

## Implementation and Impact of the Researchers Directive (Directive 2005/71/EC)

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### *Executive Summary*

The aim of Council Directive 2005/71/EC of 12 October 2005, the so called **Researchers Directive**<sup>1</sup>, is to reduce obstacles to entry and residence in the EU of third-country national researchers and to grant them intra-EU mobility rights. In 2000, the European Council launched the “Lisbon Strategy for growth and jobs” as the European Union’s joint response to the challenges of globalisation, demographic change and the knowledge society. The strategy aimed at making the EU “the most dynamic and competitive knowledge-based economy in the world.” Based on this overall goal, a broad number of objectives have been developed; one of them stipulates that each EU Member State shall increase R&D expenditures to three percent of the GDP. The evaluation of the Lisbon Strategy revealed that many of the initial goals could be reached only partly and that reinforced efforts are needed to achieve them by 2020. The “Europe 2020 Strategy” reflects this need by identifying three key drivers for growth (smart, sustainable and inclusive growth) and by setting five targets against which the progress made can be tracked by 2020. The objective of investing three percent of the GDP in R&D is one of those targets.

*„Lisbon Strategy“  
and „Europe 2020“*

This target shall be met by a number of combined measures. Opening up the EU for third-country nationals for the purpose of research is one of them. The Researchers Directive intends to contribute to this target by fostering the admission and mobility of third country national (TCN) researchers who want to stay in the EU for research purposes with a duration of more than three months. The Directive provides for a **fast-track procedure for the admission** of TCN researchers. It grants a specific residence permit, which is based on a **hosting agreement** between an accredited (“approved”) research organisation and a TCN researcher. The hosting agreement confirms the **status** of the researcher, the existence of a **valid research project**, as well as the possession by the researcher of the necessary **scientific skills**, **sufficient financial means** and **health insurance**. The permit automatically grants the **right to work** and to **teach**, as well as the same treatment as nationals in areas like social security and working conditions. In addition, it grants the right to **family reunification** and **free travel** between MS in the context of carrying out the research project. The Directive is a legally binding instrument and MS had to transpose the Directive by 12 October 2007.

*The „Researchers  
Directive“ – goal  
and main elements*

In 2011 the EC commissioned ICMPD to carry out a study to assess the implementation and the impact of the Researchers Directive on the admission of TCN researchers to the EU. The study evaluated the degree of transposition of the Directive’s text into national legislation, the institutional and procedural frameworks to support the actual implementation, the quantitative impact on the admission of TCN researchers as well as the beneficiaries’ views on the functioning of the instrument. The study was comprised of a **legal analysis** assessing the transposition of the Directive into national legislation and an **impact assessment** using on a

*Purpose and scope  
of the study*

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<sup>1</sup> The Directive does not apply to United Kingdom and Denmark.

questionnaire-based survey among research organisations and TCN researchers. In total, **267 TCN researchers** and **216 research organisations** responded to the questionnaire. Despite the lack of completeness of data on admissions of TCN researchers in the EU and the corresponding data bias, it can be assumed that a comparatively large share of TCN researchers was reached (approximately 7% of the total of known entries). Thus, and provided they are treated with some caution, their experiences and views can be perceived as speaking for the target group of researchers as such.

The aim and purpose of the Researchers Directive are **to facilitate the access of TCN researchers** to the European Union. Should it be seen as a functioning instrument in this respect? Does it have an impact? Has it been successful? The answers to these questions have to be **fairly positive**. There are some shortfalls, and improvements are recommended, but at the same time it has to be concluded that there is a clearly measurable quantitative impact of the implementation of the Directive, that the majority of research organisations and TCN researchers affected evaluate their respective experiences as rather positive, and that the latter do not encounter specific disadvantages or discrimination.

However, satisfaction depends to a high degree on the availability of clear and unambiguous information, streamlined and standardised procedures, support for applicants throughout the whole admission procedure, and the level of know-how and readiness to support applicants on the part of consular/embassy staff and immigration authorities. These areas of “flanking measures” have the biggest potential to take the functioning of the Directive further and both the EU and MS should invest in them to increase the attractiveness of the Directive for TCN researchers. Thus, the Directive and its national transposition can represent only one factor amongst others – an important, but in many cases not sufficient, one. In the long run, the acknowledgment of the demand for research expertise and experience coming from third countries among all actors in MS, an open and welcoming environment for TCN researchers at academic institutions and in the private sector, real career opportunities, fair and attractive payment, and generally more favourable conditions and opportunities compared to the other competitors for talent will ultimately decide upon the attractiveness of the European Research Area.

