mobility within the EU. There seems, therefore, to be a need for harmonisation. Harmonisation must also be introduced rapidly if Member States are to meet the European Council's target of investing 3% of their GDP in research by the deadline. Judging from the current situation the measures by the Member States will not achieve an adequate degree of harmonisation of the rules on the admission of researchers from third countries into the European Community within the time limit.

3.3. However, the Commission feels that, in view of the principle of subsidiarity, it should be left to the Member States to settle certain matters relating to researchers from third countries as they see fit: the directive does not specify what financial resources the researchers must have in order to be admitted, Member States are merely required to state publicly the minimum monthly figure they will set. The length of the residence permit may be restricted to one year or adjusted to the length of the research project, at the Member State's discretion. The Member States will have to decide whether the applications for residence permits have to be submitted by the research organisations or by the third-country nationals. Finally, they will be able to decide what happens in the absence of a decision within the 30-day deadline specified for deciding on applications for admission. And of course Member States are free to adopt more favourable arrangements and, in particular, to extend the benefits of the special procedure for researchers to allow the admission of third-country nationals for the purpose of teaching in higher education establishments. The proposal also refers to the regulations or administrative practice of the Member State in question for matters relating to the definition of a research organisation or higher education establishment.

3.4. In view of the fact that the main objective is to help make the European Union the most competitive and most dynamic knowledge-based economy in the world, the action to be taken should obviously be taken at Community level.

3.5. True to the principle of proportionality, the Commission proposes the adoption of a directive and a recommendation. The directive is binding as regards the general principles that are laid down, thereby addressing the problem of disparities between national systems. However, it leaves Member States free to choose the most appropriate means for applying these principles in their domestic legislation in the light of national conditions.

Comments on the Articles

Chapter I: General provisions

Article 1

The purpose of the Directive is to introduce a special procedure governing the entry and residence of third-country nationals coming to carry out a research project in the European Community for a period of more than three months. The procedure applies only in cases covered by a hosting agreement as defined in Article 5, signed with a research organisation approved in accordance with Article 4.

Article 2

This article defines, as necessary, the concepts used in the proposal for a Directive. They are based directly on those which have already been used in existing Community legislation.

(a) "Third-country nationals": persons who are not nationals of one of the Member States of the European Union and stateless persons within the meaning of the New York Convention of 28 September 1954.

(b) "Researcher": a third-country national admitted for research purposes under the procedure laid down by the Directive, without being required to be a researcher. He or she must hold at least a second-cycle university degree (master's degree) within the meaning of the Bologna process for a European Higher Education Area. There is no general requirement to obtain recognition of qualifications, but this condition must be met in certain specific cases (e.g. a doctor who will be required to treat patients as part of a research project). In principle, it is up to the research organisation hosting the third-country national to assess their qualifications.

(c) "Research": the definition comes from the Frascati Manual[28] produced by the OECD for surveys on research and experimental development. For the purposes of this Directive, it covers basic and applied research, as well as experimental development[29]. It is intended as a guide to assist Member States in determining whether an organisation applying for approved status is indeed conducting research. Obviously, it leaves the competent authority with some discretionary power. Further explanations and examples are given in the Frascati Manual. The definition could also help Member States wishing to verify that the project for which an approved organisation has signed a hosting agreement is a genuine research project.

(d) "Research organisation": this is a broad concept covering both the public and private sectors. A research organisation may be a university, a foundation, a

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[28] 2002 edition, p. 30.

[29] This is systematic work, drawing on existing knowledge gained from research and/or practical experience, which is directed to producing new materials, products or devices, to installing new processes, systems and services, or to improving substantially those already produced or installed (Frascati Manual, p. 30).

research centre, a laboratory, a firm, an international organisation or a non-governmental organisation. What matters is that the organisation conducts research and has been approved by the Member State where it is located.

(e) "Residence permit": the definition refers to existing European legislation.

Article 3

1. It is not the Commission's intention in proposing this Directive to dismiss international agreements on the admission of researchers which contain more favourable terms for third-country nationals.

2. This paragraph allows Member States to adopt or keep more favourable national rules, provided that they are compatible with the Directive. For example, Member States may wish to adopt rules applying the principle of non-discrimination on nationality grounds to third-country nationals covered by the Directive in respect of certain rights. In addition, the specific procedure introduced by the Directive for researchers may be extended to third-country nationals seeking entry for purposes of teaching in a higher education establishment, so that Member States which so wish can allow lecturers to benefit from the same system as researchers.

3. This paragraph excludes specific categories of person from the scope of the Directive:

(a) The exclusion of applicants for asylum or subsidiary protection and persons granted temporary protection does not affect their access to the labour market, including research posts, which is governed by the relevant (proposals for) directives. It means that they cannot use this Directive to request a change in status, since such changes are possible only under more favourable national legislation adopted by individual Member States.

(b) This subparagraph excludes doctoral students conducting research relating to their theses as students covered by the proposal for a Directive on the conditions of entry and residence of third country nationals for the purposes of studies, vocational training or voluntary service[30]. The Directive thus precludes the risk of abuse related to the admission of students. Doctoral students may none the less be caught by the scope of the Directive if they have a status as a researcher other than that of student, as where they are working on their doctoral thesis under an employment contract.

(c) This is a standard provision excluding third-country nationals who are subject to a procedure for removal, even if it has not yet been enforced.

(d) Cases involving the secondment by a research organisation of one of its researchers to a research organisation in another Member State are not covered by the Directive, but by specific rules on secondment.

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30 COM(2002) 548 (OJ C 45, 25.2.2003, p. 18).

Chapter II

Research organisations

Article 4

This article sets out the various stages in the procedure for approving research organisations.

1. The first paragraph stipulates that approval of the research organisation is a precondition for the provisions of the Directive to apply. The wording leaves Member States completely free to lay down in their national law and according to the procedure of their choice which authority will be responsible on their territory for approving research organisations.

2. This paragraph requires research organisations to provide the approval authority with information indicating the category to which they belong. This information should cover that part of their activities given over to research in accordance with their tasks (public authority) or corporate purpose (private firm).

3. The Directive distinguishes between three categories of research organisation. The approval procedure depends on the proportion of the organisation's work given over to research, as laid down in the legal provisions setting it up. This paragraph covers the first category: public or private organisations whose main activity is research and to which approval is granted for an unlimited period of time. This includes, for example, large public organisations and research foundations. Higher education establishments such as universities are also included in this first category, even though their activities include both research and teaching.

