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Proposal for a
EUROPEAN PARLIAMENT AND COUNCIL REGULATION
amending Council Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community

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Proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE
amending Directive 68/360/EEC on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families

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Proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DECISION
establishing an Advisory Committee on freedom of movement and social security for Community workers and amending Council Regulations (EEC) No 1612/68 and (EEC) No 1408/71

(presented by the Commission)

1. INTRODUCTION

This proposal is in response to measures announced by the Commission in its Action Plan for free movement of workers adopted on 12 November 1997[1].

In the Action Plan, the Commission made known its plans for measures to improve free movement of workers, adopting to this end a twofold approach:

- The first concerns the need to offer European citizens an effective and readily understandable means whereby a basic freedom established by the Treaty of Rome and implemented 30 years ago can be exercised.

- The second concerns freedom of movement, as a legal device for facilitating the mobility of workers, thereby contributing to **the coordination of national employment policies**. Against this background, mobility is fundamental as a way of increasing the European added value of measures to promote employment. The creation of a real area for people to move and work in is likely to increase the employment prospects of European workers, for whom an extensive European labour market is available. They will also be able to improve their qualifications and experience by acquiring work experience on an international scale and this should improve their employability and adaptability in labour market terms.

With this aim in view this document presents a proposal for amending Regulation (EEC) No 1612/68 and Directive 68/360/EEC on the freedom of movement of workers **(Part One).**

Also, and as confirmed in the Action Plan referred to above, the contribution to this debate which can be made by the social partners is of fundamental importance and existing structures must be made easier and simpler to apply. To this end and following the recommendations of the social partners themselves, the Commission is proposing that the two advisory committees currently dealing with free movement - the Advisory Committee on the Free Movement of Workers and the Advisory Committee on Social Security for Migrant Workers – should be merged. Accordingly, a proposal for a decision is presented (**Part Two**).

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[1] COM(97) 586 final.

PART ONE

Proposal for a

EUROPEAN PARLIAMENT AND COUNCIL REGULATION

amending Council Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community

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(Text with EEA relevance)

Proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

amending Directive 68/360/EEC on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families

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(Text with EEA relevance)

EXPLANATORY MEMORANDUM

A. GENERAL CONSIDERATIONS

1. Reasons for proposing a revision

The rules governing the freedom of movement of workers have now been in force for several decades. Freedom of movement is one of the most developed and advanced legal mechanisms devised for the benefit of the citizens of Europe in the Treaty of Rome. The right to free movement allows Community workers direct and automatic access to the labour market of each and every Member State.

The exercise of this right is determined by the effectiveness of the rules which allow unrestricted freedom of movement. The rules are now 30 years old, however. Over this period the Court of Justice has repeatedly ruled on the texts and interpreted them. As a result, a whole corpus of case-law to interpret the wording of the legislation has been created. To strengthen the security and transparency of the law on behalf of the citizen, it is now time to bring the texts into line with existing case-law.

As an indication, despite freedom of movement having been a feature of the Union for thirty years experience with the application of these texts suggests that now, after 30 years, a number of gaps in the legislation need to be filled and some shortcomings rectified.

The shortcomings of the legal texts on the freedom of movement of workers and the obsolete nature of some rules and of the way they are applied by national authorities are recognised obstacles to the completion of the internal market. Statistics reveal, for example, that mobility in Europe lags behind that of the United States[2]. Facilitating freedom of movement therefore represents an important objective for Europe, but achieving it depends to a certain extent on the effectiveness of the rules which allow unrestricted freedom of movement.

To generate new momentum in this area, the Commission set up a high-level group on the free movement of persons in 1996. This group, chaired by Mrs Simone Veil, published a report in March 1997 which highlighted these gaps and shortcomings. The group's report also stressed the need to ensure that legislation took account not only of developments in case-law but also of the political and sociological change which the European Union has undergone since 1968.

For its part, the European Parliament has repeatedly called for improvements to the legal structures governing the freedom of movement of workers. The Parliament, in fact, welcomed[3] the Commission's proposed changes to Regulation (EEC) No 1612/68 and Directive 68/360/EEC[4] back in 1989. Recently, as part of the follow-up to the High-Level Group's report on the freedom of movement, the European Parliament again confirmed

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2 See Commission report "Employment in Europe 1997".

3 Opinion of Parliament of 14 February 1989 (A3-0013/90).

4 COM(88) 815 final.

the need to improve the legal provisions on the freedom of movement and to ensure that they are effectively implemented in the Member States.

