EUROPEAN PARLIAMENT

2004 *2009*

Committee on Civil Liberties, Justice and Home Affairs

PROVISIONAL
2004/0061(CNS)
2004/0062(CNS)
2004/0063(CNS)

16.12.2004

* and *III
DRAFT REPORT

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

2. on the proposal for a Council recommendation to facilitate the admission of third-country nationals to carry out scientific research in the European Community
(COM(2004)0178 – C6-0012/2004 – 2004/0062(CNS))

3. on the 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
(COM(2004)0178 – C6-0013/2004 – 2004/0063(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Vincent Peillon

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Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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1. DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

(Consultation procedure)

The European Parliament,

– having regard to the Commission proposal (COM(2004)0178)[1],

– having regard to Article 63(3)(a) and (4) of the EC Treaty,

– having regard to Article 67 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0011/2004),

– having regard to Rule 51 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Industry, Research and Energy (A6-0000/2004),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission	Amendments by Parliament
Amendment 1 Recital 4	
(4) The number of researchers which the Community will need to meet the target set by the Barcelona European Council of 3% of GDP invested in research is estimated at 700 000. This target must be met through a series of interlocking measures such as making scientific careers more attractive to young people, extending the opportunities	(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, ***promoting women's***

[1] OJ C ... / Not yet published in OJ.

for training and mobility in research, improving the career prospects for researchers in the Community and opening the Community up to third-country nationals who could potentially be admitted for research purposes.	***involvement in scientific research,*** extending the opportunities for training and mobility in research, improving the career prospects for researchers in the Community and opening the Community up to third-country nationals who could potentially be admitted for research purposes.

Justification

The number of female researchers is still far lower (less than 50% Community-wide) than that of male researchers, particularly in the field of science, despite the fact that among people under 30 years of age there are more female than male graduates. Women are hampered by barriers that need to be combated in order to ensure that they are better represented in scientific posts and decision-making bodies.

Amendment 2
Recital 12 a (new)

	(12a) Given that family reunification is an essential factor in - and may indeed by a precondition for - mobility among researchers, it should be made easier for researchers' families to join them, so as to maintain family unity.

Justification

Family reunification is an extremely important factor for researchers from third countries who are planning to settle in Europe. Difficulties involved in bringing their families over are a major obstacle 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.

Amendment 3
Recital 12 b (new)

	(12b) Family members should thus be able to join the researcher in another Member States under conditions more favourable than those set out in Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification[1], particularly in respect of access to the labour market in the Member State

concerned.

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[1] OJ L 251, 3.10.2003, p. 12.

Justification

The Commission proposal makes reference to the directive adopted by the Council on 22 September 2003, which is not at all satisfactory and is totally unsuited to the category of person with which we are dealing here. Special arrangements should be made for members of researchers' families so as to facilitate their admission to the host Member State and their access to the labour market there.

Amendment 4
Article 1

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***.	This Directive lays down the conditions for the admission of third-country researchers to the ***European Union*** for more than three months for the purposes of conducting a research project under hosting ***agreements*** with ***one or more approved*** research ***organisations in one or more Member States***.

Justification

To bring this article into line with Article 13, under which a third-country national may conduct a research project in more than one Member State and may sign more than one hosting agreement. The European Union must be considered a common research area in which there is freedom of movement for persons.

Amendment 5
Article 4, paragraph 2

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.	2. ***Both public and private organisations*** shall apply for approval to the authority designated for the purpose by the Member State, providing it with information on ***their*** statutory tasks or corporate purpose as appropriate and proof that ***they conduct*** research.

Justification

To ensure consistency with the amendment covering the following subparagraph, which proposes that the approval should be valid for a renewable period of five years for both public and private organisations.

Amendment 6
Article 4, paragraph 2, subparagraph 2 (new)

	Approval granted to a research organisation shall be valid for a renewable period of five years.

Justification

The Commission proposal provides for unlimited approval being granted to the organisation concerned if its main task consists in conducting research. It would be more appropriate to restrict the validity all such approvals to a renewable period of five years. This would ensure that periodic checks are made. This amendment complements amendments 7 and 8.

Amendment 7
Article 4, paragraph 3

3. Member States ***shall approve for an unlimited period public and private organisations whose main tasks consist in conducting research and Member States' higher education establishments within the meaning of their legislation or administrative practice.***	***3.*** Member States ***may, in accordance with national law, require the research organisation to supply a written undertaking to the efffect that, should the researcher remain unlawfully on the territory of the Member State concerned, the organisation will take responsibility for reimbursing residence costs, health costs and the cost of return paid from public funds. The research organisation's financial liability shall cease no later than six months after the expiry of the hosting agreement.***

Justification

In view of the central role they are given to play in the admission of third-country nationals, it is important for research organisations to take on certain responsibilities. In order to guard against abuses, they should bear any costs arising from unlawful stays by researchers for a period of six months after the expiry of the agreement. The one-year period put forward by the Commission would be likely to deter organisations, while a six-month period is in keeping with the proportionality principle.

