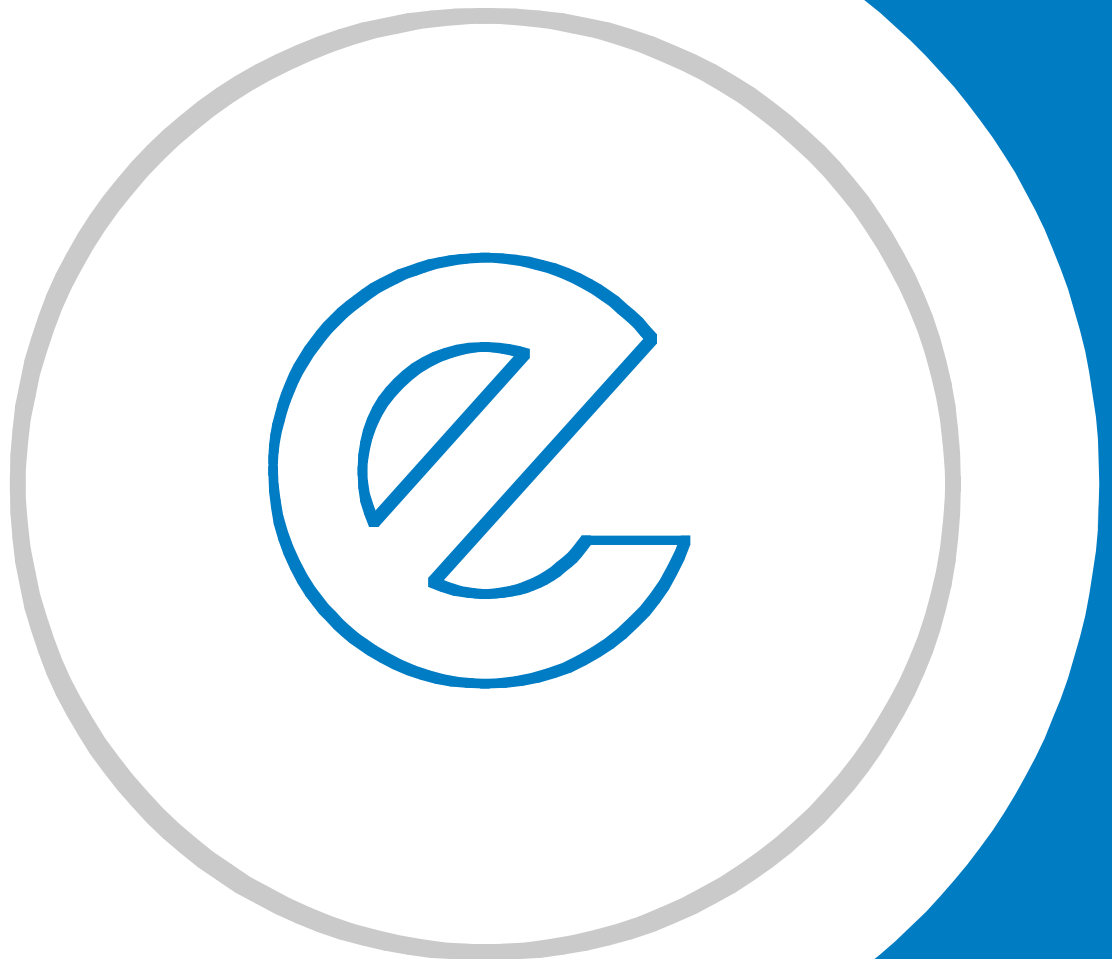


**Eurodoc Recommendations
on the entry and residence
of third-country nationals
for the purpose of
research**



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Towards a more adequate framework

Facing fundamental demographic and economic challenges, the European Union institutions recognize the need to attract talented researchers and innovators from outside the EU¹. As experience has shown that the existing student directive (2004/114/EC) and researcher directive (2005/71/EC) for these groups do not suffice to achieve the set aims², the European Commission has made a [new proposal](#) to improve the conditions of entry and residence of third-country national researchers, students, pupils, volunteers and unpaid trainees.