The Commission, reflecting the line taken by the European Parliament and responding in part to the recommendations made by the High-Level Group, adopted in November 1997 an action plan on the free movement of workers. In this plan, the Commission announced that it would be presenting proposals for legislation aimed at improving the conditions for exercising the right to freedom of movement.

The obstacles which persist even today relate not only to onerous administrative procedures connected with the recognition of the right of residence (for example in the case of trainees or job seekers) but also to the problems connected with the recognition of experience and qualifications obtained in another Member State. Progress in this area is therefore essential if the ability of the Union to offer an effective labour market to workers at European level is to be improved.

The guidelines on employment adopted following the European Council meeting in Luxembourg in November 1997 stress the importance of improving the scope for the occupational integration of workers and in particular of the unemployed (**employability**). To achieve this aim, the unemployed, and in particular the young and the long-term unemployed, should be given greater scope for training and gaining experience. Mobility offers better prospects for accessing training and gaining experience. The experience gained by workers, the jobless, trainees and students in Member States other than their own will have a significant qualitative impact in that the experience may include the chance to learn a new language or a business culture different from that of their own country. These persons will thus be able to enhance their employability not only in their own country but throughout the Union as well.

The European citizen also has high expectations regarding the opportunities offered by Europe, as demonstrated by the amount of interest in the information provided on citizens' rights.

Accordingly and on the basis of Part II of Regulation (EEC) No 1612/68 and of a decision taken in 1993, the European Commission has created the Eures network, a joint venture with the employment services in the Member States and with other partners, including in particular the social partners. Assisted by some 500 Eurocounsellors, these partners provide workers and job seekers, as well as employers, with general information and personal advice concerning the freedom of movement of workers and offer access to a data base on the employment opportunities that are available.

The growing popularity of this service and the initial results achieved by the "Citizens of Europe" campaign demonstrate the interest that exists in going to work in other Member States. Thus, a large number of persons have contacted the Sign Post Service under "Citizens First" that was set up to assist citizens to identify a problem in a neutral and objective way and to suggest solutions. The evaluation report of those calls "Listening to the citizen", annexed to the second scoreboard of the Single Market from May 1998, has highlighted that one of the major concerns of the citizen was to obtain assistance for seeking employment in another Member State.

In the framework of the "Permanent dialogue with the citizen and the enterprises" that has been launched on 14 June 1998 following the Action Plan on the Single Market, a practical guide "Routemap for jobseekers" has also been published. This guide will

explain to people that Europe has opened up an extensive European labour market on which work can be found. It is thus essential to ensure that the law as it stands and the procedures for its application do not constitute an obstacle to the efforts of the Member States to drive this message home.

It also needs to be emphasised that the **demographic prospects** for Europe are in themselves an additional reason for eliminating the obstacles to worker mobility in the Community in order to tackle the population imbalances likely to arise in certain regions.

It should also be stressed that **industrial change and the new technologies** will make it easier in future for workers to become more mobile. New technologies are European in dimension, even global, and allow workers to be employed in a European market where technical barriers will fade away. These industrial changes which are affecting the market may exacerbate the imbalance between the vocational skills available and those required by the market and lead to shortages of skilled workers in certain parts of the Union. Worker mobility may therefore be an important way of redressing the balance.

From the foregoing it can be seen that revising the regulations on the freedom of movement for workers is a priority for Europe in legal, social, economic and political terms and is fully consistent with European initiatives supporting modern and effective national-level policies to promote employment.

The proposals for legislation which are contained in this document are therefore a response to this situation and to the new approach announced in the Action Plan. Consequently, the proposals for legislation in relation to Regulation (EEC) No 1612/68 and Directive 68/360/EEC, which were submitted in 1989, will be withdrawn when these new proposals are put forward. The Commission intends to ensure that these proposals succeed in their aim of improving conditions for freedom of movement to reflect the spirit expressed by case-law. The latter is a basic step forward for the European citizen and the Commission will ensure that discussions in the Council do not lead to the loss of the headway made by case-law.

Lastly, it should be noted that this proposal is of relevance to the European Economic Area because under Article 28 of the EEA Treaty, EEA citizens enjoy the right to freedom of movement for workers.

2. Scope of the revision in relation to the status of European citizenship

The proposed revision is aimed at the texts which relate to employed persons and the members of their families. These rules apply to all European citizens moving to take up employment or seeking employment.