Amendment 8
Article 4, paragraph 4

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

Justification

Replaced by the new wording of Article 4(2).

Amendment 9
Article 4, paragraph 5

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

Justification

Replaced by the new wording of Article 4(2).

Amendment 10
Article 4, paragraph 6

6. When applying for approval, the research organisation shall give the host Member State an undertaking that they will assume responsibility for residence costs, health costs, and the cost of return in respect of the researchers it hosts and to issue them with the statement referred to in Article 5(3). The research organisation shall remain responsible for these costs for one year after the date of expiry of the hosting agreement referred to in Article 5 or the date on which the organisation informs the Member State of an event rendering it impossible to implement the hosting agreement in accordance with Article 5(4), for as long	***deleted***

as the researcher has not left the territory of the European Union.

Justification

Replaced by the new wording of Article 4(3)

Amendment 11
Article 5, paragraph 2, point (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;	(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 ***assistance*** system;

Justification

Concerns the English version only. Researchers from third countries must be given the same rights as those enjoyed by EU nationals. It is essential for them to be given access to the sickness insurance scheme.

Amendment 12
Article 7

Member States shall issue a residence permit for ***one year or more and shall renew it annually if the conditions laid down in Articles 5 and 6 are still met. If the research project is scheduled to last less than one year, the residence permit shall be issued for*** the duration of the ***project***.	Member States shall issue a residence permit for the duration of the ***hosting agreement***.

Justification

If we wish to encourage researchers from third countries to come to work in the European Union, we need to make administrative formalities as simple as possible for them. It is more logical to base the residence permit's duration on that of the hosting agreement than to have a permit that must be renewed each year.

Amendment 13
Article 7 a (new)

	Article 7 a
	Family members
	1. Member States shall facilitate the admission of members of the families of researchers from third countries, where this is not compulsory.
	2. The period of validity of the residence permit held by a member of a researcher's family shall be the same as that of the residence permit issued to the researcher, in so far as the period of validity of their travel documents permits.
	3. The issue of residence permits to members of the family of a researcher admitted to a Member State shall not be made conditional upon a minimum period of residence by the researcher.

Justification

Family reunification is a precondition for making the European research area attractive to third-country nationals. Host Member States should introduce measures that will make it easier for members of researchers' families to join them. This will be a decisive factor in their decision to settle temporarily outside their country of origin.

Amendment 14
Article 13

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***	1. ***A third-country national admitted as a researcher under this Directive shall be entitled to conduct part of his research work in another Member State under the conditions set out in this article***.

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.***	2. ***A researcher residing for no more than three months in another Member State may conduct his research work on the basis of the hosting agreement concluded in the first Member State, provided that he has sufficient resources in the other Member State and that the latter State does not consider him to pose a threat to public policy, public security or public health.***
	3. Should the researcher reside for more than three months in another Member State, the Member States may require that a new hosting agreement be concluded, to cover his research work in the Member State concerned. In any event, the conditions set out in Articles 5 and 6 shall be complied with vis-à-vis the other Member State.
	4. Where, under the relevant legislation, mobility is conditional upon the issue of a via or residence permit, the visa or permit shall be granted without delay and within a period that, while allowing the competent authorities sufficient time to process the application, does not hamper the continuation of the research work .
	Member States shall not require the researcher to leave their territory prior to applying for a visa or residence permit.

Justification

The article on mobility is one of the most important parts of the directive. Researchers must be allowed to conduct their research work in more than one Member State. The formalities should therefore be made as streamlined as possible. Nonetheless, given the responsibilities incumbent on research organisations, it is reasonable to require a new agreement to be signed where researchers plan to reside for more than three months outside the host Member State.

Amendment 15
Article 18

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.	Periodically, and for the first time ***two years after the entry into force of this Directive***, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States ***and on progress with implementation of the measures provided for in the two Council recommendations to facilitate the admission of third-country nationals to carry out scientific research in the European Community*** and shall propose any amendments ***and incorporations*** that ***need to be made to the Directive and, where appropriate, that the second recommendation be converted into a regulation***. 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.]

