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I

(Acts whose publication is obligatory)

REGULATION (EC) No 1775/2005 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 28 September 2005
on conditions for access to the natural gas transmission networks
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Following consultation of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas ⁽³⁾ has made a significant contribution towards the creation of an internal market for gas. It is now necessary to provide for structural changes in the regulatory framework to tackle remaining barriers to the completion of the internal market in particular regarding the trade of gas. Additional technical rules are necessary, in particular regarding third party access services, principles of capacity allocation mechanisms, congestion management procedures and transparency requirements.
- (2) Experience gained in the implementation and monitoring of a first set of Guidelines for Good Practice, adopted by the European Gas Regulatory Forum (the Forum) in 2002, demonstrates that in order to ensure the full implementation of the rules set out in the Guidelines in all Member States, and in order to provide a minimum

guarantee of equal market access conditions in practice, it is necessary to provide for them to become legally enforceable.

- (3) A second set of common rules entitled 'the Second Guidelines for Good Practice' was adopted at the meeting of the Forum on 24-25 September 2003 and the purpose of this Regulation is to lay down, on the basis of those Guidelines, basic principles and rules regarding network access and third party access services, congestion management, transparency, balancing and the trading of capacity rights.
- (4) Article 15 of Directive 2003/55/EC allows for a combined transmission and distribution system operator. Therefore, the rules set out in this Regulation do not require modification of the organisation of national transmission and distribution systems that are consistent with the relevant provisions of Directive 2003/55/EC and in particular Article 15 thereof.
- (5) High pressure pipelines linking up local distributors to the gas network which are not primarily used in the context of local distribution are included in the scope of this Regulation.
- (6) It is necessary to specify the criteria according to which tariffs for access to the network are determined, in order to ensure that they fully comply with the principle of non-discrimination and the needs of a well-functioning internal market and take fully into account the need for system integrity and reflect actual costs incurred, insofar as such costs correspond to those of an efficient and structurally comparable network operator and are transparent, whilst including appropriate return on

⁽¹⁾ OJ C 241, 28.9.2004, p. 31.

⁽²⁾ Opinion of the European Parliament of 20 April 2004 (OJ C 104 E, 30.4.2004, p. 306), Council common position of 12 November 2004 (OJ C 25 E, 1.2.2005, p. 44), position of the European Parliament of 8 March 2005 (not yet published in the Official Journal) and Council Decision of 12 July 2005.

⁽³⁾ OJ L 176, 15.7.2003, p. 57.

investments, and where appropriate taking account of the benchmarking of tariffs by the regulatory authorities.

- (7) In calculating tariffs for access to networks it is important to take account of actual costs incurred, insofar as such costs correspond to those of an efficient and structurally comparable network operator and are transparent, as well as of the need to provide appropriate return on investments and incentives to construct new infrastructure. In this respect, and in particular if effective pipeline-to-pipeline competition exists, the benchmarking of tariffs by the regulatory authorities will be a relevant consideration.
- (8) The use of market-based arrangements, such as auctions, to determine tariffs has to be compatible with the provisions laid down in Directive 2003/55/EC.
- (9) A common minimum set of third party access services is necessary to provide a common minimum standard of access in practice throughout the Community, to ensure that third party access services are sufficiently compatible and to allow the benefits accruing from a well-functioning internal market for gas to be exploited.
- (10) References to harmonised transportation contracts in the context of non-discriminatory access to the network of transmission system operators do not mean that the terms and conditions of the transportation contracts of a particular system operator in a Member State must be the same as those of another transmission system operator in that Member State or in another Member State, unless minimum requirements are set which must be met by all transportation contracts.
- (11) The management of contractual congestion of networks is an important issue in completing the internal gas market. It is necessary to develop common rules which balance the need to free up unused capacity in accordance with the 'use-it-or-lose-it' principle with the rights of the holders of the capacity to use it when necessary, while at the same time enhancing liquidity of capacity.
- (12) Although physical congestion of networks is rarely a problem at present in the Community, it may become one in the future. It is important therefore to provide the basic principle for the allocation of congested capacity in such circumstances.
- (13) For network users to gain effective access to gas networks they need information in particular on technical requirements and available capacity to enable them to exploit business opportunities occurring within the framework of the internal market. Common minimum standards on such transparency requirements are necessary. The publication of such information may be done by different means, including electronic means.
- (14) Non-discriminatory and transparent balancing systems for gas, operated by transmission system operators, are important mechanisms, particularly for new market entrants which may have more difficulty balancing their overall sales portfolio than companies already established within a relevant market. It is therefore necessary to lay down rules to ensure that transmission system operators operate such mechanisms in a manner compatible with non-discriminatory, transparent and effective access conditions to the network.
- (15) The trading of primary capacity rights is an important part of developing a competitive market and creating liquidity. This Regulation should therefore lay down basic rules on that issue.
- (16) It is necessary to ensure that undertakings acquiring capacity rights are able to sell them to other licensed undertakings in order to ensure an appropriate level of liquidity on the capacity market. This approach, however, does not preclude a system where capacity unused for a given period, determined at national level, is made re-available to the market on a firm basis.
- (17) National regulatory authorities should ensure compliance with the rules contained in this Regulation and the guidelines adopted pursuant to it.
- (18) In the Guidelines annexed to this Regulation, specific detailed implementing rules are defined on the basis of the second Guidelines for Good Practice. Where appropriate, these rules will evolve over time, taking into account the differences of national gas systems.
- (19) When proposing to amend the Guidelines laid down in the Annex to this Regulation, the Commission should ensure prior consultation of all relevant parties concerned with the Guidelines, represented by the professional organisations, and of the Member States within the Forum and should request the input of the European Regulators Group for Electricity and Gas.
- (20) The Member States and the competent national authorities should be required to provide relevant information to the Commission. Such information should be treated confidentially by the Commission.

(21) This Regulation and the guidelines adopted in accordance with it are without prejudice to the application of the Community rules on competition.

(22) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.

(23) Since the objective of this Regulation, namely the setting of fair rules for access conditions to natural gas transmission systems, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1. This Regulation aims at setting non-discriminatory rules for access conditions to natural gas transmission systems taking into account the specificities of national and regional markets with a view to ensuring the proper functioning of the internal gas market.

This objective shall include the setting of harmonised principles for tariffs, or the methodologies underlying their calculation, for access to the network, the establishment of third party access services and harmonised principles for capacity allocation and congestion management, the determination of transparency requirements, balancing rules and imbalance charges and facilitating capacity trading.