This revision does not apply to citizens who are self-employed or non-employed, with the exception of the members of the family of a citizen who is employed. As Community law now stands, these citizens are covered by other legal instruments[5].

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[5] Council Directive 73/148/EEC of 21 May 1973 (OJ L 172, 28.6.1973), Council Directive 90/364/EEC of 28 June 1990 on the right of residence (OJ L 180, 13.7.1990), Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity (OJ L 180, 13.7.1990), Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students (OJ L 317, 18.12.1993).

The Commission nonetheless considers that this proposal is a starting point for a much-needed and detailed review of how the citizens of the Community and their families can be treated more uniformly in the Member States. To this end the Commission has announced in its Action Plan on the single market that it is considering proposals for the updating of the conditions governing the right of residence to bring them into line with European citizenship.

However, it should be stressed that this proposal for a revision of the rules concerning only workers and the members of their families is complementary to the proposals relating to citizenship. Indeed, it should be noted that Community law as it currently stands is far from uniform in its provisions regarding the material rights of various categories of European citizens (workers, students, non-employed persons, volunteer workers, retired people or the providers or users of services, etc.). It is this difference in material terms that justifies the presentation now of proposals aimed at the material status in law of workers and their families.

Furthermore, the importance of worker mobility in the context of the Union's efforts to support Member States' employment policies calls for immediate and targeted action which should not be held back by the much broader debate on European citizenship. It should be borne in mind that these proposals relate specifically to the status of job seekers and trainees as well as the recognition for employment purposes throughout the Union of the personal and employment-related circumstances which affect the working conditions of migrant workers. These points, which are intended to help bring about a pan-European area for occupational mobility, need an approach specifically targeted on workers.

It follows that, without prejudice in the future development of the legal status for the various categories of citizens under secondary legislation, the conditions governing the free movement of workers must be improved. The legal provisions for Community workers are a cornerstone of European citizenship and are central to the achievement of real integration for all European citizens in whichever Member State they are living.

A revision of the rules governing the freedom of movement of workers is therefore consistent with the possibility of revising the rules on the right of entry and residence, which could be based on Article 8A of the Treaty as amended by the Treaty of Amsterdam and would be aimed at establishing a single legal status for European citizenship. The proposals which follow fully reflect the Commission's strategy regarding citizenship and take account of the Community contribution to employment policy.

3. Legal basis

Since this revision relates to the legal texts governing the free movement of workers, the legal basis is Article 49 of the Treaty, both with regard to Directive 68/360/EEC and to Regulation (EEC) No 1612/68. This article provides that the Council shall, acting in accordance with the procedure referred to in Article 189b and after consulting the Economic and Social Committee, issue directives or make regulations.

4. Aims of the revision

This revision relates to the conditions governing the residence of workers and of the procedures regulating freedom of movement.

The main aims are:

- to make it easier for job seekers, trainees and workers employed on a series of short-term contracts in a Member State to secure the right of residence.

- to extend the scope of this Community right to include all the ascendants and descendants of the worker and spouse, as well as other members of the family who are dependants and live under the worker's roof in Member State whence they come.

- to enhance the legal status of the members of the family so that they can be more easily integrated in the host country, in particular if the marriage breaks up.

- to reinforce the application of equal treatment for Community workers by establishing the principle of equivalence of situations for occupational purposes and taking account of the particular situation of frontier workers.

- to simplify the administrative procedures for taking advantage of the freedom of movement for workers and the members of their families.

Section II sets out in more detail the scope of the proposed revision.

B. A REVIEW OF THE AMENDMENTS PROPOSED FOR REGULATION (EEC) No 1612/68 AND DIRECTIVE 68/360/EEC

I. AMENDMENT OF REGULATION (EEC) NO 1612/68

1. Non-discrimination clause

Under the proposed new Article 1a, discrimination based on race, religion, sex, age or disability shall be prohibited wherever Regulation (EEC) No 1612/68 is applicable. This article also offers all beneficiaries of Regulation (EEC) No 1612/68 direct and enhanced protection against any discrimination inconsistent with the basic rights of the individual.

Article 1a responds to the desire of the European Union to strengthen the protection of human rights with regard to the implementation of Community law in a way which is consistent with the case-law of the Court. This aim is also set out in the Commission's Communication on an action plan against racism[6].