4. The second category comprises public organisations whose research activities are supplementary to their main tasks. They are also approved for an unlimited time.

5. For the last category, approval is limited to five years, so that Member States can regularly check that the organisations concerned are conducting research activity.

6. In return for its prerogatives under the admission procedure, the research organisation must assume responsibility for any residence costs, health costs, and costs of the researcher's return which may arise from his presence on the Member State's territory. This responsibility ceases when the researcher leaves the European Union[31] or when another research organisation takes over responsibility for him under a new hosting agreement. It continues at most for one year following the date of expiry of the hosting agreement or the date on which the research organisation informs the Member State, in accordance with Article 5(4), of an event making it impossible to implement the hosting agreement, for as long as the researcher has not left the territory of the European Union. Beyond this period, it makes sense for the Member States, who are responsible for ensuring the effective

[31] Proof of departure may, for example, be the third-country national's presenting himself to the Member State's diplomatic or consular authorities in his country of origin, an aircraft boarding card, a copy of the researcher's passport showing the exit stamp affixed at the external border, etc.

return of third-country nationals, to bear the costs related to the continuation of their illegal residence.

7. The Directive includes a notification requirement so that the authorities responsible for approving research organisations can check that the research project has been carried out. The confirmation must show that the planned research work has in fact been carried out, without necessarily indicating the research findings, which may be confidential. This information, to be provided within two months of the expiry of the hosting agreement, should show up any cases where the research organisation's approval would have to be withdrawn on the basis of paragraph 9.

8. In order to make it easier to access information and thus to take advantage of the Directive, the lists of approved research organisations must be published each year in the Member States. They must distinguish between the three categories of organisation and take account of any changes that occurred in the previous year. The Directive leaves Member States free to decide on the arrangements for implementing this paragraph.

9. Paragraph 9 sets out the situations where Member States may withdraw approval or refuse to renew it. Withdrawal or non-renewal is conditional on them, but not automatic, and Member States may use their discretion. These situations arise where the research organisation does not meet or no longer meets the conditions in paragraphs 2 to 7, where the researcher does not meet or no longer meets the conditions in Articles 5 and 6 or where he is found to be residing for purposes other than research and the Member States have applied Article 8(1), withdrawing or refusing to renew his residence permit. Given the seriousness of the circumstances in the last two cases, the research organisation may not be approved again until five years after the decision to withdraw or not to renew approval.

Article 5

1. The cornerstone of the specific admission procedure for researchers is the "hosting agreement". This is a legal contract by which the researcher undertakes to complete the research project and the research organisation, to host the researcher for that purpose. It obviously covers all aspects of the research project. It does not govern the researcher's status. It is concluded subject to the residence permit being issued by the immigration authorities. A hosting agreement may be renewed several times between the same researcher and the same research organisation or with other approved organisations, provided the conditions laid down in paragraph 2 are met.

2. Three conditions must be met before the research organisation signs the hosting agreement:

(a) The relevant authority in the host organisation must have approved the research project. The project must be described in a document setting out:

- the research work that the person concerned intends to carry out.

- the duration of the work and how it is to be funded. The resources needed for the work (laboratory costs, costs of equipment, etc.) and the remuneration paid to the researcher must be specified. Where the researcher is bound by an employment contract, the salary must be indicated, so that it can be monitored.

– the researcher's qualifications for the planned research (formal qualifications required, professional experience, etc.).

These aspects must be described in sufficient detail to enable the relevant authority in the research organisation, and the Member States' immigration authorities in exceptional cases, to assess them.

(b) The research organisation must have verified that the researcher has sufficient resources to meet his needs (food, accommodation, etc.) and travel costs and is not likely to need financial support from the Member State. In order to help research organisations assess this delicate matter and to establish the necessary trust for them to cooperate with the immigration authorities, the resources assessment will be carried out on the basis of a minimum monthly amount required by the Member States. The Directive does not propose a minimum amount. Each Member State will have to decide on the minimum required for a third-country national to reside on its territory.

(c) This condition is a basic requirement for admission to and movement within the European Union.

3. The statement formalises the undertaking to assume financial responsibility which the research organisation must give to the Member State concerned before hosting a researcher under a hosting agreement.

4. The hosting agreement will automatically lapse if the legal relationship between the researcher and the research organisation comes to an end, for example, if a researcher subject to an employment contract is dismissed. Research organisations must immediately inform the Member States of any occurrence likely to prevent implementation of the hosting agreement, such as loss of funding for the research, a serious accident suffered by the researcher rendering him unable to carry out the planned project or even a researcher not carrying out the planned research. The purpose of this provision is to enable Member States to take prompt action, in particular with regard to withdrawing the third-county national's residence permit.

Chapter III

Conditions for the entry and residence of researchers

Article 6

Once the hosting agreement is signed, the application for a residence permit is lodged with the relevant authority in the Member State. That authority will issue the residence permit when the four conditions stipulated are met:

(a) In accordance with a standard rule, the third-country national must have a valid passport or equivalent travel documents.

(b) Presentation of the hosting agreement referred to in Article 5. Various aspects can be checked: status of the signatories, researcher's formal qualifications, adequacy of the funding and of the researcher's resources, the latter's salary if he is employed, etc.

(c) Presentation of the statement of financial responsibility, as referred to in Article 5(3).

(d) This check must cover not only the third-country national concerned, but also the subject of the research, which the Member State may consider incompatible with public policy, public security or public health.

Article 7

This article has been worded in such a way as to allow the duration of residence permits to be adjusted in accordance with the duration of the research projects, which can vary. The basic principle is that residence permits will be issued for one year, unless the research project planned is shorter, in which case the permit will cover the duration of the project. The principle of a minimum of one year is intended to simplify administrative procedures. The Directive also enables Member States which so wish to issue researcher residence permits for more than one year in order to cover the entire research project. Residence permits may be renewed annually as long as the conditions for issue are met. Residence permits may be also be renewed if the researcher signs a new hosting agreement with the host organisation or another organisation approved by the Member State, provided the relevant conditions are met.

Article 8

This article covers the cases where researcher residence permits may be refused or withdrawn. Paragraph 1(a) refers to cases where the holder does not meet or no longer meets the conditions for entering and residing on the territory of the Member States. It can cover cases where organisations sign hosting agreements for work which does not qualify as research within the meaning of Article 2(c). Subparagraph (b) covers cases where the special procedure for researchers is misused by people who do not conduct the planned research and, in particular, who principally carry out other paid work. The second paragraph covers reservations regarding public policy, public security or public health. These decisions must be taken on a case-by-case basis, taking account of the specific situation of the person concerned and the principle of proportionality. No one may be penalised for suffering from an illness contracted after entering the territory.