2. Member States may establish an entity or body set up in compliance with Directive 2003/55/EC for the purpose of carrying out one or more functions typically attributed to the transmission system operator, which shall be subject to the requirements of this Regulation.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

Article 2

Definitions

1. For the purpose of this Regulation, the following definitions shall apply:

1. 'transmission' means the transport of natural gas through a network, which mainly contains high pressure pipelines, other than an upstream pipeline network and other than the part of high pressure pipelines primarily used in the context of local distribution of natural gas, with a view to its delivery to customers, but not including supply;
2. 'transportation contract' means a contract which the transmission system operator has concluded with a network user with a view to carrying out transmission;
3. 'capacity' means the maximum flow, expressed in normal cubic meters per time unit or in energy unit per time unit, to which the network user is entitled in accordance with the provisions of the transportation contract;
4. 'unused capacity' means firm capacity which a network user has acquired under a transportation contract but which that user has not nominated by the deadline specified in the contract;
5. 'congestion management' means management of the capacity portfolio of the transmission system operator with a view to optimal and maximum use of the technical capacity and the timely detection of future congestion and saturation points;
6. 'secondary market' means the market of the capacity traded otherwise than on the primary market;
7. 'nomination' means the prior reporting by the network user to the transmission system operator of the actual flow that he wishes to inject into or withdraw from the system;
8. 're-nomination' means the subsequent reporting of a corrected nomination;
9. 'system integrity' means any situation in respect of a transmission network including necessary transmission facilities in which the pressure and the quality of the natural gas remain within the minimum and maximum limits laid down by the transmission system operator, so that the transmission of natural gas is guaranteed from a technical standpoint;
10. 'balancing period' means the period within which the offtake of an amount of natural gas, expressed in units of energy, must be offset by every network user by means of the injection of the same amount of natural gas into the transmission network in accordance with the transportation contract or the network code;

11. 'network user' means a customer or a potential customer of a transmission system operator, and transmission system operators themselves in so far as it is necessary for them to carry out their functions in relation to transmission;
12. 'interruptible services' means services offered by the transmission system operator in relation to interruptible capacity;
13. 'interruptible capacity' means gas transmission capacity that can be interrupted by the transmission system operator according to the conditions stipulated in the transportation contract;
14. 'long-term services' means services offered by the transmission system operator with a duration of one year or more;
15. 'short-term services' means services offered by the transmission system operator with a duration of less than one year;
16. 'firm capacity' means gas transmission capacity contractually guaranteed as uninterruptible by the transmission system operator;
17. 'firm services' means services offered by the transmission system operator in relation to firm capacity;
18. 'technical capacity' means the maximum firm capacity that the transmission system operator can offer to the network users, taking account of system integrity and the operational requirements of the transmission network;
19. 'contracted capacity' means capacity that the transmission system operator has allocated to a network user by means of a transportation contract;
20. 'available capacity' means the part of the technical capacity that is not allocated and is still available to the system at that moment;
21. 'contractual congestion' means a situation where the level of firm capacity demand exceeds the technical capacity;
22. 'primary market' means the market of the capacity traded directly by the transmission system operator;
23. 'physical congestion' means a situation where the level of demand for actual deliveries exceeds the technical capacity at some point in time.

Regulation, shall also apply with the exception of the definition of transmission in point 3 of that Article.

Article 3

Tariffs for access to networks

1. Tariffs, or the methodologies used to calculate them, applied by transmission system operators and approved by the regulatory authorities pursuant to Article 25(2) of Directive 2003/55/EC, as well as tariffs published pursuant to Article 18 (1) of that Directive, shall be transparent, take into account the need for system integrity and its improvement and reflect actual costs incurred, insofar as such costs correspond to those of an efficient and structurally comparable network operator and are transparent, whilst including appropriate return on investments, and where appropriate taking account of the benchmarking of tariffs by the regulatory authorities. Tariffs, or the methodologies used to calculate them, shall be applied in a non-discriminatory manner.

Member States may decide that tariffs may also be determined through market-based arrangements, such as auctions, provided that such arrangements and the revenues arising therefrom are approved by the regulatory authority.

Tariffs, or the methodologies used to calculate them, shall facilitate efficient gas trade and competition, while at the same time avoiding cross-subsidies between network users and providing incentives for investment and maintaining or creating interoperability for transmission networks.

2. Tariffs for network access shall not restrict market liquidity nor distort trade across borders of different transmission systems. Where differences in tariff structures or balancing mechanisms would hamper trade across transmission systems, and notwithstanding Article 25(2) of Directive 2003/55/EC, transmission system operators shall, in close cooperation with the relevant national authorities, actively pursue convergence of tariff structures and charging principles including in relation to balancing.

Article 4

Third party access services

1. Transmission system operators shall:
 - (a) ensure that they offer services on a non-discriminatory basis to all network users. In particular, where a transmission system operator offers the same service to

2. The definitions contained in Article 2 of Directive 2003/55/EC, which are relevant for the application of this

different customers, it shall do so under equivalent contractual terms and conditions, either using harmonised transportation contracts or a common network code approved by the competent authority in accordance with the procedure laid down in Article 25 of Directive 2003/55/EC;

- (b) provide both firm and interruptible third party access services. The price of interruptible capacity shall reflect the probability of interruption;
- (c) offer to network users both long and short-term services.

2. Transportation contracts signed with non-standard start dates or with a shorter duration than a standard annual transportation contract shall not result in arbitrarily higher or lower tariffs not reflecting the market value of the service, in accordance with the principles laid down in Article 3(1).

3. Where appropriate, third party access services may be granted subject to appropriate guarantees from network users with respect to the creditworthiness of such users. Such guarantees must not constitute any undue market entry barriers and must be non-discriminatory, transparent and proportionate.

Article 5

Principles of capacity allocation mechanisms and congestion management procedures

1. The maximum capacity at all relevant points referred to in Article 6(3) shall be made available to market participants, taking into account system integrity and efficient network operation.

2. Transmission system operators shall implement and publish non-discriminatory and transparent capacity allocation mechanisms, which shall:

- (a) provide appropriate economic signals for efficient and maximum use of technical capacity and facilitate investment in new infrastructure;
- (b) be compatible with the market mechanisms including spot markets and trading hubs, while being flexible and capable of adapting to evolving market circumstances;
- (c) be compatible with the network access systems of the Member States.

3. When transmission system operators conclude new transportation contracts or renegotiate existing transportation contracts, these contracts shall take into account the following principles:

- (a) in the event of contractual congestion, the transmission system operator shall offer unused capacity on the primary market at least on a day-ahead and interruptible basis;
- (b) network users who wish to re-sell or sublet their unused contracted capacity on the secondary market shall be entitled to do so. Member States may require notification or information of the transmission system operator by network users.

4. When capacity contracted under existing transportation contracts remains unused and contractual congestion occurs, transmission system operators shall apply paragraph 3 unless this would infringe the requirements of the existing transportation contracts. Where this would infringe the existing transportation contracts, transmission system operators shall, following consultation with the competent authorities, submit a request to the network user for the use on the secondary market of unused capacity in accordance with paragraph 3.

5. In the event that physical congestion exists, non-discriminatory, transparent capacity allocation mechanisms shall be applied by the transmission system operator or, as appropriate, the regulatory authorities.

Article 6

Transparency requirements

1. Transmission system operators shall make public detailed information regarding the services they offer and the relevant conditions applied, together with the technical information necessary for network users to gain effective network access.