However, it should also be noted that the types of discrimination envisaged by Article 1a are in themselves obstacles to free movement and are therefore inconsistent with Article 48 of the Treaty. Freedom of movement is aimed at securing the full integration of the migrant worker and of the members of his family. Europe's cultural, social, religious and ethnic diversity suggests that the protection currently offered against nationality-based discrimination is not enough to allow effective freedom of movement. Consequently, it is important to underline that all forms of discrimination run counter to the ideal of European integration intended by Article 48 of the Treaty.

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6 COM(1998) 183 final of 25 March 1998.

This new article is also to be seen as a contribution to the development of Community law, which will contain, when the Treaty of Amsterdam enters into force, a new clause on non-discrimination (Article 13).

2. Geographical scope

The Court of Justice has repeatedly stated that the applicability of Community law with regard to the free movement of workers cannot be determined by the place at which the work is performed[7]. The place at which the work is performed may even be outside the territory of the European Union but this under no circumstances renders Community regulations inapplicable so long as the employment relationship retains a sufficiently close link with the Union.

For example, such links can be found whenever the Community worker is recruited by an undertaking in a Member State, is affiliated to the social security scheme of that Member State and has performed his work for the said undertaking during his postings within the European Union or to a third country.

However, the principle of equal treatment may also be applicable, irrespective of any posting, whenever the employment relationship has sufficiently close links to the legal system of a particular Member State and, as a result, to the relevant provisions of Community law. An example of this is when the contract of a Community worker, recruited locally in a third country, has been concluded in accordance with the law of a Member State and is subject to the jurisdiction of a Member State[8].

In such a case, the Community worker must be able to secure for himself the same treatment as that enjoyed by that country's nationals. It is not a case of creating a new right for the Community worker employed outside the Union but rather of allowing him to be treated as a national of a Member State when he is subject to the law of that Member State whilst working outside that Member State. The proposal is therefore that a new Article, Article 9A, should be added so that workers who are posted within the Union or to countries outside the Union, as well as workers who perform their work within the Union, can be covered so long as their employment relationships retain a sufficiently close link with a Member State.

This new provision is considered to be necessary despite the existence of Directive 96/71/EC on the posting of workers occurring as part of the provision of services[9], given that the scope of the latter is more restricted than that of Regulation (EEC) No 1612/68.

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7 See, for example, the judgment in the *Prodest* Case of 12 April 1984 (Case C-237/83, ECR p. 3153) and the *Boukhalfa* judgment of 30 April 1996 (Case C-214/94, ECR p. 2253).

8 See *Boukhalfa* judgment referred to in footnote 7 above.

9 OJ L 18, 21.1.1997, pp. 1-6.

3. Persons covered

Job seekers and trainees

The Court of Justice has on earlier occasions clearly recognised that the free movement of workers also applies to persons seeking employment and to persons undergoing occupational training as trainees[10]. It is for this reason that Article 1 now contains a reference to job seekers and to trainees.

This proposal does not extend the scope of the Regulation to a greater number of persons; the intention is rather for it to reflect the case-law that exists. The proposal is matched by the amendments to Directive 68/360/EEC.

For Article 5, the proposal is to include, in line with the principle of equal treatment, grants and subsidies for recruitment or training. This should increase the chances of unemployed people finding work, including opportunities for them to undergo training when moving to another Member State in order to work. However, it is important to remember that the reference to job seekers does not, in principle, affect the case-law of the Court, according to which jobseekers do not benefit from Title II of the Regulation[11]. On the other hand, trainees must be considered as workers for the purposes of applying Title II if they are genuinely employed irrespective of the fact that the employment is in the form of training[12].

Family reunification

At the present moment the regulation entitles the spouse, descendants aged under 21 or dependants and dependant family in the ascending line, irrespective of their nationality, to take up residence with a worker who is employed in a Member State.

The Member States also have to facilitate the admission of other members of the family once they become **dependants** or live under the migrant worker's roof in the country whence he comes.

However, this scheme has shortcomings and still causes problems for workers. The High-Level Group has already indicated that the problems are not compatible with the dual objective of safeguarding the family unit and reunifying families in the host country, a requirement which is part and parcel of the free movement of people.

To resolve these problems, it is proposed that the section of the Regulation listing the persons covered should be extended to allow family reunification in a way which is consistent with today's demographic and sociological patterns within the European Union. It would seem to be incompatible with free movement as it ought to practise that a family household established by a Community worker in the Member State

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10 With regard to job seekers see the *Antonissen* judgment of 26 February 1991 (Case C-292/89, ECR p. 745) and the judgment in the *Commission* v *Belgium* Case of 20 February 1997 (Case C-344/95, ECR p. 1035). With regard to trainees see, for example, the judgment in the *Lawrie-Blum* Case of 3 July 1996 (Case C-66/85, ECR p. 2121) and the judgment in the *Le Manoir* Case of 21 November 1997 (Case C-27/91, ECR p. 5531).