Justification

It is essential for the Commission to review implementation of both the directive and the two recommendations linked thereto and, following the review, for it to be able to propose that the two non-binding instruments be converted - one by means of an amending directive and the other through the adoption of a regulation.

2. DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council recommendation to facilitate the admission of third-country nationals to carry out scientific research in the European Community (COM(2004)0178 – C6-0012/2004 – 2004/0062(CNS))

(Consultation procedure)

The European Parliament,

– having regard to the Commission proposal (COM(2004)0178)[1],

– having regard to Article 63 of the EC Treaty,

– having regard to Article 67 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0012/2004),

– having regard to Rule 51 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Industry, Research and Energy (A6-0000/2004),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission	Amendments by Parliament
Amendment 16 Recital 4	
(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	(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,

[1] OJ C ... / Not yet published in OJ.

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.	***promoting women's involvement in scientific research,*** 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.

Justification

The number of female researchers is still far lower (less than 50% Community-wide) than that of male researchers, particularly in the field of science, despite the fact that among people under 30 years of age there are more female than male graduates. Women are hampered by barriers that need to be combated in order to ensure that they are better represented in scientific posts and decision-making bodies.

3. DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the 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 (COM(2004)0178 – C6-0013/2004 – 2004/0063(CNS))

(Codecision procedure: first reading)

The European Parliament,

– having regard to the Commission proposal (COM(2004)0178)[1],

– having regard to Article 62(2)(b)(ii) of the EC Treaty,

– having regard to Article 67(1) of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0013/2004),

– having regard to Articles 67(4) and 251(2) of the EC Treaty,

– having regard to Rule 51 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Industry, Research and Energy (A6-0000/2004),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission	Amendments by Parliament
	Amendment 17 Recital 4
(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	(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,

[1] OJ C ... / Not yet published in OJ.

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.	***promoting women's involvement in scientific research,*** 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.

Justification

The number of female researchers is still far lower (less than 50% Community-wide) than that of male researchers, particularly in the field of science, despite the fact that among people under 30 years of age there are more female than male graduates. Women are hampered by barriers that need to be combated in order to ensure that they are better represented in scientific posts and decision-making bodies.

EXPLANATORY STATEMENT

Background to the Commission proposals

The Commission has submitted to Parliament a package of measures seeking to facilitate the admission of third-country researchers to the European Union.

These proposals are intended to help meet the targets set in Lisbon and Barcelona.

In Lisbon in 2002 the Union set itself the objective of becoming the most competitive and dynamic knowledge economy in the world.

Given that one of the keys to the success of this strategy is to give a new impetus to European research policy, the European Council adopted the proposals submitted by the Commission in January 2000 with a view to the establishment of a European research area. The idea was to break down the barriers between national research systems, and enhancing the mobility of researchers - an option that has subsequently been endorsed on several occasions - was chosen as one of the means of doing so.

Mobility is an essential factor in the acquisition and transfer of knowledge. It therefore helps to raise the general standard of European research through the transfer of expertise and the formation of scientists' networks.

These considerations were taken into account in the 6th R&TD Framework Programme, with € 1.6 billion being earmarked for action to promote researcher training, mobility and career development as part of the Human Resources and Mobility activity.

However, in addition to mobility within the European Union, consideration also needs to be given to mobility within the framework of exchanges with third countries.

It is essential for non-EU researchers to be taken in if we wish to meet the Barcelona target of investing 3% of the Member States' GDP in research and technological development. In order to do so the EU will need to recruit 700 000 researchers by 2010 and it will not be able to produce this number of researchers itself.

It is therefore essential to remove the barriers preventing scientists from coming to the EU.

The idea of creating a specific permit for third-country researchers was raised in 2001 in a communication from the Commission. The Commission has since developed close ties with Ministries of Justice or Home Affairs in the Member States during implementation of this communication.

It must not be forgotten that, while the proposal deals with researchers and is therefore of direct interest to DG Research, it come primarily within the sphere of immigration policy and thus DG JHA, as is demonstrated by the choice of legal bases.

A balance needs to be struck between the urgent need to give the European research area a

boost and immigration and security concerns.

In order to head off any future disputes, we need to base our action on the principle that researchers are not 'ordinary migrants'. They come within that category of highly-qualified migrants in respect of which the Commission came down clearly in favour of the controlled reopening of legal immigration channels in its communication of 22 November 2000 on a Community immigration policy.