As the proposal is currently under discussion in trilogue negotiations between the European Commission, the European Parliament and the Council of European Union³, Eurodoc urges all negotiating parties to keep in mind the initial objectives, and to agree on an ambitious final text that will *de facto* improve the situation of doctoral candidates and junior researchers.

Therefore, Eurodoc recommends :

1. To clarify the situation of Early Stage Researchers, by defining doctoral candidates status as researchers only in article 3⁴
2. To guarantee adequate and stable working conditions
3. To provide non-discriminatory treatment to third-country nationals in
 - a) recruitment procedures
 - b) access to intra-EU mobility

¹ See for example this [press release](#) by the European Commission and the [website of the European Council and Council of the European Union](#).

² See Eurodoc policy paper: [Recommendations for admitting non-EU researchers \(2010\)](#)

³ The proposal of the Council of the European Union can be found by clicking on [this link](#).

⁴ In the proposed article 3 doctoral candidates can be categorized both as « Researchers » (3.b) and as « Students » (3.c), which leads to ambiguity.

Proposals to help the directive reaching its goals:

1. Clarification of the Early Stage Researchers' status:

The EUA 2005 forth Salzburg Principles proclaimed that *“Doctoral candidates as early stage researchers should be recognised as professionals – with commensurate rights – who make a key contribution to the creation of new knowledge”*. The Salzburg II Recommendations stress again that *“regardless of legal status, they are to be seen and treated as professionals...⁵”*

Similarly, the European Charter for Researchers and the Code of Conduct for the Recruitment of Researchers (below C&C) stress that *“All researchers engaged in a research career should be recognised as professionals and be treated accordingly. This should commence at the beginning of their careers, namely at postgraduate level, and should include all levels, regardless of their classification at national level⁶”*

However, previous directives didn't fully recognize this fact: doctoral candidates were included both in the researcher's directive and in the student's one. This ambiguity was one of the points stressed by Eurodoc and its member organisations as a weakness in the previous texts, reducing clarity and attractiveness of research in Europe for both EU and non-EU early-stage researchers.

The new definitions do not remedy the ambiguous situation of doctoral candidates.

In the new proposal, aiming at resolving this ambiguity, Doctoral Candidates are defined as researchers in point 3.b.: *“‘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 required⁷”,* taking into consideration the C&C definition of the first stage of a research career, which includes *“the period of research training⁸”*.

Eurodoc fully **supports this definition** and the recognition of the **scientific work of doctoral candidates**, during the time of their doctorate, as an effective contribution to research.

But doctoral candidates are also included in the definition of “students” in point 3.c.: *“‘student’ means a third-country national accepted by an establishment of higher education and admitted to the territory of a Member State to pursue as his/her main activity a full-time course of study leading to a higher education qualification recognised by the Member State, including diplomas, certificates or doctoral degrees in an establishment of higher education, which may cover a preparatory course prior to such education according to its national legislation⁹.”*

This definition is not appropriate for doctoral candidates, whose main activity is not *“a full-time*

⁵ http://www.eua.be/Libraries/Publications_homepage_list/Salzburg_II_Recommendations.sflb.ashx

⁶ http://ec.europa.eu/euraxess/pdf/brochure_rights/am509774CEE_EN_E4.pdf, “recognition of the profession”, p.16

⁷ European commission and European Parliament's proposal, **article 3: definitions, point 3.c.**

⁸ http://ec.europa.eu/euraxess/pdf/brochure_rights/am509774CEE_EN_E4.pdf, “Definitions”, p.28: “The term Early-Stage Researcher refers to researchers in the first four years (full-time equivalent) of their research activity, including the period of research training.”

⁹ European commission and European Parliament's proposal, **article 3: definitions, point 3.b.**

course of study” but a main activity of research – field work, experiments, papers, conferences, etc.¹⁰. Whereas training is an important part of the doctoral experience, it cannot be considered as an educational part of the doctoral programme. Learning to do research through research also includes teaching activities, dissemination of research results through publications, seminars and reviewing activities, entrepreneurial, managerial and political skills, etc.