11 See the *Lebon* judgment of 18 June 1987 (Case C-316/85, ECR p. 2811).

12 See judgment in the *Lawrie-Blum* Case referred to above.

of origin disintegrates because a basic right is claimed, namely that of moving freely within the European Union.

The proposed Article 10(1) therefore enables direct descendants and ascendants to install themselves with a Community national who is employed in another Member State irrespective of whether they are dependants or not and irrespective of their age. Other members of the family who are dependants or who live under the worker's roof in the Member State whence he comes are also included. In turn, it must be noted that entry into the European Union of third country nationals continues to be primarily a matter of concern for national competence.

The removal of the age requirement (under 21) or of the need to be a dependant is intended to prevent situations where the children or the parents of the worker or spouse who do not satisfy the age or dependant-status criteria cannot accompany the family on the same basis as other members of the family.

The present scheme contains some contradictions in that the members of the family who are not the worker's dependants and who are therefore less likely to become a burden for the host country, cannot take advantage of family reunification under the terms of Regulation (EEC) No 1612/68. However, members of the family who are the worker's dependants and who could possibly oblige the worker to claim social assistance from the host country, do benefit from all the advantages offered by family reunification.

To illustrate this, the scheme as it currently stands does not allow children over 21 who are not dependent on their parents to accompany the family. If they want to accompany their parents, these children must obtain residence permits for themselves. This means that a worker's children who are attending university and who are not dependent must apply for a residence permit under Directive 93/96/EC if they want to join their family in another Member State[13]. Children are required to obtain a residence permit which is restricted to the duration of their studies, they must obtain sickness insurance cover for themselves and make a declaration to the effect that they have adequate funds. If they no longer meet these conditions they may be deported despite the fact that the remaining members of the family have residence permits valid for five years, automatically renewable, and may continue to reside and become integrated in the host Member State. What is more, unlike children aged under 21, children who are not covered by Regulation (EEC) No 1612/68 do not benefit from the principle of equal treatment in terms of social advantages.

The situation of children who are not dependants may be even more dramatic if they do not have the nationality of a Member State, and family reunification in such cases might be severely hampered by the national rules on immigration, since they do not benefit from the Community rules on the right of residence.

As mentioned above, the new article also includes the right to family reunification for the members of the worker's family or his spouse who were the worker's dependants or lived under his roof in the Member State whence he comes (new Article 10(1)(c). The persons concerned are the members of the household which the worker set up in the country in which he was employed before he exercised his right to freedom of movement. This extension of family reunification is not entirely new because the old Article 10(2) also

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[13] Council Directive 93/96/EEC on the right of residence for students (OJ L 317, 18.12.1996, p. 59).

required the Member States to ease the entry requirements for these members of the family. The aim of improving the rights of family members now justifies establishing a specific right in preference to retaining the old wording for dependants and for a household already constituted within the European Union. Where the worker is coming from a third country, the new proposal maintains the requirement under the existing regulation to facilitate family reunion of such family members.

The proposed Article 10(1) also stipulates that the partner assimilated to the spouse may follow the worker where the host Member State recognises the situation of unmarried couples for its own nationals. This possibility, which merely reflects sociological developments in certain Member States, has already been recognised in the case-law and constitutes only an application of the principle of equal treatment[14]. This provision does not oblige the Member States to recognise unmarried couples and will be applied only in cases where such recognition has been decided by the national legislator.

Lastly, and in order to remain within the spirit of the idea of making family reunification easier, and by extension the movement of the worker and his family in a single European economic space, the condition requiring the availability of normal housing for the family has been omitted from the new wording.

The rights of family members

As indicated above, the High-Level Group argued that family reunification is also aimed at integrating the members of the family in the host country. This full, *de facto* integration must also be accompanied by *de jure* integration.

As Community law now stands, family members do not have direct rights, but rather indirect ones depending on their status as family members[15].

It is therefore necessary to grant family members their own rights while maintaining the link between these rights and their status as family members.

Article 10(3) therefore provides that the family members referred to in the previous paragraphs are entitled to equal treatment as regards all economic, fiscal, social, cultural and other benefits. The Court's decisions clearly affirmed that equal treatment for family members was one of the worker's rights[16]. However, in order to reinforce legal certainty and enable family members to invoke and uphold their own interests *vis-à-vis* the authorities and the courts, it is important to grant them this right directly.

