



LOT 2: Assess the implementation and impact of the
"Scientific Visa" package (Researchers Directive
2005/71/EC and Recommendation 2005/761/EC)

**Assessment for the
Directive 2005/71/EC:
Executive Summary**

The Legal Analysis conducted in the context of the “Scientific Visa” Study was carried out on the basis of precise and rigorous conformity analyses of the transposition of Directive 2005/71/EC into the national legislation of 25 EU MSs, as well as of the equivalent provisions in the legislation of DK and UK – the MSs that did not transpose the Directive - by legal experts in each of the 27 EU MSs. Transposition was assessed in relation to each individual provision of the Directive in each MS concerned, analysing the compliance of the MSs’ legislation, pointing up problematic areas and room for improvement, as well as evidence of Good Practices in the transposition process, and concluding with a set of recommendations.

In the context of this study, “transposition” meant incorporation of the provisions of the Directive into national law. In the context of the conformity analysis, two categories were used: “**Compliant**”, when the national provision incorporated all of the requirements invoked in the provision of the Directive and was compatible with (not contrary to) all these requirements; and “**Not compliant**”, when the national provision did not meet all requirements of the provision of the Directive (incomplete) or was contrary to the provision of the Directive.

The Legal Analysis concluded that all MSs have transposed, using different methods, the provisions of Directive 2005/71/EC. The approach taken by MSs was either to adopt new legislation to incorporate the Directive’s provisions into the national legal framework or to amend existing laws and secondary legislation in line with the Directive. The practical implementation of the Directive was also affected by a number of legal instruments that have been adopted at EU level since 2005, particularly by the 2010 Visa Code and the 2009 EU Blue Card Directive. At the same time 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. This analysis has assessed that 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 at MS level.

However, it should be highlighted that based on the findings of the legal and impact assessment it can be concluded 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. Despite of the lack of completeness and comparability of the relevant data, the analysis of quantitative and qualitative indicators suggests that practical application of the Directive has indeed facilitated and increased the access of TCN researchers to the EU. Still, there is room for improvement with regard to the legal aspects of Directive 2005/71/EC, namely when it comes to a desirable literal transposition of the definitions of the Directive, which would promote uniform interpretation and application; a uniform way of publishing and updating the list of approved research organisations (ROs); the safeguarding of *bona fide* beneficiaries’ rights in case of withdrawal of an RO’s approval; a clear and unambiguous definitions of TCN researchers’ rights under the Directive in national legislation (especially regarding mobility rights and rights to work); clear distinctions between permits for TCN researchers and

other types of permits; and clear definitions regarding the legal quality and format of hosting agreements (HAs).

Again, these 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 MS level, are by any means dysfunctional or not well-designed. 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, but also perceptions and attitudes will have fully adapted to this non-traditional way of managing migration.

The assessment of the practical implementation and impact of Directive 2005/71/EC built upon the Legal Analysis in order to provide an accurate picture and a comprehensive assessment of how the Directive is being applied in each MS, as well as of the equivalent procedures in DK and UK. The assessment further examined the actual impact of transposition, based on expert analysis by country researchers, and a broad survey of data, procedures and lived experiences of the implementation and impact through questionnaires applied to all relevant stakeholders: the TCN Researchers themselves, ROs in EU MSs and relevant national government authorities.

In order to achieve these objectives, four distinct phases of data collection and analysis were implemented. The first phase entailed developing a precise set of quantitative and qualitative indicators of the effectiveness of the implementation and impact of the transposition of the Directive. On the basis of these indicators, in the second phase, three distinct questionnaires were developed for the three target groups of stakeholders, as defined above. Using different dissemination strategies, all three groups were invited to fill in the appropriate questionnaire, which included both multiple-choice and open-ended questions. The third phase then involved the experts for the 27 MSs continuing their analysis of the Directive in their country by drawing up country sheets on the implementation and impact, based on desk research; in some cases interviews with relevant authorities; and on the responses to the questionnaires. During this phase, the project coordinators also collated all of the data and open-ended responses from the questionnaires and analysed them as a whole. Finally, the assessment of implementation and impact was developed using all of these outputs and in conjunction with the legal analysis described above.

Taking into account the inherent sample biases and general methodological issues in relation to the application of questionnaires, the relevant data on TCN researchers and ROs in the European Union were the subject of an in-depth examination in relation to numbers, countries of destination, countries of origin, approval of ROs, main areas of research and types of activity. It became clear from this examination that while the Directive has had a verifiable impact on the migration of TCN researchers to the EU, which has increased year-on-year, this is localised specifically in the six MSs that registered 200 or more TCN Researchers under the Directive during 2010 (**NL, SE, DE, IE, AT** and **CZ**). This contrasts slightly with the composition of the respondents to the questionnaire for TCN Researchers, half of whom lived in **BE**, while the others mainly lived in **SE, IT, FR** and **DE**. On the other hand, the nationalities of origin of the respondents to the questionnaire roughly corresponded to the available statistics, with

almost half of all respondents coming from India, China, USA, the Russian Federation and Japan. A trend emerged both among the respondents and in the official statistics which shows that a significant majority of TCN Researchers in the EU are men.

There are differences in the approval process for ROs depending on whether they are public or private, particularly if all public ROs in an MS are approved *ab initio* for concluding HAs. The impact of these policies can be observed in the statistics on the numbers of ROs that can conclude HAs across the MSs, which is much higher for countries where the approval process is automatic. Just over half of the responding ROs were universities, while a further third were non-university ROs. 80% of all responding ROs were public organisations. A significant proportion of both responding ROs and TCN researchers were working in the field of natural sciences, while the other highest reported disciplines were health sciences, engineering and information technologies.

