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Subject: Controls by the frontier police on members of the family of persons entitled under
Community law

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Annex : Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (Reg. No 1612/68), Official Journal No L 257, 19.10.1968

Pursuant to the first sentence of Article 5(2) of the Commission draft, persons who – as the distinction drawn in the second sentence makes clear – are not covered by the freedom of movement arrangements under Community law, are to be subject upon entry to more stringent controls to ensure that they meet the entry requirements listed in Article 7(1).

Family members entitled under Community law from third States are, however, to be subject to controls over and above what is laid down in Article 5(1) only in order to establish that they comply with the visa requirement laid down in Article 7(1)(b) of the Commission draft.

However, entitlement under Community law on the basis of family membership pursuant to Article 1(a)(ii) and (iii) is not established by the travel document to be produced pursuant to Article 5(1). At the frontier control, therefore, compliance with the distinction drawn in Article 5(2) cannot be established, as long as a family member entitled under Community law is not obliged to demonstrate spontaneously his special legal status when crossing the Community's external frontiers. The German delegation has pointed out these practical difficulties before in its note of 5 May 1994 (6821/94 ASIM 95).

The Presidency therefore feels that this group of persons must formally prove their entitlement under Community law. This follows firstly from the principle that anyone

seeking an entitlement must demonstrate that he fulfils the necessary conditions in that respect. Secondly, the frontier authorities cannot in practice verify without formal proof that family members who are nationals of third States are persons entitled under Community law.

Unlike EU and EEA nationals, family members who are nationals of third States enjoy no Community-wide freedom of movement. Their freedom of movement is limited to the territory of the Member State in which the EU/EEA national, from whom entitlement under Community law is derived, is resident by virtue of his right to freedom of movement. In addition, the freedom of movement of such persons is dependent on their proving that a relationship exists within the meaning of Article 10(1) of Regulation No 1612/68 and on the existence of the other requirements laid down in Article 10(1) and (3) of Regulation No 1612/68.

These conditions – such as for example the requirement for actual dependent status in the cases covered by Article 10(1)(a) of Regulation No 1612/68 – can only be verified by the Member State in which the family member who is a national of a third State has a right of residence under Community law. Only where that Member State in the individual case issues a residence permit in accordance with the provisions of Community law, thereby demonstrating the existence of the aforementioned conditions in a manner which can be verified by the frontier control authorities of all Member States, can the controls on entry of family members entitled under Community law be limited in the manner provided for in Article 5(2) of the draft.

Therefore, as means of proof of entitlement under Community law within the meaning of these provisions, only the following should be recognized:

- a residence permit issued by a Member State in accordance with the provisions of Community law, or alternatively

- a visa issued by a Member State which indicates the holder's status as a person entitled under Community law.

The Presidency therefore suggests that Article 5(2) of the draft should be worded as follows:

"2. Upon entry, persons shall also be subject to a control to ensure that they fulfil the conditions set out in Article 7. This shall not apply to nationals of third States, if they have been formally identified as persons entitled under Community law in accordance with Article 1(a)."

The beginning of Article 7(1) of the draft should be worded correspondingly:

"1. Any person who has not been formally identified as a person entitled under Community law within the meaning of Article 1(a) may be authorized to enter the territories of the Member States for a short stay provided that he meets the following requirements:"

In order to make it clear that formal proof of entitlement is required, but also sufficient, a joint declaration as follows should be added to the Annex to the External Frontiers Convention:

"Joint Declaration by the Member States re Articles 5(2) and 7(1) of the Convention:

The Member States declare that, for the purposes of applying Article 5(2) and Article 7(1) of this Convention, they regard proof of entitlement under Community law to be furnished by the production of a visa in which a Member State has indicated the holder's status as a person entitled under Community law, or of a residence permit which has been issued by the authorities of a Member State in accordance with the entry and residence rules laid down in Community law."

Official Journal of the European Communities No L 257, 19.10.1968
REGULATION (EEC) No 1612/68 OF THE COUNCIL

of 15 October 1968

on freedom of movement for workers within the Community (*)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 49 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament¹;

Having regard to the Opinion of the Economic and Social Committee²;

Whereas freedom of movement for workers should be secured within the Community by the end of the transitional period at the latest; whereas the attainment of this objective entails the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment, as well as the right of such workers to move freely within the Community in order to pursue activities as employed persons subject to any limitations justified on grounds of public policy, public security or public health;

Whereas by reason in particular of the early establishment of the customs union and in order to ensure the simultaneous completion of the principal foundations of the Community, provisions should be adopted to enable the objectives laid down in Articles 48 and 49 of the Treaty in the field of freedom of movement to be achieved and to perfect measures adopted successively under Regulation No 15³ on the first steps for attainment of freedom of movement and under Council Regulation No 38/54/EEC⁴ of 25 March 1964 on freedom of movement for workers within the Community;

¹ OJ No 268, 6.11.1967, p. 9.