Both the old and the proposed version of Article 11 of the Regulation provide for an inherent right of the spouse and children to engage in a paid economic activity. In the new version, it is specified that this right also includes the right to engage in a self-employed activity. There was, indeed, no justification for this gap.

In keeping with the extension of the right to family reunification, the right to engage in an economic activity laid down in Article 11 is extended to all beneficiaries under Article 10.

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14 *Reed* judgment of 17 April 1986 (Case C-59/85, ECR p. 1283).

15 Aforementioned *Lebon* judgment.

16 *ibid.*

Similarly, the right of access to education and training laid down in Article 12 must be extended to all beneficiaries of family reunification. The right to education includes, of course, both university and non-university education.

It should be noted that these rights maintain a direct link with the status of family member. The new wording of Article 10 enables family members to invoke their rights directly, but they still have to prove their status of family member. Accordingly, these rights are lost when the status of family member lapses.

However, the integration intended by existing Community law, as interpreted by the Court and reinforced by the new proposals, would be pointless if it could be ended abruptly and totally by the dissolution of the marriage. Spouses who derive all of their rights from the conjugal situation might in fact find themselves in a dramatic moral, legal and economic situation if they lost all their rights through divorce.

This situation of uncertainty can also affect the other members of the family, since divorce often causes a personal rift between the family members which may seriously affect, from a legal point of view, those members whose rights depend exclusively on the worker.

For all these reasons, it was considered necessary to put an end to this situation of legal uncertainty after a reasonable period of residence which makes it possible to assume that the members of the family, and especially the divorced spouse, have achieved a substantial level of integration.

Article 10(4) provides, in the event of dissolution of the marriage, for an independent right of residence for the family members after a residence period of three years. Similarly, Article 11 last indent stipulates that the family members shall keep the right to work in the event of dissolution of the marriage. These provisions apply only to the members of the family who do not have the nationality of a Member State. In actual fact, if the marriage is dissolved, the family members who are nationals of a Member State may benefit directly from the Community rules on freedom of movement and the right of residence.

The conditions for exercise of the right of residence are set out in the proposal for revision of Directive 68/360/EEC.

This legal development is based on Articles 48 and 49 of the Treaty and constitutes a necessary corollary to freedom of movement. The Court's decisions have clearly recognised the importance of integration of the family in facilitating the effective exercise of freedom of movement[17].

Integration must be considered in its independent dimension for the benefit of family members. Moreover, this interpretation is not new in that Commission Regulation (EEC) No 1251/70 on the right of residence has recognised for more than 25 years the right of residence of family members in the event of the worker's death, on the basis of Article 49 of the Treaty. In such a case, the dissolution of the marriage following the death of the worker does not result in the family members who are third-country nationals losing their

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17 *Echternach and Moritz* judgment of 15 March 1989 (Cases C-389/87 and 390/87, ECR p. 723) and *Di Leo* judgment of 13 November 1990 (Case 308/89, ECR p. 4185).

rights[18]. On the other hand, there is a degree of inconsistency in the existing system, since the members of the family who are not Community nationals would retain their right of residence if the Community spouse were to die, but would lose it in the case of divorce. Furthermore, it should be noted that the High-Level Group's report also focused attention on this situation, recommending the Commission to take action on behalf of divorced spouses.

4. Material rights of the worker

The revision of Regulation (EEC) No 1612/68 does not affect the worker's material rights. It is clear that he already benefits from the right to equal treatment in the host Member State. Consequently, the worker's material rights are the same as those of national workers.

However, given that equality of treatment is not always fully applied in the Member States, the wording of the articles of Title II must be made stronger. The proposals set out below are based for the most part on the decisions of the Court.

The proposed amendments to Article 7 do not have any material effect on the rights recognised by the Court's decisions, but add important details.

In Article 7(1), elements such as equal treatment as regards health and safety conditions are added, as are vocational retraining measures in the event of involuntary unemployment.

Article 7(2) is worded more precisely in order to reflect the Court's decisions, which are aimed at full integration of the worker at all levels: economic, cultural, recreational, social, etc. For the Court of Justice, "social benefits" should be taken to mean all benefits which, whether or not linked to a contract of employment, are generally granted to national workers by virtue of their objective status of workers or by the mere fact of their residence on the national territory and the extension of which to workers who are nationals of other Member States seems therefore likely to facilitate their mobility within the Community"[19]. The new wording of Article 7(2) is intended to cover this definition by the Court.