2. In order to ensure transparent, objective and non-discriminatory tariffs and facilitate efficient utilisation of the gas network, transmission system operators or relevant national authorities shall publish reasonably and sufficiently detailed information on tariff derivation, methodology and structure.

3. For the services provided, each transmission system operator shall make public information on technical, contracted and available capacities on a numerical basis for all relevant points including entry and exit points on a regular and rolling basis and in a user-friendly standardised manner.

4. The relevant points of a transmission system on which the information must be made public shall be approved by the competent authorities after consultation with network users.

5. Where a transmission system operator considers that it is not entitled for confidentiality reasons to make public all the data required, it shall seek the authorisation of the competent authorities to limit publication with respect to the point or points in question.

The competent authorities shall grant or refuse the authorisation on a case by case basis, taking into account in particular the need to respect legitimate commercial confidentiality and the objective of creating a competitive internal gas market. If the authorisation is granted, available capacity shall be published without indicating the numerical data that would contravene confidentiality.

No such authorisation as referred to in this paragraph shall be granted where three or more network users have contracted capacity at the same point.

6. Transmission system operators shall always disclose the information required by this Regulation in a meaningful, quantifiably clear and easily accessible way and on a non-discriminatory basis.

Article 7

Balancing rules and imbalance charges

1. Balancing rules shall be designed in a fair, non-discriminatory and transparent manner and shall be based on objective criteria. Balancing rules shall reflect genuine system needs taking into account the resources available to the transmission system operator.

2. In the case of non-market based balancing systems, tolerance levels shall be designed in a way that either reflects seasonality or results in a tolerance level higher than that resulting from seasonality, and that reflects the actual technical capabilities of the transmission system. Tolerance levels shall reflect genuine system needs taking into account the resources available to the transmission system operator.

3. Imbalance charges shall be cost-reflective to the extent possible, whilst providing appropriate incentives on network users to balance their input and offtake of gas. They shall

avoid cross-subsidisation between network users and shall not hamper the entry of new market entrants.

Any calculation methodology for imbalance charges as well as the final tariffs shall be made public by the competent authorities or the transmission system operator as appropriate.

4. Transmission system operators may impose penalty charges on network users whose input into and offtake from the transmission system is not in balance according to the balancing rules referred to in paragraph 1.

5. Penalty charges which exceed the actual balancing costs incurred, insofar as such costs correspond to those of an efficient and structurally comparable network operator and are transparent, shall be taken into account when calculating tariffs in a way that does not reduce the interest in balancing and shall be approved by the competent authorities.

6. In order to enable network users to take timely corrective action, transmission system operators shall provide sufficient, well-timed and reliable on-line based information on the balancing status of network users. The level of information provided shall reflect the level of information available to the transmission system operator. Where they exist, charges for the provision of such information shall be approved by the competent authorities and shall be made public by the transmission system operator.

7. Member States shall ensure that transmission system operators endeavour to harmonise balancing regimes and streamline structures and levels of balancing charges in order to facilitate gas trade.

Article 8

Trading of capacity rights

Each transmission system operator shall take reasonable steps to allow capacity rights to be freely tradable and to facilitate such trade. Each such operator shall develop harmonised transportation contracts and procedures on the primary market to facilitate secondary trade of capacity and recognise the transfer of primary capacity rights where notified by network users. The harmonised transportation contracts and procedures shall be notified to the regulatory authorities.

*Article 9***Guidelines**

1. Where appropriate, Guidelines providing the minimum degree of harmonisation required to achieve the aim of this Regulation shall specify:

- (a) details of third party access services including the character, duration and other requirements of these services, in accordance with Article 4;
- (b) details of the principles underlying capacity allocation mechanisms and on the application of congestion management procedures in the event of contractual congestion, in accordance with Article 5;
- (c) details on the definition of the technical information necessary for network users to gain effective access to the system and the definition of all relevant points for transparency requirements, including the information to be published at all relevant points and the time schedule according to which this information shall be published, in accordance with Article 6.

2. Guidelines on the issues listed in paragraph 1 are laid down in the Annex. They may be amended by the Commission; this shall be done in accordance with the procedure referred to in Article 14(2).

3. The application and amendment of Guidelines adopted pursuant to this Regulation shall reflect differences between national gas systems, and shall therefore not require uniform detailed terms and conditions of third party access at Community level. They may, however, set minimum requirements to be met to achieve non-discriminatory and transparent network access conditions necessary for an internal gas market, which may then be applied in the light of differences between national gas systems.

*Article 10***Regulatory authorities**

When carrying out their responsibilities under this Regulation, the regulatory authorities of the Member States established under Article 25 of Directive 2003/55/EC shall ensure compliance with this Regulation and the Guidelines adopted pursuant to Article 9 of this Regulation.

Where appropriate they shall cooperate with each other and with the Commission.

*Article 11***Provision of information**

Member States and the regulatory authorities shall, on request, provide to the Commission all information necessary for the purposes of Article 9.

The Commission shall fix a reasonable time limit within which the information is to be provided, taking into account the complexity of the information required and the urgency with which the information is needed.

*Article 12***Right of Member States to provide for more detailed measures**

This Regulation shall be without prejudice to the rights of Member States to maintain or introduce measures that contain more detailed provisions than those set out in this Regulation and the Guidelines referred to in Article 9.

*Article 13***Penalties**

1. The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by 1 July 2006 at the latest and shall notify it without delay of any subsequent amendment affecting them.

2. Penalties provided for pursuant to paragraph 1 shall not be of a criminal law nature.

*Article 14***Committee procedure**

1. The Commission shall be assisted by the Committee set up by Article 30 of Directive 2003/55/EC.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its Rules of Procedure.

*Article 15***Commission report**

The Commission shall monitor the implementation of this Regulation. In its report under Article 31(3) of Directive 2003/55/EC, the Commission shall also report on the experience gained in the application of this Regulation. In particular the report shall examine to what extent the Regulation has been successful in ensuring non-discriminatory and cost-reflective network access conditions for gas transmission networks in order to contribute to customer choice in a well functioning internal market and to long-term security of supply. If necessary, the report shall be accompanied by appropriate proposals and/or recommendations.

*Article 16***Derogations and exemptions**

This Regulation shall not apply to:

- (a) natural gas transmission systems situated in Member States for the duration of derogations granted under Article 28 of Directive 2003/55/EC; Member States which have been granted derogations under Article 28 of Directive 2003/55/EC may apply to the Commission for a temporary derogation from the application of this Regulation, for a period of up to two years from the date at which the derogation referred to in this point expires;
- (b) interconnectors between Member States and significant increases of capacity in existing infrastructures and modifications of such infrastructures which enable the

development of new sources of gas supply as referred to in Article 22(1) and (2) of Directive 2003/55/EC which are exempted from the provisions of Articles 18, 19, 20 and 25(2), (3) and (4) of that Directive as long as they are exempted from the provisions referred to in this subparagraph; or

- (c) natural gas transmission systems which have been granted derogations under Article 27 of Directive 2003/55/EC.