Depending on the State, this inaccurate definition of the status could lead to inappropriate visas or permits, which won’t allow doctoral candidates to fully work as researchers and deploy the expected activities for realizing the Innovation Union, or to get the legitimate benefits from certain rights they should have acquired as knowledge producers, while working to carry out a research activity¹¹. Within the diversity of administrative and legal framework under which a researcher, at any stage of his/her career, can obtain a authorization, a visa or a permit for entry and residence, **the researcher status is indeed the one which recognizes better the research activity**. It usually goes with a proper contract, with benefits such as social security, pension contributions and **legally states the activity as a professional experience**.

The preamble of the directive, in the European Commission and European Parliament’s proposals, underlines this fact **in point 12**, by adding the following recommendation: *“Where appropriate, Member States should be encouraged to treat PhD candidates as researchers¹².”*

In order to ensure equal and appropriate treatment of all early stage researchers, Eurodoc recommends to **maintain and to strengthen** this proposal in the final version of the directive: *“Members States shall treat PhD Candidates as researchers, in line with the Commission Recommendation of 11 March 2005 on the European Charter for Researchers and on the Code of Conduct for the Recruitment of Researchers¹³.”*

Inappropriate status and permit **may also lead to unequal treatments** of non-EU researchers entering the EU with different types of visa, permits and working conditions. The result could be the growing of already existing inequalities between Member States, institutions, or between colleagues when some have fewer rights than others. **Eurodoc is in favour of equal treatment of all early stage researchers working within the Union.**

In addition, **Eurodoc recommends the following modifications in points 3.b and 3.c:**

3.b. *‘researcher’ means a third-country national holding a doctoral degree or an appropriate higher education qualification [...] giving them access to doctoral programmes, who is selected by a research organisation for carrying out a research [...] as his/her main activity for which the above qualification is normally required;*

3.c. *‘student’ means a third-country national accepted by [...] a higher education institution recognised or considered as such according to national legislation and admitted to the territory of a Member State to pursue as his/her main activity a full-time course of study leading to a higher*

¹⁰ Thus they are considered as “creative, critical and autonomous intellectual risk takers”. See LERU: Doctoral Degrees beyond 2010: “Training talented researchers for society”, March 2010, p.3.

¹¹ Unemployment benefits, pension contributions, extended rights to stay in the Country to seek for the next position, etc. (see below, part 2&3)

¹² Preamble, (12)

¹³ See above, footnote 8.

education qualification recognised by the respective Member State, including diplomas, certificates [...] in [...] a higher education institution, which may cover a preparatory course prior to such education according to its national legislation [...] and/or compulsory training foreseen in the course of study;

2. The Guarantee of adequate and stable working conditions

Researchers should have adequate and stable working conditions in order to complete their research project. This is also a condition for European Union to be attractive for the best researchers worldwide, including Early Stage Researchers¹⁴.

An appropriate authorization for the duration of the project is one condition of stability, as stated by **the point 24 of the preamble** in the European Commission and the European Parliament's proposal:

"The different periods of duration regarding authorisations under this Directive should reflect the specific nature of the stay of each group¹⁵."

The nature of the stay of researchers is the completion of a research project.

Researchers shouldn't be working with the fear of having their authorizations withdrawn or not renewed before the end of their research project for reasons which are not their responsibilities.

However, in this directive proposal, the host institutions are no longer the only one responsible for their possible disrespect to their legal obligations. **Points 2(a) and 2(b) of the article 19** allows a member state **to withdraw the authorization from a researcher** if his/her host institution loses its agreement. Researchers would then be in the situation of **being punished for something their employers, and not themselves, would have committed**.

To allow such working conditions, while having the possibility of being at any time excluded from the host country, is in opposition with the initial will to improve a process based on mutual trust, and thus to develop mobility and brain circulation from outside and within EU¹⁶.

Therefore, Eurodoc urges to **cancel points 2a and 2b of the article 19**, which put third-country-nationals researchers in a clear state of discrimination, while their EU counterparts wouldn't be affected by such consequences while facing the same situation.