In Article 7(3), the term "vocational schools" is replaced by "vocational training", an expression which is in keeping with the current situation as regards training in the Member States. This Article is fundamental nowadays in view of the importance of life-long learning as a means of adapting workers to industrial change and new technological developments as and when they happen.

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[18] *Cristini* judgment of 30 September 1975 (Case C-32/75, ECR p. 1085).

[19] *Schmid* judgment of 27 May 1993 (Case 310/91, ECR p. 3011) and *Meints* judgment of 27 November 1997 (Case 57/96, ECR p. 6689).

Article 7(3) covers the cases where the worker interrupts his career in order to improve or perfect his training and his skills. It is also possible that the worker decides to switch the direction of his career as a result of industrial changes on the labour market. Consequently, access without discrimination to training and therefore to continuing training constitutes at all times a key element of the employability and adaptability of employees. This provision is also fully in keeping with the guidelines on employment and with the conclusions of the G8 Conference on employability[20]. Moreover, it follows on from the Court's decisions, which recognised, as regards the right to vocational training, that "certain rights linked to the status of worker are guaranteed to migrant workers even if the latter are no longer in an employment relationship"[21].

Lastly, in the proposed Article 8(1), the concept of exercise of public-law function is replaced by the expression "which involves the exercise of public power and the safeguarding of the general interests of the State and regional authorities", to quote the Court's case-law on Article 48(4)[22]. The exclusion of Community workers from the management of public-law bodies cannot in fact be general in nature, as stated in the old wording of Article 8(1). It is solely on account of the specific nature of the functions to be fulfilled within public-law bodies that it will be possible to exclude Community workers.

The principle of equivalence of situations

A new paragraph 5 is inserted in Article 7. It is aimed at incorporating the principle of equivalence of situations for professional purposes. This principle is fundamental to the creation of a genuine area of vocational mobility. Under it, the worker may move with his personal and professional baggage without suffering any prejudice or any economic or professional loss.

The experience gained from the application of the Regulation has revealed the difficulties encountered by workers in obtaining the right to certain social or vocational benefits because the laws, regulations and administrative provisions considered take account for the purposes of entitlement of only the facts or events occurring on the national territory.

Thus, certain tax deductions for dependent children would not be granted unless the children are actually brought up on the national territory; promotion in the civil service is awarded according to the number of years of military service if it is carried out under the national flag; a civil servant's final grade depends on his length of service, but only in the national public service.

In the examples quoted above and in others included in the case-law, the Court of Justice has come out clearly in favour of recognition of the same facts or personal or professional circumstances that have arisen in other Member States[23].

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20 London Conference, February 1998.

21 Aforementioned *Cristini* judgment (point 11) and *Lair* judgment of 21 June 1988 (Case C-39/86, ECR p. 3161).

22 See aforementioned *Lawrie-Blum* judgment.

23 *Ugliola* judgment of 15 October 1969 (Case C-15/69, ECR p. 363), *Scholz* judgment of 23 February 1994 (Case C-419/92, ECR p. 505), *Vougioukas* judgment of 22.11.1995 (Case C-443/93, ECR p. 4033), *Schöning* judgment of 15 January 1998 (Case C-15/96, not yet published), *Commission* v *Greece* judgment of 12 March 1998 (not yet published).

It should be noted that the principle of equivalence of situations will be applicable particularly to jobs in the Member States' civil service, since it is in such jobs, which are highly and strictly regulated in certain Member States, that the conditions of employment depend on a whole series of circumstances which are clearly defined by the relevant regulations and statutes.

However, in certain cases it is collective agreements that lay down the criteria for determining civil servants' conditions of employment. Like the statutes, these agreements generally contain only national references (e.g. to national diplomas, national training or national military service). To a lesser extent, private-sector collective agreements may also contain national references for the recruitment and remuneration of workers.

For example, in the civil service an official's grade may be influenced by military service, since the years of national military service are taken into account for the purposes of seniority. Moreover, the civil service encourages and very often rewards officials who have followed training courses or acquired academic qualifications during their career. These academic qualifications may therefore have repercussions on officials' pay or promotion. Lastly, it often happens that candidates' academic and professional qualifications may be important for admission to civil service entrance examinations.

