The legal issues of foreign citizens participation in megascience projects

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Abstract. The article is devoted to the analyses of the issues of legal regulation of issues of foreign citizens participation in megascience projects. The large-scale nature of megascience objects that distinguishes them from other research infrastructures is expressed primarily in the scale of the objects of research, in terms of the complexity of their creation, the complexity of operation, as well as the exchange of workforce in the process of research exercising. Considering the issue of personnel exchange in the framework of large-scale research, it is necessary to focus not only on conducting the research in the framework of megascience, but also on legal regulation of foreign researchers attraction, or the problem of the entry and residence of foreign scientific researchers. The EU has a procedure for admitting third-country nationals recruited for the purpose of conducting research activities, independent of their legal relationship with the host research organization and not requiring a work permit in addition to authorization. This procedure is based on cooperation between research organizations and the immigration authorities of the EU Member States. The existence of specific procedure for the entry and residence of foreign scientific researchers helps to remove barriers in the migration of researchers, expand the scientific exchange. In this regard the EU legal experience in the scope of researchers migration regulation should be used as a model for improving the Russian Federation legal regulation in the same scope.

1. Introduction

1.1. What do megascience installations mean?
A unique scientific set-up of the Mega-science class is a world-class complex of scientific equipment and related educational infrastructure, functioning as a whole, created with the involvement of international cooperation in order to obtain scientific results, the achievement of which is impossible at other facilities in the world [9].

The megascience installation is a complicated system complex created with the involvement of different international resources (from equipment to scientists) for the purpose of obtaining scientific results containing fundamental breakthrough knowledge, technologies or solutions of global importance. In such organisations this goal usually could be pursued by establishing common research area in which researchers, scientific knowledge and technology circulate freely, and encouraging it to become more competitive, including in its industry, while promoting all the research activities [8].

The megascience has become the basis for unification of civilization efforts in search of impactful methodology of sustainable development [1]. International scientific projects aimed at the creation and operation of megascience facilities and at obtaining innovative scientific results of global significance
are called “megascience” projects. Accomplishment of such projects requires large scale international cooperation and concentration of huge financial resources. The Institut Laue-Langevin is an example of such a project.

1.2. The Institut Laue-Langevin as a megascience installation

The Institut Laue-Langevin is an international research centre at the leading edge of neutron science and technology. The ILL neutron scattering facilities provide an indispensable analytical tool for the analysis of the structure of novel conducting and magnetic materials for future electronic devices, the measurement of stresses in mechanical materials, and investigations into how complex molecular assemblies behave, particularly in a biological environment.

The Institut Laue-Langevin (ILL) has sought to become the most reliable neutron source for research and studies in the fields of material sciences, solid-state physics, chemistry, crystallography, molecular biology as well as nuclear and fundamental physics. Scientists of institutions in the member states may apply to use the ILL facilities, and may invite scientists from other countries to participate. Experimental time is allocated by a scientific council involving ILL users. The use of the facility and travel costs for researchers are paid for by the institute. Commercial use, for which a fee is charged, is not subject to the scientific council review process. Over 750 experiments are completed every year, in fields including magnetism, superconductivity, materials engineering, and the study of liquids, colloids and biological substances [7].

1.3. The European Research Infrastructure Consortium (ERIC)

Another example of called megascience project is European Research Infrastructure Consortium (ERIC). The ERIC is a specific legal form that facilitates the establishment and operation of Research Infrastructures with European interest. The ERIC allows the establishment and operation of new or existing Research Infrastructures on a non-economic basis.

The ERIC is a legal entity set up by a decision of the European Commission. It has legal personality and full legal capacity recognised in all EU Member States. The basic internal structure of an ERIC is flexible and defined in the statutes by its members. This legal entity enables adoption of diverse and fully flexible models for the management of European research infrastructures. Its legal personality and extensive legal capacity are recognised in all Member States without requiring transposition into national law or any national legal instrument. Moreover, the ERIC has the most extensive legal capacity granted to the legal entities under the national law of member states [6].

The ERIC legal framework has been introduced by the Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC)\(^1\), which was amended by the Council Regulation (EU) No 1261/2013 of 2 December 2013 amending Regulation (EC) No 723/2009 concerning the Community legal framework for a European Research Infrastructures Consortium (ERIC) and which allows an ERIC organisation to be recognized in all EU Member States.