*Article 17***Entry into force**

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

It shall apply from 1 July 2006 with the exception of the second sentence of Article 9(2), which shall apply from 1 January 2007.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 28 September 2005.

For the European Parliament

The President

J. BORRELL FONTELLES

For the Council

The President

D. ALEXANDER

ANNEX

GUIDELINES ON

1. **Third party access services,**
2. **Principles underlying the capacity allocation mechanisms, congestion management procedures and their application in the event of contractual congestion, and**
3. **Definition of the technical information necessary for network users to gain effective access to the system, the definition of all relevant points for transparency requirements and the information to be published at all relevant points and the time schedule according to which this information shall be published**

1. **Third party access services**

- (1) Transmission system operators shall offer firm and interruptible services down to a minimum period of one day.
- (2) Harmonised transportation contracts and common network codes shall be designed in a manner that facilitates trading and re-utilisation of capacity contracted by network users without hampering capacity release.
- (3) Transmission system operators shall develop network codes and harmonised contracts following proper consultation with network users.
- (4) Transmission system operators shall implement standardised nomination and re-nomination procedures. They shall develop information systems and electronic communication means to provide adequate data to network users and to simplify transactions, such as nominations, capacity contracting and transfer of capacity rights between network users.
- (5) Transmission system operators shall harmonise formalised request procedures and response times according to best industry practice with the aim of minimising response times. They shall provide for on-line screen based capacity booking and confirmation systems and nomination and re-nomination procedures no later than 1 July 2006 after consultation with the relevant network users.
- (6) Transmission system operators shall not separately charge network users for information requests and transactions associated with their transportation contracts and which are carried out according to standard rules and procedures.
- (7) Information requests that require extraordinary or excessive expenses such as feasibility studies may be charged separately, provided the charges can be duly substantiated.
- (8) Transmission system operators shall cooperate with other transmission system operators in coordinating the maintenance of their respective networks in order to minimise any disruption of transmission services to network users and transmission system operators in other areas and in order to ensure equal benefits with respect to security of supply including in relation to transit.
- (9) Transmission system operators shall publish at least once a year, by a predetermined deadline, all planned maintenance periods that might affect network users' rights from transportation contracts and corresponding operational information with adequate advance notice. This shall include publishing on a prompt and non-discriminatory basis any changes to planned maintenance periods and notification of unplanned maintenance, as soon as that information becomes available to the transmission system operator. During

maintenance periods, transmission system operators shall publish regularly updated information on the details of and expected duration and effect of the maintenance.

- (10) Transmission system operators shall maintain and make available to the competent authority upon request a daily log of the actual maintenance and flow disruptions that have occurred. Information shall also be made available on request to those affected by any disruption.

2. **Principles underlying capacity allocation mechanisms, congestion management procedures and their application in the event of contractual congestion**

2.1. *Principles underlying capacity allocation mechanisms and congestion management procedures*

- (1) Capacity allocation mechanisms and congestion management procedures shall facilitate the development of competition and liquid trading of capacity and shall be compatible with market mechanisms including spot markets and trading hubs. They shall be flexible and capable of adapting to evolving market circumstances.
- (2) These mechanisms and procedures shall take into account the integrity of the system concerned as well as security of supply.
- (3) These mechanisms and procedures shall neither hamper the entry of new market participants nor create undue barriers to market entry. They shall not prevent market participants, including new market entrants and companies with a small market share, from competing effectively.
- (4) These mechanisms and procedures shall provide appropriate economic signals for efficient and maximum use of technical capacity and facilitate investment in new infrastructure.
- (5) Network users shall be advised about the type of circumstance that could affect the availability of contracted capacity. Information on interruption should reflect the level of information available to the transmission system operator.
- (6) Should difficulties in meeting contractual delivery obligations arise due to system integrity reasons, transmission system operators should notify network users and seek a non-discriminatory solution without delay.

Transmission system operators shall consult network users regarding procedures prior to their implementation and agree them with the regulatory authority.

2.2. *Congestion management procedures in the event of contractual congestion*

- (1) In the event that contracted capacity goes unused, transmission system operators shall make this capacity available on the primary market on an interruptible basis via contracts of differing duration, as long as this capacity is not offered by the relevant network user on the secondary market at a reasonable price.
- (2) Revenues from released interruptible capacity shall be split according to rules laid down or approved by the relevant regulatory authority. These rules shall be compatible with the requirement of an effective and efficient use of the system.

- (3) A reasonable price for released interruptible capacity may be determined by the relevant regulatory authorities taking into account the specific circumstances prevailing.
- (4) Where appropriate, transmission system operators shall make reasonable endeavours to offer at least parts of the unused capacity to the market as firm capacity.
3. **Definition of the technical information necessary for network users to gain effective access to the system, the definition of all relevant points for transparency requirements and the information to be published at all relevant points and the time schedule according to which this information shall be published**

3.1. *Definition of the technical information necessary for network users to gain effective access to the system*

Transmission system operators shall publish at least the following information about their systems and services:

- (a) a detailed and comprehensive description of the different services offered and their charges;
- (b) the different types of transportation contracts available for these services and, as applicable, the network code and/or the standard conditions outlining the rights and responsibilities of all network users including harmonised transportation contracts and other relevant documents;
- (c) the harmonised procedures applied when using the transmission system, including the definition of key terms;
- (d) provisions on capacity allocation, congestion management and anti-hoarding and re-utilisation procedures;
- (e) the rules applicable for capacity trade on the secondary market vis-à-vis the transmission system operator;
- (f) if applicable, the flexibility and tolerance levels included in transportation and other services without separate charge, as well as any flexibility offered in addition to this and the corresponding charges;
- (g) a detailed description of the gas system of the transmission system operator indicating all relevant points interconnecting its system with that of other transmission system operators and/or gas infrastructure such as liquefied natural gas (LNG) and infrastructure necessary for providing ancillary services as defined by Article 2(14) of Directive 2003/55/EC;
- (h) information on gas quality and pressure requirements;
- (i) the rules applicable for connection to the system operated by the transmission system operator;
- (j) any information, in a timely manner, on proposed and/or actual changes to the services or conditions, including the items listed in points (a) to (i).

3.2. Definition of all relevant points for transparency requirements

Relevant points shall include at least:

- (a) all entry points to a network operated by a transmission system operator;
- (b) the most important exit points and exit zones covering at least 50 % of total exit capacity of the network of a given transmission system operator, including all exit points or exit zones covering more than 2 % of total exit capacity of the network;
- (c) all points connecting different networks of transmission system operators;
- (d) all points connecting the network of a transmission system operator with an LNG terminal;
- (e) all essential points within the network of a given transmission system operator including points connecting to gas hubs. All points are considered essential which, based on experience, are likely to experience physical congestion;
- (f) all points connecting the network of a given transmission system operator to infrastructure necessary for providing ancillary services as defined by Article 2(14) of Directive 2003/55/EC.