A clear outcome of the questionnaire applied to the ROs was that a full fifth of all organisations that responded were not aware of whether they had been approved for the purposes of concluding HAs or not, a situation that appears of even more concern among TCN Researchers, four-fifths of whom responded that they were not aware of the “‘Scientific Visa’/research residence permit and the rights that derive from it”. Support in the application process is largely provided by home or host ROs, with fewer TCN Researchers reporting help from other channels or specifically from the EURAXESS network (although the ROs providing support may in fact be part of EURAXESS).

Procedures for the approval process for ROs in order that they can conclude HAs with TCN researchers range from automatically approving all public ROs or all ROs already accredited as national research centres, to applying a specific and sometimes costly procedures to every individual RO, regardless of whether they are public or private, accredited or not. In general, however, ROs in the EU expressed overall satisfaction with the approval process. The responsibilities of the ROs also vary slightly, within the confines of what is stipulated by the Directive, and so, for example, in **DE** and **BE**, ROs arguably have a far higher level of responsibility for checking the *bona fides* of each individual applicant, while in **NL**, for example, this responsibility remains with the immigration authorities.

Similarly, TCN Researchers responded that they were generally satisfied with the process of concluding a HA, though requirements in many MSs for means of subsistence and health insurance, as well as health checks, were identified as potential obstacles, complications or even disincentives. Bureaucracy and sometimes long waiting times were also indicated, as well as often high application, issuing and additional costs (up to 1,600 EUR) and unsatisfactory interaction with the immigration authorities (lack of helpfulness or awareness).

Furthermore, the correct application of the provisions transposing the Directive to all TCNs conducting research work in the EU has proved problematic, with some MSs defining all TCN Researchers as falling under the Directive, while in other significant countries of destination, less than one quarter of all TCNs conducting research have a permit under the Directive (e.g. **DE**). Other difficulties relate to the issue of whether or not the HA is legally defined as a contract and, in some MSs, the lack of an official template for the HA.

These indications are further confirmed by the wide range of immigration statuses of respondents to the questionnaires, and the lack of clarity as to whom exactly and in what context the research residence permit under the Directive should be applied. While the research residence permit is generally granted for a year or more, some difficulties were identified in relation to mobility within the EU, particularly for research stays of longer than a month. Nevertheless, researchers were generally satisfied with the procedure for issuing the permit, and the main potential problem as numbers increase will be the status of a TCN Researcher under the Directive if their RO's approval is refused or withdrawn, which has only been addressed in a limited number of MSs. The majority of applicants for research residence permits are granted this status and there is no evidence of any withdrawals of the permits, although there are slightly higher numbers of refusals to renew.

Although the Directive provides for enhanced rights to family reunification for TCN researchers, the data from the questionnaires indicate that less than half of TCN Researcher respondents have brought their immediate family members with them to the EU – in many cases also because they did not want to. Nevertheless, definitions of family members can be limiting, and less than half of all MSs allow the unmarried partners of TCN Researchers to live with them in the MS. Some MSs also do not grant the automatic right to work to the spouse or partner. The fees for issuing permits to family members, in some cases, are even higher than those for the TCN researchers themselves. As stated above, however, many respondents to the questionnaire indicated that they did not take their family members with them for personal reasons rather than reasons related to the implementation of the Directive.

TCN researchers are entitled to equal treatment with nationals as regards recognition of qualifications, working conditions including pay and dismissal, social security, tax benefits and access to goods and services. Only a minority of TCN researchers have been exposed to legal disadvantage or discrimination, though this minority did comment on their experiences in relation to the procedures, access to social security services and access to general services in the private sector. Recognition of their qualifications as well as access to the necessary information and official documents in a language they understood were also identified as problematic. Other experiences of disadvantage related to career issues like promotion and salary, while further comments were also made in relation to general issues with language, racism and xenophobia.

While Good Practices in relation to the impact of the Directive were highlighted throughout the assessment, a number of additional general Good Practices that merit specific attention were also set out, as they significantly influence the impact of the Directive in the EU MSs concerned and have the potential to be transferred to the context of other MSs. These included practices on enhanced access to Long-Term Residence Status and the labour market for TCN Researchers, combined visa and permit application processes, longer duration of validity of research residence permits, the availability of documentation in various languages and amelioration of the criminal record requirement. They also include the setting up of specific working groups at a national level to monitor the implementation of the Directive in MSs such as **DE**, **BE** and **PT**, and the explicit transferral of responsibilities from immigration authorities to ROs.

The aim and purpose of Directive 2005/71/EC is to facilitate the access of TCN researchers to the European Union. Is it a functioning instrument? Does it have an impact? Has it been successful? The answers to these questions have to be fairly positive. Of course, there are some shortfalls, and improvements are recommended by this report, but at the same time the assessment concludes that there is a clearly measurable quantitative impact of the implementation of the Directive, that the majority of ROs and TCN researchers that have made use of the corresponding procedures evaluate their respective experiences as rather positive, and that they do not generally encounter specific disadvantage or discrimination.

Satisfaction depends to a high degree on the availability of clear and unambiguous information, streamlined and standardised procedures, support from ROs for applicants throughout the whole admission procedure, and the state of knowhow 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 MSs should invest in them to increase the attractiveness of the Directive for TCN researchers. When looking at the attractiveness of the European Research Area in general, Directive 2005/71/EC 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 MSs, 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 on a global scale will ultimately decide upon the success of Directive 2005/71/EC.