² OJ No 298, 7.12.1967, p. 10.

³ OJ No 57, 26.8.1961, p. 1073/61.

⁴ OJ No 62, 17.4.1964, p. 965/64.

Whereas freedom of movement constitutes a fundamental right of workers and their families; whereas mobility of labour within the Community must be one of the means by which the worker is guaranteed the possibility of improving his living and working conditions and promoting his social advancement, while helping to satisfy the requirements of the economies of the Member States; whereas the right of all workers in the Member States to pursue the activity of their choice within the Community should be affirmed;

Whereas such right must be enjoyed without discrimination by permanent, seasonal and frontier workers and by those who pursue their activities for the purpose of providing services;

Whereas the right of freedom of movement, in order that it may be exercised, by objective standards, in freedom and dignity, requires that equality of treatment shall be ensured in fact and in law in respect of all matters relating to the actual pursuit of activities as employed persons and to eligibility for housing, and also that obstacles to the mobility of workers shall be eliminated, in particular as regards the worker's right to be joined by his family and the conditions for the integration of that family into the host country;

Whereas the principle of non-discrimination between Community workers entails that all nationals of Member States have the same priority as regards employment as is enjoyed by national workers;

Whereas it is necessary to strengthen the machinery for vacancy clearance, in particular by developing direct co-operation between the central employment services and also between the regional services, as well as by increasing and co-ordinating the exchange of information in order to ensure in a general way a clearer picture of the labour market; whereas workers wishing to move should also be regularly informed of living and working conditions; whereas, furthermore, measures should be provided for the case where a Member State undergoes or foresees disturbances on its labour market which may seriously threaten the standard of living and level of employment in a region or an industry; whereas for this purpose the exchange of information, aimed at discouraging workers from moving to such a region or industry, constitutes the method to be applied in the first place but, where necessary, it should be possible to strengthen the results of such exchange of information by temporarily suspending the above-mentioned machinery, any such decision to be taken at Community level;

(*) Text amended by Council Regulation (EEC) No 312/76 of 9 February 1976, OJ No L 39, 14.2.1976

Whereas close links exist between freedom of movement for workers, employment and vocational training, particularly where the latter aims at putting workers in a position to take up offers of employment from other regions of the Community; whereas such links make it necessary that the problems arising in this connection should no longer be studied in isolation but viewed as inter-dependent, account also being taken of the problems of employment at the regional level; and whereas it is therefore necessary to direct the efforts of Member States toward co-

ordinating their employment policies at Community level;

Whereas the Council, by its Decision of 15 October 1968¹ made Articles 48 and 49 of the Treaty and also the measures taken in implementation thereof applicable to the French overseas departments;

HAS ADOPTED THIS REGULATION:

PART I

EMPLOYMENT AND WORKERS' FAMILIES

TITLE I

Eligibility for employment

Article 1

1. Any national of a Member State, shall, irrespective of his place of residence, have the right to take up an activity as an employed person, and to pursue such activity, within the territory of another Member State in accordance with the provisions laid down by law, regulation or administrative action governing the employment of nationals of that State.

2. He shall, in particular, have the right to take up available employment in the territory of another Member State with the same priority as nationals of that State.

Article 2

Any national of a Member State and any employer pursuing an activity in the territory of a Member State may exchange their applications for and offers of employment, and may conclude and perform contracts of employment in accordance with the provisions in force laid down by law, regulation or administrative action, without any discrimination resulting therefrom.

Article 3

1. Under this Regulation, provisions laid down by law, regulation or administrative action or administrative practices of a Member State shall not apply:

— where they limit application for and offers of employment, or the right of foreign nationals to take up and pursue employment or subject these to conditions not applicable in respect of their own nationals; or

— where, though applicable irrespective of nationality, their exclusive or principal aim or effect is to keep nationals of other Member States away from the employment offered.

This provision shall not apply to conditions relating to linguistic knowledge required by reason of the nature of the post to be filled.