Article 9

This article stipulates that fraud, where it is found to have been committed, will be punished by the withdrawal of the residence permit issued under the Directive.

Chapter IV

Researchers' rights

Article 10

If the researcher's application for admission is successful, he is entitled to enter and reside on the territory of the Member State concerned for the purposes of carrying out the research project for which he has been admitted. The Directive does not govern the status of researchers (employee, self-employed, scholarship holder, etc.) but authorises them to conduct research on the terms planned (depending on the case, remuneration under an employment contract, a scholarship, etc.) without having to obtain a work permit in cases where it would normally have been required by the Member States. Researchers are also authorised occasionally to perform paid work related to their research, such as contributing to a scientific publication, taking part in a selection board, producing a report or giving professional advice. The Directive leaves Member States free to choose the procedure for

issuing the residence permit (directly in the country of origin or on application lodged on arrival in the Member State), but stipulates that visa requirements may not be an obstacle to the entry of the third-country nationals concerned.

Article 11

In order to take account of the value to the Member State concerned of researchers' knowledge and of normal practice in the Member States, the Directive will allow researchers to teach in universities and similar establishments. They may lecture on previous work or on the ongoing research they are involved in. However, since the purpose of their stay is primarily research, the number of teaching hours is restricted to an annual maximum, to ensure that teaching remains an ancillary activity. The exact number is not specified in the Directive for reasons of flexibility. Reference is made to each Member State's own decision in this respect.

Article 12

Holders of residence permits are entitled to the same substantive treatment as nationals with respect to certain rights (recognition of qualifications, social insurance benefits, tax concessions, access to goods and services). Social welfare is deliberately not included as researchers are supposed to have sufficient resources not to require financial support from the host Member State in accordance with Article 5(2)(b) and Article 6(c). The conditions relating to pay and dismissal will apply only to researchers taken on as employees. In such cases, social dumping must be prevented by ensuring that researchers have the same salary as nationals in comparable positions.

Article 13

This article takes account of the growing need for mobility of researchers within the European Research Area. Obviously, if Europe is to be internationally competitive, it is vital that the work of researchers not be hindered or held up because of a need to travel to another Member State.

This article therefore stipulates that where work related to the research project is conducted in another Member State, the holder of a residence permit issued under the Directive can travel to that Member State at any time during the validity of the residence permit to conduct that work, on presentation of a valid passport or travel document and provided he does not pose a threat to public policy, public security or public health.

Chapter V

Procedure and transparency

Article 14

Allowing host research organisations to lodge the application for admission on the researcher's behalf is intended to speed up the procedure for issuing the residence permit. The Directive leaves it to Member States to determine who should lodge the application: the research organisation or the researcher as they prefer, or one of the two if the Member State decides to opt for only one possibility.

In principle, the application for admission should be presented by the researcher in the third country where he resides via the diplomatic or consular authorities of the Member State where

he wishes to conduct the research. In order to simplify the admission procedure and avoid researchers being required to return to their country of origin in order to lodge an application, the Directive allows the application to be made on the spot if the third-country national is already lawfully on the territory of the Community at the time of lodging the application. This will apply in particular where a researcher wishes to renew a hosting agreement or to conclude a new one in order to continue his research.

The Directive leaves Member States free to consider applications for residence permits made by people who do not meet the conditions laid down, for reasons of flexibility and to avoid precluding regularisation by the Member States.

Article 15

The three paragraphs are based on the provisions of other directives already adopted in the immigration field[32] and set out the procedural rules for examining a request for admission or for renewal of a residence permit.

Notification must be given in writing in accordance with the Member States' own laws. Member States must specify what happens in the absence of a reply from the authorities. Since the speed of the specific admission procedure is one of the keys to its success, the period for Member States to reply to a request for a residence permit is set at thirty days. However, it may be extended in exceptionally complex cases.

The second paragraph requires Member States to give reasons for decisions rejecting the application or amending, withdrawing or failing to renew the residence permit and to specify the administrative or legal means of appeal available to the person concerned. This information must also indicate the deadlines for bringing such appeals.

The third paragraph stipulates that the researcher must be able to bring an appeal before the courts against a decision rejecting his application or amending, withdrawing or refusing to renew his residence permit.

Article 16

This article requires Member States to set their own fees up to a maximum determined by the real costs of processing applications.

Article 17

Since the purpose of the Directive is to attract researchers to the European Union, it is particularly important for information on admission possibilities to be easily accessible from outside the European Union. The Directive therefore contains a specific provision on transparency. It is intended to foster the worldwide dissemination of information on the possibilities available under the Directive and the national implementing rules in the Member States. The information must be updated regularly and must cover the conditions and procedures for entering and residing on the territory of the Member States for the purposes of

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[32] Directive 2003/86 of 22 September 2003 on the right to family reunification (OJ L 251, 3.10.2003, p. 12) and Council Directive 2003/109 of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ L 16 of 23.01.2004, p. 44).

carrying out a research project (including the minimum monthly amount of financial resources required by the Member State under Article 5(2)(b)) and the research organisations approved under the Directive. Member States do not necessarily have to disseminate this information themselves and may for example leave it up to the organisations, but they must ensure that it is available on the internet. Implementation of this article will be greatly facilitated by the information efforts already undertaken at European level as part of the European Research Area, especially the creation of the internet researchers' mobility portal.

Article 18

This is a standard provision of Community law. The Commission must report to the Council and Parliament on the application of the Directive by the Member States with a view to identifying any amendments or additions that might usefully be made. The first report must be submitted three years after the deadline for implementation set in Article 19 has expired, and subsequent reports, at a frequency to be determined.

Article 19

This article sets the date by which Member States will have to incorporate the Directive into their national law, i.e. 31 December 2006 at the latest. Member States must systematically and promptly inform the Commission of the legislative, regulatory and administrative amendments they adopt to this end, which must include a reference to the Directive.

Article 20

This article sets the date for the entry into force of the Directive in accordance with the date of its publication in the Official Journal.

Article 21

This article stipulates that the Directive is addressed to the Member States, with the exception of Denmark in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community and the United Kingdom and Ireland in accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, unless the latter two countries decide otherwise in accordance with the procedure determined by that Protocol.