3.3. Information to be published at all relevant points and the time schedule according to which this information should be published

- (1) At all relevant points, transmission system operators shall publish the following information about the capacity situation down to daily periods on the Internet on a regular/rolling basis and in a user-friendly standardised manner:
 - (a) the maximum technical capacity for flows in both directions,
 - (b) the total contracted and interruptible capacity,
 - (c) the available capacity.
- (2) For all relevant points, transmission system operators shall publish available capacities for a period of at least 18 months ahead and shall update this information at least every month or more frequently, if new information becomes available.
- (3) Transmission system operators shall publish daily updates of availability of short-term services (day-ahead and week-ahead) based, *inter alia*, on nominations, prevailing contractual commitments and regular long-term forecasts of available capacities on an annual basis for up to 10 years for all relevant points.
- (4) Transmission system operators shall publish historical maximum and minimum monthly capacity utilisation rates and annual average flows at all relevant points for the past three years on a rolling basis.
- (5) Transmission system operators shall keep a daily log of actual aggregated flows for at least three months.

- (6) Transmission system operators shall keep effective records of all capacity contracts and all other relevant information in relation to calculating and providing access to available capacities, to which relevant national authorities shall have access to fulfil their duties.
 - (7) Transmission system operators shall provide user-friendly instruments for calculating tariffs for the services available and for verifying on-line the capacity available.
 - (8) Where transmission system operators are unable to publish information in accordance with paragraphs 1, 3 and 7, they shall consult with their relevant national authorities and set up an Action Plan for implementation as soon as possible, but not later than 31 December 2006.
-

**DECISION No 1776/2005/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 28 September 2005**

amending Council Decision 2000/819/EC on a multiannual programme for enterprise and entrepreneurship, and in particular for small and medium-sized enterprises (SMEs) (2001 to 2005)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 157(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) It is essential to ensure the continuity of Community support for enterprise and entrepreneurship, and in particular for small and medium-sized enterprises (SMEs).
- (2) It is therefore appropriate to extend the period of validity of Decision 2000/819/EC ⁽³⁾ by another year until 31 December 2006 and increase the financial reference amount by EUR 88,5 million.
- (3) Decision 2000/819/EC should be amended accordingly.

(4) The Committee of the Regions was consulted, but has not delivered an opinion,

HAVE DECIDED AS FOLLOWS:

Article 1

Decision 2000/819/EC is hereby amended as follows:

1. in Article 7(1), the financial reference amount of 'EUR 450 million' shall be replaced by 'EUR 538 500 000';
2. in Article 8, the date of 31 December 2005 shall be replaced by that of 31 December 2006.

Article 2

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Strasbourg, 28 September 2005.

*For the European Parliament
The President*

J. BORRELL FONTELLES

*For the Council
The President*

D. ALEXANDER

⁽¹⁾ Opinion delivered on 9 March 2005 (not yet published in the Official Journal).

⁽²⁾ Opinion of the European Parliament of 26 May 2005 (not yet published in the Official Journal) and Council Decision of 18 July 2005.

⁽³⁾ OJ L 333, 29.12.2000, p. 84. Decision as last amended by Decision No 593/2004/EC of the European Parliament and of the Council (OJ L 268, 16.8.2004, p. 3).

COUNCIL DIRECTIVE 2005/71/EC**of 12 October 2005****on a specific procedure for admitting third-country nationals for the 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,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the Committee of the Regions ⁽³⁾

Whereas:

- (1) With a view to consolidating and giving structure to European research policy, the Commission considered it necessary in January 2000 to establish the European Research Area as the lynchpin of the Community's future action in this field.
- (2) Endorsing the European Research Area, the Lisbon European Council in March 2000 set the Community the objective of becoming the most competitive and dynamic knowledge-based 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 ⁽⁴⁾, when it opened up its programmes further to researchers from outside the European Union.

(4) The number of researchers which the Community will need by 2010 to meet the target set by the Barcelona European Council in March 2002 of 3 % of GDP invested in research is estimated at 700 000. This target is to be met through a series of interlocking measures, such as making scientific careers more attractive to young people, promoting women's involvement in scientific research, extending the opportunities for training and mobility in research, improving career prospects for researchers in the Community and opening up the Community to third-country nationals who might be admitted for the purposes of research.

(5) This Directive is intended to contribute to achieving these goals by fostering the admission and mobility for research purposes of third-country nationals for stays of more than three months, in order to make the Community more attractive to researchers from around the world and to boost its position as an international centre for research.

(6) Implementation of this Directive should not encourage 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 should be taken in partnership with the countries of origin with a view to establishing a comprehensive migration policy.

(7) For the achievement of the objectives of the Lisbon process it is also important to foster the mobility within the Union of researchers who are EU citizens, and in particular researchers from the Member States which acceded in 2004, for the purpose of carrying out scientific research.

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

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

⁽¹⁾ Opinion of 12 April 2005 (not yet published in the Official Journal).

⁽²⁾ OJ C 120, 20.5.2005, p. 60.

⁽³⁾ OJ C 71, 22.3.2005, p. 6.

⁽⁴⁾ Decision No 1513/2002/EC of the European Parliament and of the Council of 27 June 2002 concerning 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) (OJ L 232, 29.8.2002, p. 1). Decision amended by Decision No 786/2004/EC (OJ L 138, 30.4.2004, p. 7).

- (10) Each Member State should 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 this Directive, with which researchers could conclude a hosting agreement, and on the conditions and procedures for entry and residence on its territory for the purposes of carrying out research, as adopted under this Directive.
- (11) 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. Member States could apply similar rules for third-country nationals requesting admission for the purposes of teaching in a higher education establishment in accordance with national legislation or administrative practice, in the context of a research project.
- (12) At the same time, the traditional avenues of admission (such as employment and traineeship) should be maintained, especially for doctoral students carrying out research as students, who should be excluded from the scope of this Directive and are covered by Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service ⁽¹⁾.
- (13) 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.
- (14) Research organisations approved in advance by the Member States should be able to sign a hosting agreement with a third-country national for the purposes of carrying out a research project. Member States will issue a residence permit on the basis of the hosting agreement if the conditions for entry and residence are met.
- (15) 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 possibility to teach in higher education establishments.
- (16) This Directive adds a very important improvement in the field of social security as the non-discrimination principle also applies directly to persons coming to a Member State directly from a third country. Nevertheless, this Directive should not confer more rights than those already provided in existing Community legislation in the field of social security for third-country nationals who have cross-border elements between Member States. This Directive furthermore should not grant rights in relation to situations which lie outside the scope of Community legislation like for example family members residing in a third country.
- (17) It is important to foster the mobility of third-country nationals admitted for the purposes of carrying out scientific research as a means of developing and consolidating contacts and networks between partners and establishing the role of the European Research Area at world level. Researchers should be able to exercise mobility under the conditions established by this Directive. The conditions for exercising mobility under this Directive should not affect the rules currently governing recognition of the validity of the travel documents.
- (18) Special attention should be paid to the facilitation and support of the preservation of the unity of family members of the researchers, according to the Council Recommendation of 12 October 2005 to facilitate the admission of third-country nationals to carry out scientific research in the European Community ⁽²⁾.
- (19) In order to preserve family unity and to enable mobility, family members should be able to join the researcher in another Member State under the conditions determined by the national law of such Member State, including its obligations arising from bilateral or multilateral agreements.
- (20) Holders of residence permits should be in principle allowed to submit an application for admission while remaining on the territory of the Member State concerned.
- (21) Member States should have the right to charge applicants for the processing of applications for residence permits.