2. There shall be included in particular among the provisions or practices of a Member State referred to in the first subparagraph of paragraph 1 those which:

- (a) prescribe a special recruitment procedure for foreign nationals;
- (b) limit or restrict the advertising of vacancies in the press or through any other medium or subject it to conditions other than those applicable in respect of employers pursuing their activities in the territory of that Member State;
- (c) subject eligibility for employment to conditions of registration with employment offices or impede recruitment of individual workers, where persons who do not reside in the territory of that State are concerned.

Article 4

1. Provisions laid down by law, regulation or administrative action of the Member States which restrict by number or percentage the employment of foreign nationals in any undertaking, branch of activity or region, or at a national level, shall not apply to nationals of the other Member States.

¹ OJ No L 257, 19.10.1968, p. 1.

2. When in a Member State the granting of any benefit to undertakings is subject to a minimum percentage of national workers being employed, nationals of the other Member States shall be counted as national workers, subject to the provisions of the Council Directive of 15 October 1963.¹

Article 5

A national of a Member State who seeks employment in the territory of another Member State shall receive the same assistance there as that afforded by the employment offices in that State to their own nationals seeking employment.

Article 6

1. The engagement and recruitment of a national of one Member State for a post in another Member State shall not depend on medical, vocational or other criteria which are discriminatory on grounds of nationality by comparison with those applied to nationals of the other Member State who wish to pursue the same activity.

2. Nevertheless, a national who holds an offer in his name from an employer in a Member State other than that of which he is a national may have to undergo a vocational test, if the employer expressly requests this when making his offer of employment.

TITLE II

Employment and equality of treatment

Article 7

1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and should he become unemployed, reinstatement or re-employment;

2. He shall enjoy the same social and tax advantages as national workers.

3. He shall also, by virtue of the same right and under the same conditions as national workers, have

¹ OJ No 159, 2.11.1963, p. 2661/63.

(*) Paragraph amended by Regulation (EEC) No 312/76, Article 1(1).

(**) Paragraph deleted by Regulation (EEC) No 312/76, Article 1(2).

access to training in vocational schools and retraining centres.

4. Any clause of a collective or individual agreement or of any other collective regulation concerning eligibility for employment, employment, remuneration and other conditions of work or dismissal shall be null and void in so far as it lays down or authorises discriminatory conditions in respect of workers who are nationals of the other Member States.

Article 8

1. A worker who is a national of a Member State and who is employed in the territory of another Member State shall enjoy equality of treatment as regards membership of trade unions and the exercise of rights attaching thereto, including the right to vote and to be eligible for the administration or management posts of a trade union;

he may be excluded from taking part in the management of bodies governed by public law and from holding an office governed by public law. Furthermore, he shall have the right of eligibility for workers' representative bodies in the undertaking. (**)

The provisions of this Article shall not affect laws or regulations in certain Member States which grant more extensive rights to workers coming from the other Member States.

2. (**)

Article 9

1. A worker who is a national of a Member State and who is employed in the territory of another Member State shall enjoy all the rights and benefits accorded to national workers in matters of housing, including ownership of the housing he needs.

2. Such worker may, with the same right as nationals, put his name down on the housing lists in the region in which he is employed, where such lists exist; he shall enjoy the resultant benefits and priorities.

If his family has remained in the country whence he came, they shall be considered for this purpose as residing in the said region, where national workers benefit from a similar presumption.

Article 10

1. The following shall, irrespective of their nationality, have the right to install themselves with a worker who is a national of one Member State and who is employed in the territory of another Member State:

- (a) his spouse and their descendants who are under the age of 21 years or are dependants;
- (b) dependent relatives in the ascending line of the worker and his spouse.

2. Member States shall facilitate the admission of any member of the family not coming within the provisions of paragraph 1 if dependent on the worker referred to above or living under his roof in the country whence he comes.

3. For the purposes of paragraphs 1 and 2, the worker must have available for his family housing considered as normal for national workers in the region where he is employed; this provision, however

must not give rise to discrimination between national workers and workers from the other Member States.

Article 11

Where a national of a Member State is pursuing an activity as an employed or self-employed person in the territory of another Member State, his spouse and those of the children who are under the age of 21 years or dependent on him shall have the right to take up any activity as an employed person throughout the territory of that same State, even if they are not nationals of any Member State.

Article 12

The children of a national of a Member State who is or has been employed in the territory of another Member State shall be admitted to that State's general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if such children are residing in its territory.

Member States shall encourage all efforts to enable such children to attend these courses under the best possible conditions.