2004/0061 (CNS)

Proposal for a

COUNCIL DIRECTIVE

on a specific procedure for admitting third-country nationals for purposes of scientific research

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(a) and (4) thereof,

Having regard to the proposal from the Commission[33],

Having regard to the opinion of the European Parliament[34],

Having regard to the opinion of the European Economic and Social Committee[35],

Whereas:

(1) With a view to consolidating and giving structure to European research policy, the Commission considered it necessary in January 2000[36] to establish the European Research Area as the lynchpin of the Community's future action in this field.

(2) Backing the European Research Area, the Lisbon European Council set the Community the objective of becoming the most competitive and dynamic knowledge economy in the world by 2010.

(3) The globalisation of the economy calls for greater mobility of researchers, something which was recognised by the sixth framework programme of the European Community for research, technological development and demonstration activities, contributing to the creation of the European Research Area and to innovation (2002 to 2006)[37], when it opened up its programmes further to researchers from outside the European Union.

(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

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33 OJ C […], […], p. […].
34 OJ C […], […], p. […].
35 OJ C […], […], p. […].
36 COM(2000) 6, 18.1.2000.
37 OJ L 232, 29.8.2002, p. 1.

for researchers in the Community and opening the Community up to third-country nationals who could potentially be admitted for research purposes.

(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.

(6) Implementation of the Directive must not promote a brain drain from emerging or developing countries. Back-up measures to support researchers' reintegration into their countries of origin as well as the movement of researchers must be taken in partnership with the countries of origin with a view to establishing a comprehensive migration policy.

(7) It is appropriate to facilitate the admission of researchers by establishing an admission procedure which does not depend on their legal relationship with the host research organisation and by no longer requiring a work permit in addition to a residence permit. At the same time, the traditional avenues of admission (employment, work placement, etc.) should be maintained, especially for doctoral students carrying out research as students, who must be excluded from the scope of the Directive and are covered by Council Directive .../.../EC on the conditions of entry and residence of third country nationals for the purposes of studies, vocational training or voluntary service[38].

(8) 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.

(9) Research organisations approved in advance by the Member States must be able to sign a hosting agreement with a third-country national for the purposes of carrying out a research project; the Member States will issue a residence permit on the basis of the agreement if the conditions for entry and residence are met.

(10) In return for the prerogatives granted them, research organisations must undertake to assume responsibility for residence costs, health costs, and the cost of the researcher's return should any of these have to be borne by the host Member State during the researcher's residence or if the researcher were to remain illegally in the European Union once the hosting agreement has expired.

(11) Given the openness imposed by changes in the world economy and the likely requirements to meet the 3% target, third-country researchers potentially eligible for the Directive should be defined broadly in accordance with their qualifications and the research project which they intend to carry out.

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[38] OJ C 45, 25.2.2003. p. 18.

(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.

(13) As the effort to be made to achieve the 3% of GDP target for investment in research largely concerns the private sector, which must therefore recruit more researchers in the years to come, the research organisations potentially eligible for the Directive belong to both the public and private sectors.

(14) In order to make the Community more attractive to third-country researchers, they should be granted, during their stay, equal social and economic rights with nationals of the host Member State in a number of areas and the right to teach in higher education establishments.

(15) The objectives of the proposed action, namely the introduction of a special admission procedure and the adoption of conditions of entry and residence applicable to third-country nationals for stays of more than three months in the Member States for the purposes of conducting a research project under a hosting agreement with a research organisation, cannot be sufficiently achieved by the Member States, especially as regards ensuring mobility between Member States, and can therefore be better achieved by the Community. The Community is therefore entitled to take measures in accordance with the subsidiarity principle laid down in Article 5 of the Treaty. In accordance with the principle of proportionality set out in that article, this Directive does not go beyond what is necessary to achieve those objectives.

(16) The Member States should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.

(17) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

(19) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not participating in the adoption of this Directive, and is not bound by it or subject to its application,

HAS ADOPTED THIS DIRECTIVE:

Chapter I

General Provisions

Article 1

Purpose

This 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 conducting a research project under a hosting agreement with a research organisation.

Article 2

Definitions

For the purposes of this Directive:

(a) "Third-country national" means any person who is not a Union citizen within the meaning of Article 17(1) of the Treaty;

(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;

(c) "Research" means creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of man, culture and society, and the use of this stock of knowledge to devise new applications;

(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;

(e) "Residence permit" means any authorisation bearing the term "researcher" issued under this Directive by the authorities of a Member State in accordance with Article 1(2)(a) of Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals[39].

Article 3

Scope

1. The provisions of this Directive shall apply to third-country nationals, except where more favourable provisions apply under:

   (a) bilateral or multilateral agreements concluded between the Community or between the Community and its Member States on the one hand and one or more non-member countries on the other;

   (b) bilateral or multilateral agreements concluded between one or more Member States and one or more non-member countries.

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' legislation or administrative practice.

3. This Directive shall not apply to:

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[39] OJ L 157, 15.6.2002, p. 1.

(a) third-country nationals staying in a Member State as applicants for asylum or subsidiary protection or under temporary protection schemes;

(b) third-country nationals applying to reside in a Member State as students within the meaning of Directive …/…/EC on the conditions of entry and residence of third-country nationals for the purposes of studies, vocational training or voluntary service in order to carry out research leading to a doctoral degree;

(c) third-country nationals whose expulsion has been suspended for reasons of fact or law;

(d) researchers seconded by a research organisation to another research organisation in a different Member State.

Chapter II

Research organisations

Article 4

Approval

1. Any research organisation wishing to host a researcher under the admission procedure laid down in this Directive must first be approved for that purpose by the Member State where it is located.

2. The organisation concerned shall apply for approval to the authority designated for the purpose by the Member State, providing it with information on its statutory tasks or corporate purpose as appropriate and proof that it conducts research.

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.

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

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.

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.

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.

8. The authority designated for the purpose by each of the Member States shall produce lists of the different categories of research organisation approved for the purposes of this Directive. These lists shall be kept up to date and published each year in accordance with the national legal rules applicable in the Member States.

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.

Article 5

Hosting agreement

1. A research organisation wishing to host a researcher shall sign 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 subject to the researcher's being issued with a residence permit.