Council Regulation (EC) No 723/2009 on the Community legal framework for a European Research Infrastructure Consortium was adopted in order to facilitate the establishment and the operation of large European research infrastructures among several Member States and associated countries by providing a new legal instrument, the European Research Infrastructure Consortium (ERIC). The ERIC legal framework may be used for new or existing, single-sited or distributed research infrastructures [4].

The large-scale nature of megascience objects that distinguishes them from other research infrastructures is expressed primarily in the scale of the objects of research, in terms of the complexity of their creation, the complexity of operation, as well as the exchange of workforce in the process of research exercising.

Considering the issue of personnel exchange in the framework of large-scale research, it is necessary to focus not only on conducting the research in the framework of megascience, but also on legal

\(^{1}\) OJ L 206, 8.8.2009, p. 1–8.
regulation of foreign researchers attraction, or the problem of the entry and residence of foreign scientific researchers.

2. Legal regulation of researchers migration for the purpose of research holding

2.1. European Union legislation

One of the most actual issues of conducting scientific research within the framework of megascience projects is the problem of foreign researchers attraction, or the problem of the entry and residence of foreign scientific researchers for the purpose of conducting research within the framework of megascience projects. The EU was the first integrational organization among the other organizations existing in Europe and the world that recognized the need to develop special legal mechanisms to ensure cross-border mobility of qualified specialists [10]. Third-country nationals immigration to the European Union (EU) for the purposes of research holding is one of the sources of highly qualified specialists and, in particular, immigration of researchers are gaining in popularity.

Migration should contribute to the generation and acquisition of knowledge and skills, the development of scientific research, the exchange of scientists and scientific experience. It represents a form of mutual enrichment for the migrants concerned, their native countries and the respective EU Member State, as well as strengthening cultural ties and enhancing the role of cultural diversity [2].

The EU Global Approach to Migration and Mobility (GAMM) sets the overarching framework of the EU’s external migration policy. It defines how the EU organises its dialogue and cooperation with non-EU countries in the area of migration and mobility. The GAMM aims to contribute – inter alia – to the achievement of the Europe 2020 Strategy, in particular through its objective of better organising legal migration and fostering well-managed mobility (alongside its other pillars dealing with irregular migration, migration and development and international protection). Particularly relevant in this context are the Mobility Partnerships, which offer a tailor-made bilateral frameworks for cooperation between the EU and selected non-EU countries (notably in the EU neighbourhood).

Allowing third-country nationals exchange in Europe encourages “brain circulation” and supports cooperation with third countries, which benefits both the sending and the receiving countries. Globalization calls for enhanced relationships between EU enterprises and foreign markets, while movements of researchers fosters the development of human capital, result in mutual enrichment for the migrants, their country of origin and the host country and an improved mutual familiarity between cultures. However, in absence of a clear legal framework, this process will be quite difficult. The EU has a procedure for admitting third-country nationals recruited for the purpose of conducting research activities, independent of their legal relationship with the host research organization and not requiring a work permit in addition to authorization. This procedure is based on cooperation between research organizations and the immigration authorities of the EU Member States and is carried out in accordance with the Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing².

2.1.1. Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing. This Directive aims at fostering people-to-people contacts and mobility, as important elements of the Union's external policy, notably vis-à-vis the countries of the European Neighbourhood Policy or the Union's strategic partners. Migration promotes the generation and acquisition of knowledge and skills. It constitutes a form of mutual enrichment for the migrants concerned, their country of origin and the Member State concerned, while strengthening cultural links and enhancing cultural diversity. This

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² OJ L 132, 21.5.2016, p. 21–57.
Directive promotes the EU as an attractive location for research and innovation and advance it in the global competition for talent and, in so doing, lead to an increase in the Union's investment.

It is appropriate to facilitate the admission of third-country nationals applying for the purpose of carrying out a research activity through 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 an authorisation. This procedure should be based on collaboration between research organisations and the immigration authorities in Member States. It should give the former a key role in the admission procedure with a view to facilitating and speeding up the entry of third-country nationals applying for the purpose of carrying out a research activity in the Union while preserving Member States' prerogatives with respect to immigration policy. Research organisations, which Member States should have the possibility to approve in advance, should be able to sign either a hosting agreement or a contract with a third-country national for the purpose of carrying out a research activity. Member States should issue an authorisation on the basis of the hosting agreement or the contract if the conditions for entry and residence are met.