The directive also considers **the issue of sickness insurance**, a main question to reach adequate working conditions. The previous 2005/71/EC Researchers' directive¹⁷ stated that either the member state or the hosting institution would make sure that the third country national researcher is covered by sickness insurance.

¹⁴ ERA Steering Group Human Resources and Mobility final report: "the core of doctoral education is research training by an individual research experience. It cannot be seen as yet another study level"

¹⁵ Preamble, (24)

¹⁶ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/intm/134168.pdf

¹⁷ Article 6.2.c

The current proposal from the European Commission and the European Parliament ensures it in **article 9, point 2b**. Nevertheless, the suppression of this point in the Council proposal leads to the risk of having no security insurance provided by the host institution, which is no longer obliged to check if the conditions are fulfilled.

3. A non-discriminatory treatment to third-country nationals

The article 21 of the directive proposal quotes the directive 2011/98/EU which states that :

*"Member States should ensure **at least equal treatment** of third-country nationals who are in employment or who, after a minimum period of employment, are registered as unemployed¹⁸"*

Whereas some Member States already allow researchers to stay on their territory until the end of their social rights and unemployment benefits, **the directive secure this right for a minimum period of 6 months only¹⁹**. Even if the directive is not supposed to determine changes in Member States to less favourable positions, it doesn't ensure that, in case of national changes, it will prevent Member States to restrict the rights of their non-EU researchers.

Eurodoc recommends that the directive will instead protect the rights that have already been acquired and extend good practices to more states.

Eurodoc proposal:

"Researchers as defined in Article 3.b should enjoy equal treatment with nationals of the host Member State as regards all the elements of Article 12(1) of Directive 2011/98/EU. The restrictions provided for in Article 12(2) of Directive 2011/98/EU should not apply to researchers with the exceptions provided for in this Directive. After the end of the contract, the third country national researcher **should be granted the same type of unemployment benefits as national researchers, and for the same time period, even if this period exceeds the six months period defined in article 24"**

Another major requirement to secure equal treatment between researchers is a fair and transparent recruitment process. Nevertheless, in absolute contradiction with the will to develop "openness of the ERA" to "the rest of the world²⁰", the new proposal gives to the Member States the right to close their research labour market to third country national researchers:

Point (28) from preamble and article 5.a from the Council mentions the possibility for a member state to restrict the number of researchers admitted to work as a researcher on its territory:

"Where a Member State considers third-country national researchers [...] to be in an employment relationship, that Member State should retain the right to regulate the volumes of admission of the category or categories concerned on its territory."

¹⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:343:0001:0009:EN:PDF> : (25)

¹⁹ Article 24 from the Council proposal

²⁰ [http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32000Y0719\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32000Y0719(01)&from=EN)

Article 18.3 also give Member States the opportunity to check if a position could have been filled by one national of the State member of the EU, in order to refuse the authorization to a non-EU researcher :

"In case a third-country national applies to be admitted to enter into an employment relationship in the Member State concerned, Member States may verify whether the post in question could be filled by nationals of the Member State concerned or by other Union citizens, or by third-country nationals lawfully residing in that Member State, in which case they may reject the application".

These two articles discriminate third-country national researchers in the recruitment process. The best applications for a research position or project shall be selected, irrespective of the nationality of the applicants, as mentioned in the Code of conduct for the recruitment of researchers²¹, and according to the will of recruiting the best applicants at the international level, as mentioned in the Horizon 2020 strategy funded by the EU.

Eurodoc cannot support a differential treatment of researchers based on their country of nationality and **supports a fair recruitment process which leads to entry and residence authorisations**, from the 1st stage of research career (i.e. doctoral level), in order to promote **the development of skills and talents** necessary to reach the highest level of research excellence.

²¹ http://ec.europa.eu/euraxess/pdf/brochure_rights/am509774CEE_EN_E4.pdf, "non-discrimination", p.16: "Employers and/or funders of researchers will not discriminate against researchers in any way on the basis of gender, age, ethnic, national or social origin, religion or belief, sexual orientation, language, disability, political opinion, social or economic condition."