2. Research organisations may sign hosting agreements only if the following conditions are met:

(a) the research project has been accepted by the relevant authorities in the organisation, after examination of:

(i) the purpose and duration of the research, and the availability of the necessary financial resources for it to be carried out;

(ii) the researcher's qualifications in the light of the research objectives, as evidenced by a certified copy of his certificate in accordance with Article 2(b);

(b) during his stay the researcher will have sufficient monthly resources to meet his expenses and return travel costs in accordance with the minimum amount published for the purpose by the Member State, without having recourse to the Member State's social welfare system;

(c) the researcher will have sickness insurance for all the risks normally covered for nationals of the Member State concerned.

3. Once the hosting agreement is signed, the research organisation shall issue the researcher with a statement that financial responsibility has been assumed for residence costs, health costs and the cost of the researcher's return.

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.

Chapter III

Admission of researchers

Article 6

Conditions for admission

Member States shall admit researchers if they:

(a) present a valid passport or equivalent travel documents;

(b) present a hosting agreement signed with a research organisation in accordance with Article 5, accompanied by proof of funding for the research project and a certified copy of the researcher's degree certificate in accordance with Article 2(b);

(c) present a statement of financial responsibility issued by the research organisation in accordance with Article 5(3);

(d) are not considered to pose a threat to public policy, public security or public health.

Article 7

Duration of residence permit

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.

Article 8

Withdrawal or non-renewal of the residence permit

1. Member States may withdraw or refuse to renew a residence permit where:

   (a) it is found that the holder did not meet or no longer meets the conditions laid down in Articles 5 and 6;

   (b) its holder is residing for purposes other than that for which he was authorised to reside.

2. Member States may withdraw or refuse to renew a residence permit for reasons of public policy, public security or public health. Where they take such a decision, Member States shall take account of the seriousness or nature of the infringement of public policy or public health committed by the person concerned or the threat posed by that person. The competent authority of the Member State concerned may not withhold renewal of the residence permit, withdraw the permit or remove its holder from the territory on the ground of illness or disability suffered after the residence permit was issued.

Article 9

Fraud

Member States shall withdraw any residence permit issued under this Directive which has been obtained by fraudulent means.

Chapter IV

Researchers' rights

Article 10

Residence and research

Researchers shall have the right to enter and reside on the territory of the Member State which has admitted them and to conduct the research project there for which they have signed a hosting agreement. Member States which only issue residence permits on their territory shall grant third-country nationals any assistance in obtaining the necessary visa.

Article 11

Teaching

Researchers admitted under this Directive may teach in a higher education establishment within the meaning of Member States' legislation and administrative practice, subject to a maximum number of hours per year set by each Member State.

Article 12

Equal treatment

Holders of a residence permit shall be entitled to equal treatment with nationals as regards:

- (a) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;
- (b) working conditions, including pay and dismissal;
- (c) social insurance as defined by national legislation;
- (d) tax concessions;
- (e) access to goods and services and the supply of goods and services made available to the public.

Article 13

Mobility

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.

2. Paragraph 1 shall not affect Member States' right to require a short-term visa for third-country nationals not covered by the mutual recognition arrangements laid down in Article 21 of the Convention Implementing the Schengen Agreement.

Chapter V

Procedure and transparency

Article 14

Applications for residence permits

The Member States shall determine whether applications for residence permits are to be made by the researcher or by the research organisation concerned.

Applications shall be submitted:

- either in the researcher's country of residence via the diplomatic authorities of the Member State where the research is to be carried out;

- or directly on the territory of the Community, if the researcher is lawfully present there, where necessary via the diplomatic authorities of the Member State where the research is to be carried out.

Exceptionally, Member States may examine an application which is not submitted in accordance with this article.

Article 15

Procedural safeguards

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.

2. Reasons shall be given for any decision refusing, amending, refusing to renew or withdrawing a residence permit. The notification shall specify the appeal procedures available and the time limit for taking action.

3. Third-country nationals shall have the right to appeal to the courts of the Member State concerned against any decision to refuse, amend, refuse to renew or withdraw a residence permit.

Article 16

Fees

Member States may charge applicants for the processing of applications for residence permits. The fees charged shall not be more than the administrative costs incurred.

Article 17

Transparency

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.

Chapter VI

Final provisions

Article 18

Reports

Periodically, and for the first time no later than [...*], the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary. To this end, the Member States shall send the Commission statistical data on the application of this Directive.

* [Three years after the entry into force of this Directive.]

Article 19

Transposition

1. Member States shall implement the laws, regulations and administrative provisions needed in order to comply with this Directive by, at the latest, 31 December 2006. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

   When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 20

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 21

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

Proposal for a COUNCIL RECOMMENDATION to facilitate the admission of third-country nationals to carry out scientific research in the European Community

EXPLANATORY MEMORANDUM

The reasons why it is necessary to introduce the measures contained in the recommendation in advance of the transposal of the directive have already been explained in the Communication. The proposal for a recommendation covers four areas in which the Member States are asked progressively to adopt measures to facilitate the admission of researchers from non-member countries. These are admission for the purposes of research, the issue of residence permits, family reunification and operational cooperation between Member States and the Commission. In each of these areas specific measures have been identified and are being presented to the Council for adoption with a view to being implemented by the Member States. The aim is for a first set of measures to be agreed within a year of the adoption of the recommendation by the Council.

The legal base for the proposed recommendation has been chosen in the light of the purpose of the four areas covered and set out below. All fall under Article 63 of the EC Treaty. As in the case of the directive, Denmark will not take part in the adoption of the proposal, and the recommendation will not be binding upon or applicable to Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community. Nor will it apply to the United Kingdom and Ireland, under Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, unless these countries decide otherwise, according to the arrangements laid down in the Protocol.

Given the urgency and importance of these measures in the light of the objectives laid down at the Lisbon European Council, they can more easily be achieved at Community level because of their scope and impact.

COMMENTS ON THE MEASURES

1. ADMISSION FOR THE PURPOSES OF RESEARCH

The first set of measures in the recommendation relate to access to research posts on the labour market. They seek to ensure that researchers from third countries have rapid and easy access to research posts without any time limits.

a) The first measure concerns work permits. Given that there is a recognised shortage of researchers in the European Union and demand for researchers in the EU will increase in future, in line with the European Council's objectives, cited in the Communication, there is no longer any need to assess the labour market before allowing a third-country national to occupy a research post. The abolition of work permits will help to speed up the admission procedure for researchers in the EU. Before proceeding to the full-scale abolition envisaged by the directive, the Member States are asked to choose between waiving permit requirements or granting permits automatically, depending on the formula that best suits the way the administrations responsible for employment and immigration policies cooperate.

b) For the same reasons, researchers from third countries should not be subject to quota restrictions. The recommendation does not deal with the use of quotas by the Member States, but proposes that third-country nationals applying for research posts should not have their admission to the country restricted by such quotas if they do exist.

c) Similarly, access to research posts should not be subject to a maximum time limit, although this would not prevent residence permits issued to researchers being for a limited period, provided there were no restrictions on renewal. The recommendation provides in this context for a derogation in the case of measures aimed at counteracting the brain drain, if the policy of the Member State links access to research posts to the researchers' return to their native country in order to develop the knowledge they have gained there.