### ***Main Findings of the Study***

All MS **have transposed the provisions** of the **Researchers Directive**. They either adopted new legislation or amended existing laws and secondary legislation in line with the Directive. The practical implementation of the Directive has also been affected by a number of legal instruments that have been adopted at the EU level since 2005, particularly the **2010 Visa Code** and the **2009 EU Blue Card Directive**. It has to be stressed that the main elements of the Directive (definition of researcher and research, accreditation of research organisations, hosting agreement, application procedures, TCN researchers’ rights and procedural safeguards) have been incorporated into national legislation and are applied in practice. At the same a number of shortfalls were identified that potentially or practically hinder the implementation of the Directive to the full benefit of TCNs planning to enter the EU to conduct research. Some of these shortfalls can be attributed to lack of clarity of the text of the Directive as such, while others result from the incomplete transposition of its provisions or the application of procedures that run contrary to the Directive.

In most EU MS there is an absence of a **literal transposition of the “definitions”** of the Directive. Such a literal transposition would promote uniform interpretation and application in the whole EU and would underline more clearly that TCN researchers

***Positive impact of the Researchers Directive***

***Impact of other factors on the success of the Directive***

***Transposition and implementation at national level***

***Absence of uniform „definitions“ in national legislation***

entering under the Directive constitute a category that is distinct from other types of immigration and entitled to benefit from specific rights and opportunities. There is no uniform way of **publishing** the list of **approved research organisations** among MS either and some of them update the respective lists rather infrequently. It is of course not only the information on approved research organisations that is important for TCN applicants, but also, and to an even greater extent, detailed information on the conditions and procedures for entry and residence for the purposes of carrying out research. This information is also not easily accessible in some cases.

The **rights of TCN researchers** granted under the Directive are not always clearly specified in national legislation (particularly regarding mobility and equal treatment rights). In many MS, national legislation does not explicitly stipulate that TCN researchers who have been issued a permit in another MS can work on their territory for up to three months without an additional work permit. Taking into consideration that the Directive provides for a special mobility right for researchers including both the right to circulate and work, the fact that the national legislation does not stipulate the peculiarity of TCN researchers' mobility may result in uncertainty in terms of legal interpretation and practical application of those provisions.

Although the **hosting agreement** is considered to be a special contract for the purposes of the Directive, the European legislator has decided to not define it in all its details. As a consequence, MS interpret the role and scope of the hosting agreement differently; some in the meaning of a special contract for research purposes; while others leave aside the term hosting agreement and apply the term employment contract. In other cases, it is required to conclude both a hosting agreement and an employment contract with TCN researchers admitted. In practice, TCN researchers are admitted to pursue a research project lasting more than three months under different types of permits. There is no uniform use of permits and no uniform definition of conditions and applicable types for TCN researchers' residence permits among MS. Consequently, there is **uncertainty in terms of the permits** that should be granted to TCN researchers.

However, all mentioned shortfalls can and will be addressed in the future and mentioning them at this point should not imply that the Directive as such (or related provisions and procedures at the MS level) is by any means dysfunctional or not well-designed. On the contrary, all indicators used in this study suggest that it functions quite well. This becomes even more apparent when taking into account that the creation of the hosting agreement implies **a fundamental shift in the decision** on the admission of a TCN from **migration authorities to research organisations and private entities**. In this sense, the Directive was and is very innovative and it may require still more time before legislation and procedures, as well as perceptions and attitudes, will have fully adapted to this non-traditional way of managing migration.

The conclusion that the Researchers Directive and the corresponding national regulations do have a positive impact is strongly supported by available statistics. The analysis related data confirm that the application of the Directive has indeed facilitated and increased the access of TCN researchers to the EU. Not all of the 25 MSs bound to the Directive were in a position to provide annual statistics on the number of TCN researchers granted a research residence permit for the period 2007-2010. However, 15 MS have annual records for that period<sup>2</sup> and their figures confirm clear quantitative trends: Between 2007 and 2010, there was a significant increase in permits granted to TCN researchers in MS both in absolute and relative terms. In the 15 MS that have data on permits for TCN researchers, the number of

*TCN researchers' rights are not always clearly defined in national legislation*

*„Hosting agreements“ are applied differently in EU MS*

*A new and innovative approach in migration management*

*Entering into force of the Directive has increased admission of TCN researchers*

<sup>2</sup> AT, BE, CZ, EE, FI, DE, EL, HU, IE, LV, LT, NL, PL, PT, ES, SE, SK and SI.

permits increased from a total of **239 TCN researchers in 2007** to a total of **3,713 permits in 2010**, implying that the annual number of permits **increased more than 15-fold** over that period.