This Directive lays down:

- the conditions of entry to, and residence for a period exceeding 90 days in, the territory of the Member States, and the rights, of third-country nationals, and where applicable their family members, for the purpose of research, studies, training or voluntary service in the European Voluntary Service;
- the conditions of entry and residence, and the rights, of researchers, and where applicable their family members.

The same rules apply to researchers involved in megascience projects. According to the Art. 7 of the Directive (EU) 2016/801 the applicant shall:

- present a valid travel document, as determined by national law, and, if required, an application for a visa or a valid visa or, where applicable, a valid residence permit or a valid long-stay visa; Member States may require the period of validity of the travel document to cover at least the duration of the planned stay;
- provide the evidence requested by the Member State concerned that during the planned stay the third-country national will have sufficient resources to cover subsistence costs without having recourse to the Member State's social assistance system, and return travel costs.

The application shall be submitted and examined either when the third-country national concerned is residing outside the territory of the Member State to which the third-country national wishes to be admitted or when the third-country national is already residing in that Member State as holder of a valid residence permit or long-stay visa.

In addition to the general conditions mentioned above, as regards the admission of a third-country national for the purpose of research, the applicant shall present a hosting agreement or, if provided for in national law, a contract. Member States may provide that contracts shall be considered equivalent to hosting agreements. As set in Art. 10 of the Directive (EU) 2016/801 the hosting agreement shall contain:

- the title or purpose of the research activity or the research area;
- an undertaking by the third-country national to endeavour to complete the research activity;
- an undertaking by the research organisation to host the third-country national for the purpose of completing the research activity;
- the start and end date or the estimated duration of the research activity;

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3 COM/2013/0151 final - 2013/0081 (COD)).
• information on the intended mobility in one or several second Member States if the mobility is known at the time of application in the first Member State.

Member States may also require the hosting agreement to contain:

• information on the legal relationship between the research organisation and the researcher;
• information on the working conditions of the researcher.

Research organisations may sign hosting agreements only if the research activity has been accepted by the relevant instances in the organisation, after examination of:

• the purpose and estimated duration of the research activity, and the availability of the necessary financial resources for it to be carried out;
• the third-country national's qualifications in the light of the research objectives, as evidenced by a certified copy of the qualifications.

The hosting agreement shall automatically lapse if the third-country national is not admitted or when the legal relationship between the researcher and the research organisation is terminated. Member States also may provide that, within two months of the date of expiry of the hosting agreement concerned, the research organisation shall provide the competent authorities designated for that purpose with confirmation that the research activity has been carried out.

Art. 10 of the Directive (EU) 2016/801 establishes the provision that Member States may require, in accordance with national law, a written undertaking from the research organisation that, in the event that a researcher remains illegally in the territory of the Member State concerned, that research organisation is responsible for reimbursing the costs related to the 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.

Let's consider application procedure in more detail using the following example:

If you wish to conduct research in Germany for up to 180 days within a period of 360 days, you do not require a German residence title. The residence title issued by the other EU State makes you eligible for residence in Germany.

The research facility employing you in Germany must notify the Federal Office for Migration and Refugees accordingly. This notification should be provided as soon as it becomes known that you intend to pursue research in Germany. Full notification must be received prior to you entering Germany.

It is not necessary for you to present yourself in person to the immigration authority. The Federal Office for Migration and Refugees will issue you with a certificate confirming your entitlement to short-term mobility as a researcher.

If you wish to pursue research in Germany for more than 180 days and up to 360 days, you must apply for a residence permit for mobile researchers. There are two ways of applying for a residence permit for mobile researchers:

• Applying from abroad:
You must submit the application to the immigration authority competent for the place in which the research facility is located no later than 30 days prior to entering Germany. Before the immigration authority reaches a decision on the matter, you may stay and pursue research in Germany for up to 180 days within a period of 360 days.