2. RESIDENCE PERMIT

The second set of measures relate to the duration and issue of residence permits.

a) If the European Union is to be able to attract researchers from third countries the procedure for issuing residence permits must be quick and straightforward. The recommendation therefore suggests that Member States set a target of issuing permits within thirty days.

b) The second measure relating to residence permits is the counterpart to the measure relating to the length of admission to the labour market. The aim is to abolish time limits and ensure that researchers' residence permits can in principle always be renewed. As in the case of work permits, the recommendation allows derogations in connection with measures to counteract the brain drain.

c) The third measure seeks to ease the smooth the way for the transposal and application of the directive. As the system it introduces gives a major role to research organisations in the procedure for issuing residence permits, the recommendation suggests that Member States harmonise their procedures without waiting for the new mechanism. The transition will be important for building a relationship of trust between the research organisations and the immigration authorities in the Member States, which will be essential for implementing the directive. This increasing involvement could, for example, take the form of checking the researcher's status, evaluating the research project (particularly the funding aspects), evaluating the researcher's resources during his or her stay and submitting the application for a residence permit for the researcher, as the Member State saw fit.

3. FAMILY REUNIFICATION

This is a very important factor for researchers from third countries who plan to settle in Europe. The difficulty of bringing their families with them or the fact that a family member might be unable to find employment are serious obstacles to researchers' mobility and may lead them to opt for a different destination. It is therefore essential to make it easier for family members of researchers admitted into the European Union to enter the territory and reside there. Given that the Directive on the right to family reunification was formally adopted on 22 September 2003, it was felt that no

further legislation should be passed on this subject. The matter must, therefore, be dealt with in the recommendation, which calls on Member States to adopt various measures that are more favourable than the Directive on family reunification.

a) Member States that would not authorise the reunification of family members in cases where it is discretionary only, are asked to facilitate their admission if the person applying for reunification is a researcher.

b) Member States are recommended not to use as grounds for rejecting a researcher's application for family reunification the fact that the application was made when the family members were already legally present on the territory. The Directive on the right to family reunification allows for the possibility of accepting such applications, and the recommendation allows researchers this option more generally. The efforts to facilitate the admission of researchers, including the proposal to allow them to submit applications for admission on the spot, could be compromised if requests for family reunification were refused when the family members were already in the country. Such a refusal would then seem disproportionate.

c) The possibility of the researcher's family members being able to work is obviously a key factor in the researcher's decision as to whether or not to settle in Europe. In the interests of coherence, it is proposed that family members receive the most favourable treatment given to third-country nationals.

d) This measure relates to the length of the procedure for issuing residence permits to family members. As in the case of the researchers themselves, the recommendation calls on Member States to comply with a shorter deadline than that laid down in their domestic law for family reunification under the regular provisions and, in any case, a period of less than the nine-month maximum laid down by the directive.

e) On similar grounds of speed and international competitiveness, the recommendation calls on Member States not to impose a waiting period for applications submitted by researchers.

4. OPERATIONAL COOPERATION

The final section of the recommendation contains a series of administrative measures across the board, aimed at facilitating the implementation of the recommendation and, ultimately, the directive.

a) Member States are asked to inform the Commission about any measures they adopt to facilitate the entry and residence of researchers from third countries.

b) In the interests of a better understanding of the movements of people involved, Member States are encouraged to collect and pass on to the Commission statistics on the residence permits they issue to researchers and their families.

c) to f) With a view to facilitating the admission of researchers and identifying the specific obstacles that arise in practice and the solutions that can be found to them, points 3, 4 and 5 of the recommendation provide for the designation of contact persons for the admission of researchers from third countries in the competent ministries (immigration and research) and embassies, who would be able to provide comprehensive information to third-country nationals applying for research posts in

the European Union. These special duties could be assigned to an existing member of staff. Research organisations are also asked in point 6 to designate a contact person in their midst to brief researchers from third countries and promote cooperation with the Member State's immigration authorities, given the role they will play in the admission procedure in future, under the terms of the directive.

g) Finally, Member States are encouraged to network. This should be helped by the efforts already made with the launch of the European Researchers' Mobility Portal on the Internet and the future creation of the network of mobility centres covering 33 countries, which should become operational at the beginning of 2004.

2004/0062 (CNS)

Proposal for a

COUNCIL RECOMMENDATION

to facilitate the admission of third-country nationals to carry out scientific research in the European Community

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63 thereof,

Having regard to the Commission proposal[40],

Having regard to the Opinion of the European Parliament[41],

Having regard to the Opinion of the European Economic and Social Committee[42],

Whereas:

(1) With a view to consolidating and restructuring European research policy the Commission decided in January 2000[43] that it was necessary to create a European research area as the centrepiece of future action by the Community in this area.

(2) The Lisbon European Council, endorsing the European research area, set the Community the target of becoming the most competitive and dynamic knowledge-based economy in the world by the year 2010.

(3) The globalisation of the economy calls for greater mobility for researchers, something which was recognised by the European Community's sixth Framework Programme for Research when it opened up its programmes more to researchers from outside the European Union.

(4) The number of researchers which the Community will need if it is to meet the target set by the Barcelona European Council of investing 3% of GDP in research is put at 700 000. This target must be met through a series of interlocking measures, such as making scientific careers more attractive to young people, increasing the opportunities for training and mobility in research, improving career prospects for researchers within the Community and opening up the Community to third-country nationals who might be admitted for the purposes of research.

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40 OJ C , , p. .
41 OJ C , , p. .
42 OJ C , , p. .
43 COM (2000) 6, 18 January 2000.

(5) Pending the adoption of a directive to help achieve these targets by introducing a procedure for the admission of third-country nationals to carry out research, this recommendation calls on Member States to facilitate the admission of such individuals already.