Substance of proposals

The Commission has put forward three instruments:

- the **directive** focuses specifically on the admission of researchers, conditions governing entry and residence for periods of more than three months, researchers' rights and the scope of Community legislation in the area. It provides for an enhanced role for research organisations and the introduction of a residence permit not linked to the researcher's status;

- the **first recommendation** seeks to prepare the ground for the directive's implementation by calling on Member States to adopt on a gradual basis measures facilitating the admission of third-country researchers; it also covers, inter alia, the issue of residence permits, family reunification and operational cooperation between Member States and the Commission;

- the **second recommendation** covers the issue of short-stay visas to meet the special needs of researchers who are required, for example, to speak at seminars and conferences. Parliament has been asked for its opinion on this recommendation under the **codecision** procedure.

Rapporteur's position

The rapporteur welcomes the move to facilitate the admission of third-country researchers to the European Union.

He endorses the overall approach taken in the package of measures put forward and stresses the importance of introducing measures aimed at attracting scientists to the European research area while creating an environment likely to encourage researchers to remain within the EU.

The rapporteur would point out that the scientific community has been waiting for legislation in this area for several years now and stresses the need for the directive to be brought into force at the earliest opportunity. In this connection, he deplores the fact that the Council is envisaging the possibility of derogating from the proposed system for two years after the directive's entry into force. This would mean a postponement until 2009, which would be totally at odds with the urgency of the situation!

Procedure

The rapporteur is extremely unhappy with the methods being used by the Council. It reached political agreement on the directive on 19 November 2004 and on the first recommendation as far back as 26 May 2004, which was even before Parliament had held its first exchange of

views. This means that, in practice, Parliament is being stripped of its powers in this matter.

In future, the rapporteur expects the principle of loyal cooperation between the institutions to be adhered to, which means that the Council must refrain from taking decisions before Parliament has had an opportunity to give its opinion.

The explanatory statement and the amendments will therefore take account of the text of the political agreement.

The rapporteur calls on the Council to review its position in the light of Parliament's amendments.

Substance of proposals

Approval of 'host' research organisations (Article 4 of directive)
The rapporteur considers that approval should not be granted for an unlimited period; it should instead be granted for a renewable period of five years. Furthermore, the period during which an organisation continues to be responsible for a researcher after the expiry of the agreement should be reduced to six months.

Legal immigration (Articles 7 and 15 of directive/points 1 and 2 of first recommendation)
This package of measures could be considered one of the first Community instruments on legal immigration. This is because all form of quotas or national controls on the entry of researchers is rendered null and void by the directive, which requires Member States to issue residence permits to researchers on production of a hosting agreement. The Commission makes provision for a residence permit being issued within thirty days of the date of application. The Council is apparently unwilling to accept this deadline, which, however, is essential to the procedure's effectiveness.

In connection with legal immigration by researchers, one extremely positive provision deserves support, namely the fact that the issue of a residence permit means that there is no need to apply for a work permit.

In the run-up to the total abolition advocated in the directive, the first recommendation calls on Member States to choose between an exemption from work permit requirements and the automatic issue of work permits.

Family reunification (point 3 of first recommendation)
The rapporteur welcomes the Council's wish to include provisions on family reunification in the directive, while the Commission dealt with this matter in the first recommendation only. He nonetheless deplores the fact that the provisions on family reunification are optional, with the final choice being left to the Member States.

He also regrets the lack of provisions covering other matters linked to family reunification, such as access to the labour market for researchers' spouses.

The Council deleted the references to family reunification in the first recommendation. It would be preferable for them to be retained, since they were much more precise and detailed.

Withdrawal or non-renewal of the residence permit (Article 8 of directive)
The rapporteur endorses the Commission proposal to confine withdrawal or non-renewal of the residence permit to cases of 'serious' infringement of public policy or public health and its proposal that 'illness or disability suffered after the residence permit was issued' should not be grounds for withholding renewal of the residence permit, withdrawing the permit or removing its holder from the territory of a Member State. He deeply regrets the fact that the Council deleted this paragraph, which is in keeping with the case law of the European Court of Human Rights.

Mobility of researchers in the EU (Article 13 of directive)
The directive takes due account of the fact that researchers are often obliged to travel during the course of their work. It accordingly provides that a holder of a residence permit issued under the directive may conduct part of his research project on the territory of another Member State if a number of conditions are met. The rapporteur would like to clarify the Commission's proposals by stipulating that at the end of a period of three months in another Member State, a new agreement and a new residence permit must be obtained in the host Member State.

Applications for admission (Article 14 of directive)
The rapporteur shares the Commission's view that researchers should be able to submit applications for admission when they are already on the territory of a Member State, whether for study purposes or on holiday. The Council, on the other hand, has taken the view that each Member State should decide whether to allow this or not.