⁽¹⁾ OJ L 375, 23.12.2004, p. 12.

⁽²⁾ See page 26 of this Official Journal.

- (22) This Directive should not affect in any circumstances the application of Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals ⁽¹⁾.
- (23) The objectives of this Directive, 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.
- (24) 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.
- (25) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (26) In accordance with paragraph 34 of the Interinstitutional agreement on better law-making, Member States will be encouraged to draw up, for themselves and in the interest of the Community, their own tables, which will, as far as possible, illustrate the correlation between this Directive and the transposition measures, and to make them public.
- (27) In accordance with Article 3 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, Ireland has given notice by letter of 1 July 2004 of its wish to participate in the adoption and application of this Directive.
- (28) 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, and without prejudice to Article 4 of the said Protocol, the United

Kingdom is not participating in the adoption of this Directive and is not bound by it or subject to its application.

- (29) 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 does not take part 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 carrying out a research project under hosting agreements with research organisations.

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) '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;
- (c) 'research organisation' means any public or private organisations which conducts research and which has been approved for the purposes of this Directive by a Member State in accordance with the latter's legislation or administrative practice;
- (d) 'researcher' means a third-country national holding an appropriate higher education qualification, which gives access to doctoral programmes, who is selected by a research organisation for carrying out a research project for which the above qualification is normally required;

⁽¹⁾ OJ L 157, 15.6.2002, p. 1.

- (e) 'residence permit' means any authorisation bearing the term 'researcher' issued by the authorities of a Member State allowing a third-country national to stay legally on its territory, in accordance with Article 1(2)(a) of Regulation (EC) No 1030/2002.

Article 3

Scope

1. This Directive shall apply to third-country nationals who apply to be admitted to the territory of a Member State for the purpose of carrying out a research project.
2. This Directive shall not apply to:
 - (a) third-country nationals staying in a Member State as applicants for international protection or under temporary protection schemes;
 - (b) third-country nationals applying to reside in a Member State as students within the meaning of Directive 2004/114/EC 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 another Member State.

Article 4

More favourable provisions

1. This Directive shall be without prejudice to more favourable provisions of:
 - (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 third countries on the other;
 - (b) bilateral or multilateral agreements concluded between one or more Member States and one or more third 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.

CHAPTER II

RESEARCH ORGANISATIONS

Article 5

Approval

1. Any research organisation wishing to host a researcher under the admission procedure laid down in this Directive shall first be approved for that purpose by the Member State concerned.
2. The approval of the research organisations shall be in accordance with procedures set out in the national law or administrative practice of the Member States. Applications for approval by both public and private organisations shall be made in accordance with those procedures and be based on their statutory tasks or corporate purposes as appropriate and on proof that they conduct research.

The approval granted to a research organisation shall be for a minimum period of five years. In exceptional cases, Member States may grant approval for a shorter period.

3. Member States may require, in accordance with national legislation, a written undertaking of the research organisation that in cases where a researcher remains illegally in the territory of the Member State concerned, the said organisation is responsible for reimbursing the costs related to his/her stay and return incurred by public funds. The financial responsibility of the research organisation shall end at the latest six months after the termination of the hosting agreement.

4. Member States may provide that, within two months of the date of expiry of the hosting agreement concerned, the approved organisation shall provide the competent authorities 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 a hosting agreement has been signed pursuant to Article 6.

5. The competent authorities in each Member State shall publish and update regularly lists of the research organisations approved for the purposes of this Directive.

6. A Member State may, among other measures, refuse to renew or decide to withdraw the approval of a research organisation which no longer meets the conditions laid down in paragraphs 2, 3 and 4 or in cases where the approval has been fraudulently acquired or where a research organisation has signed a hosting agreement with a third-country national fraudulently or negligently. Where approval has been refused or withdrawn, the organisation concerned may be banned from reapplying for approval up to five years from the date of publication of the decision on withdrawal or non-renewal.

7. Member States may determine in their national legislation the consequences of the withdrawal of the approval or refusal to renew the approval for the existing hosting agreements, concluded in accordance with Article 6, as well as the consequences for the residence permits of the researchers concerned.

Article 6

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 without prejudice to Article 7.

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/her qualification in accordance with Article 2 (d);
- (b) during his/her stay the researcher has sufficient monthly resources to meet his/her 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;
- (c) during his/her stay the researcher has sickness insurance for all the risks normally covered for nationals of the Member State concerned;
- (d) the hosting agreement specifies the legal relationship and working conditions of the researchers.

3. Once the hosting agreement is signed, the research organisation may be required, in accordance with national legislation, to provide the researcher with an individual statement that for costs within the meaning of Article 5(3) financial responsibility has been assumed.

4. The hosting agreement shall automatically lapse when the researcher is not admitted or when the legal relationship between the researcher and the research organisation is terminated.

5. Research organisations shall promptly inform the authority designated for the purpose by the Member States of any occurrence likely to prevent implementation of the hosting agreement.

CHAPTER III

ADMISSION OF RESEARCHERS

Article 7

Conditions for admission

1. A third-country national who applies to be admitted for the purposes set out in this Directive shall:

- (a) present a valid travel document, as determined by national law. Member States may require the period of the validity of the travel document to cover at least the duration of the residence permit;
- (b) present a hosting agreement signed with a research organisation in accordance with Article 6(2);
- (c) where appropriate, present a statement of financial responsibility issued by the research organisation in accordance with Article 6(3); and
- (d) not be considered to pose a threat to public policy, public security or public health.

Member States shall check that all the conditions referred to in points (a), (b), (c) and (d) are met.

2. Member States may also check the terms upon which the hosting agreement has been based and concluded.

3. Once the checks referred to in paragraphs 1 and 2 have been positively concluded, researchers shall be admitted on the territory of the Member States to carry out the hosting agreement.

*Article 8***Duration of residence permit**

Member States shall issue a residence permit for a period of at least one year and shall renew it if the conditions laid down in Articles 6 and 7 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 9***Family members**

1. When a Member State decides to grant a residence permit to the family members of a researcher, the duration of validity of their residence permit shall be the same as that of the residence permit issued to the researcher insofar as the period of validity of their travel documents allows it. In duly justified cases, the duration of the residence permit of the family member of the researcher may be shortened.

2. The issue of the residence permit to the family members of the researcher admitted to a Member State shall not be made dependent on the requirement of a minimum period of residence of the researcher.

*Article 10***Withdrawal or non-renewal of the residence permit**

1. Member States may withdraw or refuse to renew a residence permit issued on the basis of this Directive when it has been fraudulently acquired or wherever it appears that the holder did not meet or no longer meets the conditions for entry and residence provided by Articles 6 and 7 or 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.