(6) Because of the shortage of researchers in the Community and the need to facilitate their admission, steps should be taken to promote access to research posts in the labour market, for example by waiving work permit requirements.

(7) In order to be competitive and attractive at international level, Member States should simplify and speed up their procedures for issuing and renewing visas and residence permits for researchers.

(8) The implementation of this recommendation should not encourage a brain drain from the emerging economies or developing countries. Flanking measures aimed at encouraging the integration of researchers in their countries of origin and promoting mobility among researchers should therefore be taken in these cases, as part of the partnership with the countries of origin with a view to establishing a global migratory policy.

(9) Because matters relating to family reunification are a crucial factor in researchers' decisions to choose the Community as the location for their research, Member States should retain or adopt provisions that are more favourable than those under Council Directive 2003/86 of 22 September 2003 on the right to family reunification[44].

(10) The exchange of information and best practice should be encouraged in order to improve admission procedures for researchers. This recommendation also identifies contacts between the competent authorities and networking as factors contributing to improvement.

(11) This recommendation respects fundamental rights and complies with the principles laid down, for example, in the Charter of Fundamental Rights of the European Union.

(12) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark will not take part in the adoption of this recommendation and is not affected by it,

HEREBY RECOMMENDS:

1) in the area of admission for the purpose of carrying out research:

a) encourage the admission of researchers into the Community, either by exempting them from work permit requirements or by providing for permits to be issued automatically;

b) refrain from using quotas to restrict the admission of third-country nationals for research posts;

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44 OJ L 251, 3.10.2003, p.12.

c) guarantee third-country nationals the possibility of working as a researcher without any maximum time limit, save where an exception is justified by the needs of the researchers' country of origin;

2) in the area of residence permits:

a) set a deadline of 30 days as the target for issuing residence permits in response to applications from third-country nationals for purposes of research;

b) guarantee third-country nationals working as researchers that their residence permits will be renewed indefinitely, save where an exception is justified by the needs of the researchers' country of origin;

c) gradually involve the research organisations in the admission procedure for researchers;

3) in the area of family reunification:

a) encourage the admission of family members of researchers from third countries where no obligation to admit them exists;

b) allow researchers from third countries and members of their family to apply for family reunification when the family members are already legally on their territory;

c) allow the family members of researchers from third countries who are admitted under the family reunification arrangements the most favourable treatment granted to third-country nationals as regards access to their labour market;

d) set a shorter deadline for replying to the request for admission of a family member of a researcher from a third country than that specified in domestic law and, in any case, shorter than the nine-month deadline laid down in Article 5(4) of Directive 2003/86;

e) refrain from imposing waiting periods on family members of researchers from third countries;

4) in the area of operational cooperation:

a) inform the Commission about the measures they have adopted to facilitate the admission of researchers from third countries;

b) gather statistics on the number of residence permits they issue to researchers from third countries and their family members;

c) designate a contact person within the ministry that deals with immigration and, where necessary, within their regional or local administration, who would be responsible for the admission of researchers from third countries

d) designate a contact person within the ministry that deals with research who would be responsible for the admission of researchers from third countries;

e) designate a contact person within their embassies who would be responsible for the admission of researchers from third countries;

f) encourage research organisations to designate a contact person who would be responsible within the organisation for the admission of researchers from third countries;

g) ensure that the people responsible for the admission of researchers from third countries within their administrations and research organisations network at national level.

Done at Brussels,

For the Council
The President

Proposal for a COUNCIL RECOMMENDATION to facilitate the issue by the Member States of uniform short-stay visas for researchers from third countries travelling within the European Community for the purpose of carrying out scientific research

EXPLANATORY MEMORANDUM

To complete the general framework for the entry and movement of third-country nationals for the purpose of carrying out scientific research in the European Community there is a need for special measures to facilitate the conditions under which this category of people are admitted to and allowed to travel in the Member States for short periods.

The proposal for a recommendation covers only the area of uniform visas issued for a total period of no more than three months and calls on Member States gradually to adopt measures facilitating the entry and movement of researchers who are nationals of third countries subject to a visa requirement under the terms of Council Regulation No 539/2001 of 15 March 2001[45].

Specific measures have been identified and are being presented to the Council for adoption with a view to being implemented by the Member States. The aim is for the implementation of these measures to be evaluated a year after the adoption of the recommendation by the Council.

The proposal for a recommendation is concerned with the procedure for issuing uniform visas and builds on the Schengen *acquis*. The legal base for this is Article 62(2)(b)(ii), which means that the "variable geometry" provided for by the Protocols on the position of the United Kingdom and Ireland and of Denmark applies. Thus, under the Protocol on the position of Denmark annexed to the EC Treaty, Denmark will not take part in the adoption of the proposal and the recommendation will not be binding on or applicable to Denmark. However, when, as in this case, proposals build on the Schengen *acquis*, Article 5 of the Protocol states that "Denmark shall decide within a period of 6 months after the Council has decided on a proposal or initiative to build upon the Schengen *acquis* under the provisions of Title IV of the Treaty establishing the European Community, whether it will implement this decision in its national law". Nor will the recommendation apply to the United Kingdom and Ireland, unless these states are authorised to do so under a mechanism laid down in the Protocol integrating the Schengen *acquis* into the framework of the European Union.

In accordance with the agreement singed on 17 May 1999 between the Council, Norway and Iceland to associate these countries with the implementation and further development of the Schengen *acquis*, measures taken by the European Union to amend or supplement the Schengen *acquis* are implemented and applied by Norway and Iceland.

Article 3 of the Act of Accession states that the provisions of the Schengen *acquis* and the acts building upon it or related to it, listed in the annex referred to in the article, will be binding on and applicable in the new Member States from the date of accession. The

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[45] Council Regulation No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, OJ L 81, 21.3.2001, p.1, as last amended by Regulation (EC) No 453/2003 (OJ L 69, 13.3.2003, p.10).

provisions and acts not referred to in the annex, although binding on the new Member States from the date of accession, will only apply in a new Member State pursuant to a Council decision to that effect in accordance with the article. With the exception of Regulation (EC) No 539/2001 and Regulation (EC) No 1683/95, the Schengen provisions on visas (Articles 9 to 18 of the Schengen Convention and their implementing decisions, particularly the Common Consular Instructions) are not listed in the annex and, though binding from the date of accession, will only be applicable in the new Member States after the Council decision referred to above.

In view of the urgency and importance of these measures, both from the point of view of the objectives of the Lisbon European Council and in their own right, the objective can only be achieved by Community action.