• Applying from Germany:
If you are already resident in Germany for the purposes of short-term mobility and wish to stay for more than 180 days in order to conduct research, you must submit the application to the immigration authority competent for your place of residence no later than 30 days prior to expiry of your short-term mobility status [5].
Continuing the analysis of the application procedure, it should be noted that according to the Chapter VII of the Directive (EU) 2016/801 the competent authorities of the Member State concerned shall adopt a decision on the application for an authorisation or a renewal of it and notify the decision to the applicant in writing, in accordance with the notification procedures under national law, as soon as possible but not later than 90 days from the date on which the complete application was submitted.

Where the information or documentation supplied in support of the application is incomplete, the competent authorities shall notify the applicant within a reasonable period of the additional information that is required and set a reasonable deadline for providing it. Any decision declaring inadmissible or rejecting an application, refusing renewal, or withdrawing an authorisation shall be open to legal challenge in the Member State concerned, in accordance with national law. The written notification shall specify the court or administrative authority with which an appeal may be lodged and the time limit for lodging the appeal.

As defined in Art. 20 of the Directive (EU) 2016/801 Member States shall reject an application where:

- the general conditions are not met (presenting a valid travel document, having sufficient resources to cover subsistence costs and etcs.);
- the documents presented have been fraudulently acquired, or falsified, or tampered with;
- the Member State concerned only allows admission through an approved host entity and the host entity is not approved.

The period of validity of an authorisation for researchers shall be at least one year, or for the duration of the hosting agreement where this is shorter, the also authorisation may be renewed. The duration of the authorisation for researchers who are covered by EU or multilateral programmes that comprise mobility measures shall be at least two years, or for the duration of the hosting agreement where this is shorter (see Art. 18 of the Directive (EU) 2016/801).

When the authorisation for long-term mobility is issued to a researcher in the form of a long-stay visa, Member States shall enter ‘researcher-mobility’ under the heading ‘remarks’ on the visa sticker. And when the authorisation for long-term mobility is issued to a researcher in the form of a residence permit, Member States shall use enter ‘researcher-mobility’ on the residence permit.

Researchers who hold a valid authorisation issued by the first Member State shall be entitled to stay in order to carry out part of their research in any research organisation in one or several second Member States for a period of up to 180 days in any 360-day period per Member State. The second Member State may require the researcher, the research organisation in the first Member State or the research organisation in the second Member State to notify the competent authorities of the first Member State and of the second Member State of the intention of the researcher to carry out part of the research in the research organisation in the second Member State.

In such cases, the second Member State shall allow the notification to take place either:

- at the time of the application in the first Member State, where the mobility to the second Member State is already envisaged at that stage; or
- after the researcher was admitted to the first Member State, as soon as the intended mobility to the second Member State is known.

The second Member State may require the notification to include the transmission of the following documents and information:

- the hosting agreement in the first Member State;
- the planned duration and dates of the mobility;
- evidence that the researcher has sickness insurance;
• evidence that during the stay the researcher will have sufficient resources to cover subsistence costs without having recourse to the Member State's social assistance system.

Researchers who are considered to pose a threat to public policy, public security or public health shall not be allowed to enter or to stay on the territory of the second Member State.

In relation to researchers who hold a valid authorisation issued by the first Member State and who intend to stay in order to carry out part of their research in any research organisation in one or several second Member States for more than 180 days per Member State, the second Member State shall allow the researcher to stay on the territory on the basis of and during the period of validity of the authorisation issued by the first Member State; or

When an application for long-term mobility is submitted the second Member State may require the researcher, the research organisation in the first Member State or the research organisation in the second Member State to transmit the following documents:

• valid authorisation issued by the first Member State;
• evidence that the researcher has sickness insurance;
• evidence that during the stay the researcher will have sufficient resources to cover subsistence costs without having recourse to the Member State's social assistance system;
• the hosting agreement in the first Member State;
• the planned duration and dates of the mobility.

So, the Directive (EU) 2016/801 shall apply to third-county nationals who apply to be admitted or who have been admitted to the territory of a Member State for the purpose of research. This Directive shall not apply to third-country nationals who are admitted as highly qualified workers in accordance with Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment⁴. The objective of this Directive also is not to regulate the admission and residence of third-country nationals for the purpose of employment and it does not aim to harmonise national laws or practices with respect to workers' status.

2.1.2. Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. According to the last point it is necessary to pay attention to the Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State⁵.