CHAPTER IV

RESEARCHERS' RIGHTS*Article 11***Teaching**

1. Researchers admitted under this Directive may teach in accordance with national legislation.

2. Member States may set a maximum number of hours or of days for the activity of teaching.

*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) branches of social security as defined in Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community⁽¹⁾. The special provisions in the Annex to Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by these provisions solely on the ground of their nationality⁽²⁾ shall apply accordingly;
- (d) tax benefits;
- (e) access to goods and services and the supply of goods and services made available to the public.

*Article 13***Mobility between Member States**

1. A third-country national who has been admitted as a researcher under this Directive shall be allowed to carry out part of his/her research in another Member State under the conditions as set out in this Article.

⁽¹⁾ OJ L 149, 5.7.1971, p. 2. Regulation as last amended by Regulation (EC) No 647/2005 of the European Parliament and of the Council (OJ L 117, 4.5.2005, p. 1).

⁽²⁾ OJ L 124, 20.5.2003, p. 1.

2. If the researcher stays in another Member State for a period of up to three months, the research may be carried out 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 is not considered as a threat to public policy, public security or public health in the second Member State.

3. If the researcher stays in another Member State for more than three months, Member States may require a new hosting agreement to carry out the research in that Member State. At all events, the conditions set out in Articles 6 and 7 shall be met in relation to the Member State concerned.

4. Where the relevant legislation provides for the requirement of a visa or a residence permit, for exercising mobility, such a visa or permit shall be granted in a timely manner within a period that does not hamper the pursuit of the research, whilst leaving the competent authorities sufficient time to process the applications.

5. Member States shall not require the researcher to leave their territory in order to submit applications for the visas or residence permits.

CHAPTER V

PROCEDURE AND TRANSPARENCY

Article 14

Applications for admission

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

2. The application shall be considered and examined when the third-country national concerned is residing outside the territory of the Member States to which he/she wishes to be admitted.

3. Member States may accept, in accordance with their national legislation, an application submitted when the third-country national concerned is already in their territory.

4. The Member State concerned shall grant the third-country national who has submitted an application and who meets the conditions of Articles 6 and 7 every facility to obtain the requisite visas.

Article 15

Procedural safeguards

1. The competent authorities of the Member States shall adopt a decision on the complete application as soon as possible and, where appropriate, provide for accelerated procedures.

2. If the information supplied in support of the application is inadequate, the consideration of the application may be suspended and the competent authorities shall inform the applicant of any further information they need.

3. Any decision rejecting an application for a residence permit shall be notified to the third-country national concerned in accordance with the notification procedures under the relevant national legislation. The notification shall specify the possible redress procedures available and the time limit for taking action.

4. Where an application is rejected, or a residence permit, issued in accordance with this Directive, is withdrawn, the person concerned shall have the right to mount a legal challenge before the authorities of the Member State concerned.

CHAPTER VI

FINAL PROVISIONS

Article 16

Reports

Periodically, and for the first time no later than three 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 shall propose any amendments that are necessary.

Article 17

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 12 October 2007.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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 18

Transitional provision

By way of derogation from the provisions set out in Chapter III, Member States shall not be obliged to issue permits in accordance with this Directive in the form of a residence permit for a period of up to two years, after the date referred to in Article 17(1).

Article 19

Common Travel Area

Nothing in this Directive shall affect the right of Ireland to maintain the Common Travel Area arrangements referred to in the Protocol, annexed by the Treaty of Amsterdam to the Treaty on European Union and the Treaty establishing the European Community, on the application of certain aspects of Article 14 of the Treaty establishing the European Community to the United Kingdom and Ireland.

Article 20

Entry into force

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

Article 21

Addressees

This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Luxembourg, 12 October 2005.

For the Council

The President

C. CLARKE

II

(Acts whose publication is not obligatory)

EUROPEAN PARLIAMENT AND COUNCIL

RECOMMENDATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 28 September 2005

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

(2005/761/EC)

THE EUROPEAN PARLIAMENT AND 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,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

(1) With a view to consolidating and restructuring European research policy, the Commission stated in its Communication of 18 January 2000 entitled 'Towards a European Research Area' that it was necessary to create a European research area as the centrepiece of future action by the Community in this field.

(2) At its meeting in Lisbon of 23 and 24 March 2000, the 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, which was recognised by the Community's sixth framework programme for research ⁽⁴⁾ when it opened up, to an even greater extent, its programmes 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 European Council at its meeting in Barcelona of 15 and 16 March 2002 of investing 3 % of GDP in research is put at 700 000. This target should be met through a series of interlocking measures, such as making scientific careers more attractive to young people, 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.

⁽¹⁾ OJ C 120, 20.5.2005, p. 60.

⁽²⁾ OJ C 71, 22.3.2005, p. 6.

⁽³⁾ Opinion of the European Parliament of 12 April 2005 (not yet published in the Official Journal), and Council Decision of 18 July 2005.

⁽⁴⁾ Decision No 1513/2002/EC of the European Parliament and of the Council of 27 June 2002 concerning 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) (OJ L 232, 29.8.2002, p. 1). Decision as amended by Decision No 786/2004/EC (OJ L 138, 30.4.2004, p. 7).

- (5) In order to be competitive and attractive at international level, Member States should take the necessary steps to make it easier for researchers to enter and move 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 (EC) No 539/2001 ⁽¹⁾, as persons acting in good faith and extend to them the advantages provided for in the *acquis communautaire* for the purpose of the procedures for issuing short-stay visas.
- (7) Measures should be taken to encourage the exchange of information and best practices in order to improve the procedures for issuing short-stay visas for researchers.
- (8) This Recommendation respects the fundamental rights and observes the principles laid down in particular 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 is not taking part in the adoption of this Recommendation and is not affected by it. Given that this Recommendation builds upon the Schengen *acquis*, under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark shall, in accordance with Article 5 of the said Protocol, decide within a period of six months after the European Parliament and the Council have adopted this Recommendation whether it will implement it in its national law.
- (10) This Recommendation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* ⁽²⁾; the United Kingdom is therefore not taking part in its adoption and is not affected by it.
- (11) This Recommendation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* ⁽³⁾; Ireland is therefore not taking part in its adoption and is not affected by it.
- (12) As regards Iceland and Norway, this Recommendation constitutes a development of provisions of the Schengen *acquis* within the meaning 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* ⁽⁴⁾, which fall within the area referred to in Article 1, point B of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement ⁽⁵⁾.
- (13) As regards Switzerland, this Recommendation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement signed between the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in Article 1, point B of Decision 1999/437/EC read in conjunction with Article 4(1) of Council Decision 2004/849/EC ⁽⁶⁾ and of Council Decision 2004/860/EC ⁽⁷⁾, on the signing, on behalf of the European Union, and on the signing, on behalf of the European Community, and on the provisional application of certain provisions, of that Agreement.
- (14) This Recommendation constitutes an act building upon the Schengen *acquis* or otherwise related to it, within the meaning of Article 3(2) of the 2003 Act of Accession.
- (15) This Recommendation is also intended to provide a flexible formula for researchers who wish to maintain a professional link with an organisation of their country of origin (e.g. by spending periods of up to three months every semester in a European host research organisation located in the common area while continuing to work the rest of the time in the research organisation of origin),

⁽¹⁾ Council Regulation (EC) 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). Regulation as last amended by Regulation (EC) No 851/2005 (OJ L 141, 4.6.2005, p. 3).