COMMENTS ON THE MEASURES

To enable the European Union to attract researchers from outside the European Union it is necessary to facilitate entry and mobility conditions so that this category of individuals can circulate within the common area to take part in specific events under the scientific research programmes within the European Community.

The procedures and conditions for issuing uniform short-stay visas are set out in the Common Consular Instructions. These provide for ways of facilitating various aspects of the procedure for issuing visas. These are intended to apply to people acting in good faith.

The recommendation is based entirely on the assumption that researchers intending to take part in scientific research projects in the European Community and who are nationals of third countries subject to a visa requirement in accordance with Regulation No 539/2001 may be regarded as bona fide applicants for whom it is legitimate to facilitate the issue of uniform visas.

Member States may set themselves the objective of taking the necessary steps in terms of material and administrative resources to ensure, in general terms, that they reduce the amount of time taken to issue visas requested by researchers.

International movement of researchers who have to travel frequently for short periods should be facilitated, not least because this is one of the flanking measures that the Community can take to encourage the free movement of intellectual resources, rather than a brain drain to the detriment of certain third countries. For this reason, Member States should issue visas to researchers who can prove that their work necessitates frequent travel, enabling them to make several return journeys between the European Union and their country of origin. They should also adapt the length of time visas are valid to the length of the research work. Researchers would not then have to apply for several successive visas during their work.

The Schengen *acquis* relating to visa policy requires visa applicants to present a number of documents in support of their application. Recognising researchers as bona fide applicants, Member States could consider reducing the evidence required in support of applications for this category of people, taking into account the local situation. In consultation with approved research organisations, a harmonised approach could facilitate the processing of researchers' visa applications.

Under the rules laid down in the *acquis*, Member States may reduce or waive the fees for processing researchers' individual applications.

To promote the exchange of best practice, Member States will engage in consultation at local level and share information about the administrative approaches they use to facilitate the processing of visa applications by researchers.

On the basis of information supplied by the Member States, the Commission will present a first assessment of the measures one year after the date of adoption of the recommendation.

2004/0063 (CNS)

Proposal for a

COUNCIL RECOMMENDATION

to facilitate the issue by the Member States of uniform short-stay visas for researchers from third countries travelling within the European Community for the purpose of carrying out scientific research

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62(2)(b)(ii) thereof,

Having regard to the proposal from the Commission[46],

Having regard to the opinion of the European Parliament[47],

Having regard to the opinion of the European Economic and Social Committee[48],

Whereas:

(1) With a view to consolidating and restructuring European research policy the Commission decided in January 2000[49] that it was necessary to create a European research area as the centrepiece of future action by the Community in this area.

(2) The Lisbon European Council, endorsing the European research area, set the Community the target of becoming the most competitive and dynamic knowledge-based economy in the world by the year 2010.

(3) The globalisation of the economy calls for greater mobility for researchers, something which was recognised by the European Community's sixth Framework Programme for Research when it opened up its programmes more to researchers from third countries.

(4) The number of researchers which the Community will need if it is to meet the target set by the Barcelona European Council of investing 3% of GDP in research is put at 700 000. This target must be met through a series of interlocking measures, such as making scientific careers more attractive to young people, increasing the opportunities for training and mobility in research, improving career prospects for researchers within the Community and opening up the Community to third-country nationals who might be allowed to enter and travel within the common area for the purposes of research.

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46 OJ C , , p. .
47 OJ C , , p. .
48 OJ C , , p. .
49 COM (2000) 6, 18 January 2000.

(5) In order to be competitive and attractive at international level, Member States should take the necessary steps to facilitate the entry into and movement of researchers within the Community for short periods.

(6) For short stays, Member States should undertake to consider researchers from third countries subject to a visa requirement under Regulation No 539/2001 as people acting in good faith and extend to them the advantages provided for in the *acquis* for the purpose of the procedures for issuing short-stay visas.

(7) Measures should be taken to encourage the exchange of information and best practice in order to improve the procedures for issuing short-stay visas for researchers.

(8) This recommendation respects fundamental rights and complies with the principles laid down, for example, by the Charter of Fundamental Rights of the European Union.

(9) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark will not take part in the adoption of this recommendation and is therefore not affected by it. However, because this recommendation seeks to build upon the Schengen *acquis*, under the provisions of Part Three, Title IV of the Treaty establishing the European Community, Article 5 of the Protocol applies.

(10) This recommendation builds on the Schengen *acquis,* which the United Kingdom does not take part in, in accordance with Article 4 and 5 of the Protocol integrating the Schengen *acquis* into the framework of the European Union, annexed to the Treaty on European Union and the Treaty establishing the European Community, with the result that the United Kingdom will not take part in the adoption of this recommendation and is not affected by it.

(11) This recommendation builds on the Schengen *acquis,* which Ireland does not take part in, in accordance with Article 4 and 5 of the Protocol integrating the Schengen *acquis* into the framework of the European Union, annexed to the Treaty on European Union and the Treaty establishing the European Community, with the result that Ireland will not take part in the adoption of this recommendation and is not affected by it.

(12) In the case of the Republic of Iceland and the Kingdom of Norway, this recommendation is a further development of the provisions of the Schengen *acquis*, which falls within the area referred to in point B of Article 1 of the Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis*.

(13) The recommendation constitutes an act building upon the Schengen *acquis* or otherwise related to it, within the meaning of Article 3(2) of the Act of Accession,

HEREBY RECOMMENDS:

1. facilitate the issue of visas by undertaking to expedite the examination of visa applications from researchers from third countries subject to a visa requirement under Regulation No 539/2001.

2. promote the international mobility of researchers from third countries needing to travel frequently within the European Union by issuing them with multiple entry visas. When determining the period of validity of the visas, the Member States will take into account the duration of the research programmes in which the researchers are taking part.

3. undertake to facilitate the adoption of a harmonised approach to the supporting evidence researchers are required to enclose with their visa application. They will consult the approved research organisations on this matter.

4. encourage the issue of visas without administrative fees for researchers, in accordance with the rules laid down in the *acquis*.

5. take account of the goal of facilitating the issue of visas to researchers from third countries when engaging in local consular cooperation, in order to promote the exchange of best practice.

6. undertake to supply the Commission, one year after the adoption of the recommendation, with information about best practices adopted to facilitate the issue of uniform visas for researchers, to enable it to evaluate the progress made.

Done at Brussels,

For the Council
The President