The figures presented reveal that there are differences in the extent to which MS use the instrument. At the same time, all MS observed significant increases when comparing annual figures for the period 2007 to 2010. **NL** recorded an increase of 558% between 2008 and 2010 (from 216 to 1,422), **ES** an increase of 313% between 2007 and 2010 (from 15 to 62), **DE** an increase of 312% (from 100 to 412), **IE** an increase of 307% (from 73 to 297), **CZ** an increase of 102% (from 102 to 206) and **AT** an increase of 46% (from 143 to 209). It is difficult to assess whether the observed trends express a real increase of TCN researchers coming to the EU, or whether figures only reflect a shift from one immigration instrument to another, with MS counting TCN researchers under a new category that did not exist before. The fact that most MS observed positive trends support the conclusion that there was a real increase. However, with the passing of just 2-4 years since the introduction of this specific category at the MS level, observation periods are too short to assess the real effects in quantitative terms. A statistical review in five years' time will come to more sound conclusions.

TCN researchers who responded to the survey were predominantly male (**70.1% male** respondents, **29.9% female** respondents). These figures indicate a trend towards "male migration" among researchers from third countries. What was also noticeable about respondents to the survey was a clear trend towards the natural sciences and technology.

**52.2%** of TCN researchers defined "**natural sciences**" as their main discipline. The highest reported disciplines after "natural sciences" were "engineering" (14.6%), "information technologies" (12.7%) and "health sciences" (9.0%). "Humanities", "social sciences" and "applied sciences" were to be found further down the list. 6.7% of TCN researchers were engaged in "social sciences", 3.4% in "humanities" and 0.7% in "business" or "law". If the aim of the Directive was to attract highly-skilled professionals and researchers in "natural" and "formal sciences", the findings of the study indicate that it has been very successful in this respect.

Approved research organisations in European countries of destination and home organisations in countries of origin of TCN researchers seem to have sufficient awareness of and knowhow on the Researchers Directive and its application. At the same time there seems to be less awareness among TCN researchers themselves, even though they have moved to the EU on the basis of national procedures in line with the Directive. A certain share of the target group, namely those TCN researchers who are not part of a network linking organisations at home and host countries that know about the Directive and apply it in practice, is cut off from key information and practical support when trying to move to the EU. For MS, this implies that they might not be able to benefit from the full potential of highly-skilled researchers available in third countries, and for TCN researchers that they cannot fully utilise opportunities that they would qualify for on the basis of their professional backgrounds.

Notwithstanding this, both research organisations and TCN researchers evaluate their respective experiences with regard to the different aspects of **national application and admission procedures largely positively**. The positive experience refers to the approval procedure of research organisations, the setting up of research work and the conclusion of hosting agreements, the actual admission procedure of TCN researchers and the admission of family members. Thus, the respective levels of satisfaction depend to a high degree on the availability of clear

*Significant increases in admissions in some EU MS*

*The majority of TCN researchers under the Directive are male*

*The majority of TCN researchers under the Directive engage in „natural sciences“*

*Awareness about the provisions of the Directive among research organisations and TCN researchers*

*Generally positive experiences and high level of satisfaction with the Directive*

and unambiguous information, streamlined and standardised procedures, support from research organisations for applicants throughout the whole admission procedure, and the level of know-how and readiness to support applicants on the part of consular/embassy staff and immigration authorities.

TCN researchers under the Directive are entitled to the same treatment as nationals in regards to the recognition of qualifications, working conditions including pay and dismissal, social security, tax benefits and access to goods and services. The majority of TCN researchers **did not encounter any disadvantages or discrimination** in their host country and at their host organisation. Nevertheless, some comments by TCN researchers imply that they still encounter difficulties with authorities, with the bureaucracy at their host organisations, at their workplace or in their daily lives, difficulties that are linked to their residence status or to the fact that they are not EU citizens. A considerable share of these difficulties seems to result from **language and cultural barriers** or a lack of familiarity with bureaucratic procedures and rules in their host countries.

A lack of financial means and/or fellowships, as well as incurring costs for applying and renewing permits, have been named as additional obstacles to overcome when trying to organise the stay of a TCN researcher at a hosting organisation. However, applicants are first and foremost attracted by the research environment and career opportunities in a MS, which are a result of good funding programmes, efficient R&D policies and non-discriminatory behaviour and attitudes towards researchers from non-EU countries. In general, immigration policies – including those under the Researchers Directive - are not the major attraction for TCN researchers to apply, but can become either a facilitator or a hindrance, depending on how legislation is implemented and procedures are conducted. In any case, support for applicants before and during the admission procedure, in combination with a pro-active information policy, have been highlighted as the main factors in promoting enhanced access of TCN researchers by most respondents, be it on the individual or institutional side.