This Directive lays down:

• a single application procedure for issuing a single permit for third-country nationals to reside for the purpose of work in the territory of a Member State, in order to simplify the procedures for their admission and to facilitate the control of their status; and
• a common set of rights to third-country workers legally residing in a Member State, irrespective of the purposes for which they were initially admitted to the territory of that Member State, based on equal treatment with nationals of that Member State.

According to the Directive an application to issue, amend or renew a single permit shall be submitted by way of a single application procedure. Member States shall determine whether applications for a single permit are to be made by the third-country national or by the third-country national’s employer. Member States may also decide to allow an application from either of the two. If the application is to be

⁴ OJ L 155, 18.6.2009, p. 17.
⁵ OJ L 343, 23.12.2011, p. 1–9.
submitted by the third-country national, Member States shall allow the application to be introduced from a third country or, if provided for by national law, in the territory of the Member State in which the third-country national is legally present.

Member States shall examine an application and shall adopt a decision to issue, amend or renew the single permit if the applicant fulfils the requirements specified by Union or national law. A decision to issue, amend or renew the single permit shall constitute a single administrative act combining a residence permit and a work permit. Member States shall issue a single permit, where the Directive conditions provided for are met, to third-country nationals who apply for admission and to third-country nationals already admitted who apply to renew.

2.2. Russian legislation

A megascience unique scientific installation (megascience projects) is a single complex system of scientific equipment, unparalleled in the world and created with the involvement of resources of international cooperation in order to obtain scientific results which contain fundamental breakthrough knowledge, technologies, or solutions of global importance which cannot be achieved with other hardware sets. The Russian Federation is currently seeking to take a significant place in the system of international high-tech development and research using the most advanced technologies [3]. Nevertheless the Russian legislation does not provide for a separate simplified entry procedure for admitting third-country nationals recruited for the purpose of conducting research activities. Researchers arriving in Russia for the purpose of participating in scientific projects, including magasaens projects must follow the migration rules of the Russian Federation, in particular:

- Federal Law No. 114 of 15th of August 1996 “On the procedure for leaving the Russian Federation and entering the Russian Federation”;
- Federal Law No. 115 of 25th of July 2002 “On the legal status of foreign citizens in the Russian Federation”;
- Federal Law No. 109 of 18th of July 2006 “On migration registration of foreign citizens and stateless persons in the Russian Federation”.

Art. 25 of Federal Law N 114 establishes that to get a visa it is necessary to get an invitation to enter the Russian Federation. An invitation to enter is issued by the federal executive body in charge of foreign affairs at the request of:

- federal government bodies;
- diplomatic missions and consular offices of foreign states in the Russian Federation;
- international organizations and their representations in the Russian Federation, as well as representations of foreign states;
- public authorities of the constituent entities of the Russian Federation.

In cases established by federal law, an invitation to enter the Russian Federation is also issued by the federal executive body in the field of internal affairs. The invitation is issued by the territorial body of the federal executive body in the field of internal affairs at the request of:

- local government bodies;
- legal entities registered with the federal executive body in the field of internal affairs or its territorial body by notification;

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6 CL RF 1996. № 34. Art. 4029.  
7 CL RF 2002. № 30. Art. 3032.  
8 CL RF 2006. № 30. Art. 3285.
• citizens of the Russian Federation and foreign citizens permanently residing in the Russian Federation;
• branches, representative offices of foreign commercial organizations accredited in the Russian Federation;
• foreign citizens who are highly qualified specialists and carry out labor activities in accordance with Art. 13.2 of the Federal Law N 115;
• representative offices of foreign commercial organizations.

Simultaneously with the request for an invitation, the inviting party presents guarantees of material, medical and housing support for a foreign citizen for the period of his/her stay in the Russian Federation. The inviting party takes measures to implement guarantees of material, medical and housing support for the invited foreign citizen during his/her stay in the Russian Federation.

3. Conclusion
Summing up the analysis of the problem of attracting foreign citizens to participate in megascience projects it should be noted that the simplification of the procedure for the entry and residence of foreign scientific researchers helps to remove barriers in the migration of researchers, expand the scientific exchange. As there is no separate simplified entry procedure for researchers economic and non-economic mobility to hold research in the legislation of the Russian Federation. In connection with the growing role of megasensing projects, a similar simplified procedure should be envisaged at the legislative level. The EU legal experience, analyzed in this article, should be used as a model for improving the Russian Federation legal regulation in the scope of researchers migration.

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