⁽²⁾ OJ L 131, 1.6.2000, p. 43.

⁽³⁾ OJ L 64, 7.3.2002, p. 20.

⁽⁴⁾ OJ L 176, 10.7.1999, p. 36.

⁽⁵⁾ OJ L 176, 10.7.1999, p. 31.

⁽⁶⁾ OJ L 368, 15.12.2004, p. 26.

⁽⁷⁾ OJ L 370, 17.12.2004, p. 78.

HEREBY RECOMMEND MEMBER STATES:

1. to 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 (EC) No 539/2001;
2. to 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, Member States should take into account the duration of the research programmes in which the researchers are taking part;
3. to undertake to facilitate the adoption of a harmonised approach to the supporting evidence that researchers are required to enclose with their visa application. They should consult the approved research organisations on this matter;
4. to encourage the issue of visas without administrative fees for researchers, in accordance with the rules laid down in the *acquis communautaire*;
5. to 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 practices;
6. to undertake to supply the Commission by 28 September 2006 with information about best practices adopted to facilitate the issue of uniform visas for researchers, so as to enable it to evaluate the progress made. Having regard to whether or not the directive on a specific procedure for admitting third-country nationals for the purposes of scientific research ⁽¹⁾ is adopted, and to the outcome of the evaluation, the possibility of incorporating the provisions of this Recommendation in an appropriate legally binding instrument should be examined.

Done at Strasbourg, 28 September 2005.

For the European Parliament
The President
J. BORRELL FONTELLES

For the Council
The President
D. ALEXANDER

⁽¹⁾ See page 15 of this Official Journal.

COUNCIL

COUNCIL RECOMMENDATION

of 12 October 2005

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

(2005/762/EC)

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 proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the Committee of the Regions ⁽³⁾,

Whereas:

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

(2) Endorsing the European Research Area, the Lisbon European Council in March 2000 set the Community the objective 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 of researchers, something which was recognised by the sixth framework programme of the European Community ⁽⁴⁾ when it opened up its programmes further to researchers from outside the European Union.

(4) The number of researchers which the Community will need by 2010 if it is to meet the target set by the Barcelona European Council in March 2002 of investing 3 % of GDP in research is estimated at 700 000. This target is to be met through a series of interlocking measures, such as making scientific careers more attractive to young people, promoting women's involvement in scientific research, extending the opportunities for training and mobility in research, improving career prospects for researchers in the Community and opening up the Community to third-country nationals who might be admitted for the purposes of research.

⁽¹⁾ Opinion of 12 April 2005 (not yet published in the Official Journal).

⁽²⁾ OJ C 120, 20.5.2005, p. 60.

⁽³⁾ OJ C 71, 22.3.2005, p. 6.

⁽⁴⁾ Decision No 1513/2002/EC of the European Parliament and of the Council of 27 June 2002 concerning 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) (OJ L 232, 29.8.2002, p. 1). Decision as amended by Decision No 786/2004/EC (OJ L 138, 30.4.2004, p. 7).

- (5) Pending the implementation of Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research ⁽¹⁾, 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) Implementation of this recommendation should not encourage a brain drain from emerging economies or developing countries. Back-up 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 comprehensive migration policy. In this context, Member States should endeavour to establish a balance between the reception of researchers from third countries and the appraisal of the needs of their country of origin in the field of research. In doing so, they should take into account also the personal situation of the researchers, in particular where the person concerned has a contractual relationship with a research organisation in his/her country of origin.
- (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 facilitate the reunification of the researchers' family members, for example with respect to access to the labour market and the possibility for family members to apply when they are legally present on the territory of the Member State concerned.
- (10) In determining the duration of the residence permit to be issued to the family members, Member States should take into account whether the person concerned should complete his/her schooling needs or not.
- (11) 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. In particular, the 'Pan-European Researchers Mobility Web Portal' and the equivalent national tools constitute an important source of information for researchers.
- (12) According to the 2003 Act of Accession, the then Member States are, during any period when national measures or those resulting from bilateral agreements are applied, to give preference to workers who are nationals of the Member States over workers who are nationals of third countries as regards access to the labour market.
- (13) Czech, Cypriot, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Slovakian and Slovenian migrant workers and their families legally resident and working in another Member State or migrant workers from other Member States and their families legally resident and working in the Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia shall not be treated in a more restrictive way than those from third countries resident and working in that Member State or the Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia respectively.
- (14) This recommendation respects fundamental rights and complies with the principles laid down, in particular, in the Charter of Fundamental Rights of the European Union.
- (15) 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 to the Treaty establishing the European Community and without prejudice to Article 4 of the said Protocol, Ireland is not taking part in the adoption of this recommendation and the provisions thereof do not apply to it.
- (16) 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 to the Treaty establishing the European Community and without prejudice to Article 4 of the said Protocol, the United Kingdom is not taking part in the adoption of this recommendation and the provisions thereof do not apply to it.

⁽¹⁾ See page 15 of this Official Journal.

(17) 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 does not take part in the adoption of this recommendation and the provisions thereof do not apply to it,

HEREBY RECOMMENDS MEMBER STATES:

1. in the area of admission for the purpose of carrying out research:
 - (a) to encourage the admission of researchers into the Community, by providing them with favourable conditions for carrying out research, preferably by exempting them from work permit requirements, or alternatively by providing for work permits to be issued automatically or under fast-track procedures;
 - (b) to refrain from using quotas to restrict the admission of third-country nationals for research posts;
 - (c) to guarantee third-country nationals the possibility of working as a researcher, including the possibility of extension or renewal of work permits where appropriate;
2. in the area of residence permits:
 - (a) to issue residence permits in response to applications from third-country nationals for purposes of research as soon as possible, and facilitate fast-track procedures;

- (b) to guarantee third-country nationals working as researchers that their residence permits will be renewed;
 - (c) gradually to involve the research organisations in the admission procedure for researchers;
3. in the area of family reunification, to facilitate and support the reunification of family members, by providing them with favourable and attractive conditions and procedures;
4. in the area of operational cooperation:
 - (a) to facilitate access of researchers to the relevant information and promote its availability on all the relevant information sources;
 - (b) to promote contact persons networks within the competent administrations;
 - (c) to encourage research organisations to develop such networks;
 - (d) to inform the Commission of the measures they have adopted in order to facilitate the admission of researchers from third countries.

Done at Luxembourg, 12 October 2005.

For the Council
The President
C. CLARKE