### ***Policy Recommendations***

The findings of the study make evident that **access to information is key** for the successful implementation of the Researchers Directive. This refers particularly to the role of research organisations as main interlocutors for applicants. Thus, information on approved research organisations should be updated and re-published by MS every time an organisation obtains approval or renewal of approval or if an approval has been withdrawn. The most effective and accessible approach is to publish the list on the website of the approving authority. The role of EURAXESS as an important source of information has been confirmed by TCN researchers participating in the survey. Consequently, the role of the network in collecting and publishing information from the MS on one website should be further strengthened.

In this context it is also recommended to implement **measures that directly reach out to research organisations that have not yet been approved** or have not sought accreditation, inform them about the Directive, the formal and procedural requirements and assist them in building their respective capacities. Further concrete measures should promote cooperation between approved research organisations, organisations in countries of origin, the EURAXESS network and migration authorities to identify existing information gaps on all sides, define the demand for additional support in formal aspects of the procedure, address shortcomings of admission procedures and allow for the exchange of Good Practices between respective MS.

***Low exposure to disadvantage and discrimination***

***Main obstacles encountered by TCN researchers***

***Transparency, awareness and information***

***Broadening of opportunities for TCN researchers***

MS authorities and host research organisations should explore ways to **improve the support they offer to TCN researchers** admitted under the Directive with a focus on practical assistance. Such support should include clear and unambiguous information on all formal requirements and procedural steps in the national language(s) of beneficiaries; interpreters, translators or “cultural mediators”, who assist TCN researchers in official procedures and contacts with authorities but also with landlords, financial institutions and social insurance; and special assistance in finding accommodation and organising the actual move.

Additional measures should try to reach out to **TCN researchers outside of established research networks** already linking home and potential host organisations. In this regard, it has to be underlined that such information tools do already exist; the EURAXESS website, for instance, provides accurate, comprehensive, yet easily understandable, information for each MS. A survey among TCN researchers residing in the EU on how they informed themselves about options on research work in the EU and on how they would reach out to their peers could help to use existing instruments in a more targeted way and to reach new audiences.

National legislation should clearly regulate the peculiarity of **equal treatment** for TCN researchers addressed in the Researchers Directive as well as **mobility rights** and the **right to work**; and make those concerned fully aware of these rights. In addition, TCN graduates of universities in MS should be particularly facilitated in switching their status from TCN student to TCN researcher if they are offered a job at an EU research organisation. MS should amend national legislation to incorporate provisions safeguarding the residence rights of bona fide TCN researchers in case the approval of a research organisation is withdrawn or there is a refusal to renew. Indeed, their resident permit should not suffer changes, at least immediate ones, after such an approval is withdrawn or not renewed.

As regards admission procedures, a general recommendation can be made towards **simplification, standardisation and support**. MS should streamline their procedures towards: a uniform approach, the granting of a “true” research residence permit, the establishment of permanent and functioning cooperation between authorities and research organisations, a pro-active and targeted information policy on the Directive, and investment in regular training and in providing their consular/embassy staff with information. The role of research organisations should be generally strengthened. They should be supported in assuming a higher degree of responsibility and should be encouraged to establish specific units or specialised staff, acquainted and experienced with all aspects of admission procedures. In addition, MS should acknowledge the financial burden imposed by initial fees and fees for the renewal of permits and reconsider whether a reduction or abolition of these costs is feasible and constitutes a contribution to attracting more TCN researchers.

It is suggested to **strengthen the collection of data** on the admission of TCN researchers to EU MS, including in regards to the gender dimension. If a **gender bias** in admissions is confirmed by fully comprehensive and EU-wide collected data, special programmes should be developed to attract and support female TCN researchers in taking up research work in the EU.

The study reveals that the availability of an EU document explaining the spirit of all provisions included in the Directive would contribute to reducing confusion and misunderstandings with regard to TCN researchers’ rights. Thus, it is recommended to compose a European Handbook for the Admission of TCN researchers, which describes all the categories of research activities that a TCN may take up in the EU, explains which type of permit shall apply under which conditions, and lists the

*Support and assistance to TCN researchers*

*Reach out to the target group*

*Clearer regulation of TCN researchers’ rights under the Directive*

*Simplification, standardisation and support during procedures*

*Data collection and gender dimension*

*A European Handbook on the Admission of TCN researchers under the Directive*

respective conditions for admission, as well as the corresponding immigration statuses, rights and benefits. Information days and conferences should be held for all stakeholders by responsible national authorities in order to increase awareness of the residence permit under the Directive and the associated procedures.

### ***References***

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