However, freedom of movement for workers cannot be truly effective if the migrant workers cannot, for the purposes of their career development, benefit in the same way as nationals from their academic, professional or personal (military service) qualifications obtained in other Member States. The Directives concerning the professional recognition of qualifications are not sufficient for this purpose. They apply only to access to regulated professions, but not to the recognition of professional (or personal) qualifications that are not needed for access to the profession but may improve the conditions for the practice of a profession. A worker may thus invoke a Directive on the professional recognition of his qualifications in order to gain access to a regulated profession, but he may not invoke it for the purposes of career advancement if he has other professional or academic qualifications.

The proposed Article 7(5) aims therefore to remedy this situation, which moreover is the subject of a very large number of complaints to the Commission and petitions to the European Parliament. The wording is necessarily general, since the typology of practical situations is very wide. Moreover, it should be noted that the effective implementation of this principle is a question of the Member States' political will. It is difficult to impose mutual trust in a regulation. It is thus up to the national authorities, and to the social partners in the case of collective agreements, to adopt an open and flexible attitude towards migrant workers and the personal and professional circumstances affecting them that have arisen in another Member State.

This technique of assimilating situations is not new for the Member States, since it is widely used under Regulation (EEC) No 1408/71[24] on the coordination of social security schemes (aggregation of periods of insurance, employment and residence for the establishment of entitlement and the calculation of social security benefits).

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[24] OJ L 149, 5.7.1971.

Frontier workers

The issue of frontier workers goes beyond that of migrant workers in general, since they are often subject to two legal systems and not to a single one like the worker residing in the country of employment. However, it is indisputable that Regulation (EEC) No 1612/68 applies to frontier workers. The Regulation recognises this in its recitals and the Court of Justice has made a clear pronouncement to this effect[25].

However, the fiscal and social status of frontier workers presents special difficulties which are not common to the other workers covered by Regulation (EEC) No 1612/68 who have exercised their right to freedom of movement. The Court's case-law has certainly made it possible to clarify the legal status of frontier workers, particularly as regards taxation[26], social benefits[27] and social security[28]. Despite this case-law, the legal situation is uncertain in that the Member States are still not in a position from the legal point of view and in terms of their administrative organisation to cope with the situation of workers who reside in another State where they have their personal and family centre of interest.

The European Parliament has also stressed the importance of frontier working (Van Lancker report), while acknowledging that the proportion of frontier workers to the total number of workers in Europe is still very low (0.5%). However, frontier working has an undeniable political interest in that it may act as a barometer of European integration, particularly as regards the creation of a single employment market (Van Lancker report).

The High-Level Group chaired by Mrs Simone Veil devoted part of its final report to the question of frontier workers. In its view, Community rules are needed to settle the question of residents and non-residents, since the double-taxation agreements between the Member States cannot resolve all the problems.

In order to meet these demands, it is planned to make reference in Article 7a to the situation of frontier workers. This provision, which is necessarily general in nature, constitutes a basis for reinforcing the frontier worker's legal security. One of the main questions is in fact to determine the benefits to which a frontier worker is entitled under the legislation of the country of employment, which is generally designed for workers who are resident. As a rule, it is considered that a frontier worker should enjoy the same benefits as a resident worker[29].

However, under certain circumstances, it would be necessary to determine whether the situation of a resident worker and a non-resident worker are objectively comparable. This would be particularly the case for tax benefits[30]. Determination of the objective comparability of situations is definitely a question of fact. The Commission

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25 Aforementioned *Meints* judgment.

26 *Biehl* judgment of 8 May 1990 (Case C-175/88, ECR p. 1779), *Schumacker* judgment of 14 February 1995 (Case C-279/93), *Wielockx* judgment of 11 August 1995 (Case C-80/94, ECR p. 2493).

27 Aforementioned *Meints* judgment.

28 *Miethe* judgment of 12 June 1986 (Case 1/85, ECR p. 1837).

29 See judgment of the Court in case *Meints*.

30 See case-law in cases such as *Biehl* and *Schumacher* (cited above).

Recommendation of 21 December 1993 "on the taxation of certain incomes received by non-residents in a Member State" should form the basis for this interpretation.

However, it must be stressed that Article 7a is not likely to affect the field of application of Regulation (EEC) No 1408/71 on the coordination of social security schemes. The provisions of this Regulation (special law) do in fact prevail over Regulation (EEC) No 1612/68 (general law), and it should be noted that in certain cases Regulation (EEC) No 1408/71 guarantees, for frontier workers, the benefits of the State of residence rather than those of the State of employment. Article 42(2) of Regulation (EEC) No 1612/68 recognises, moreover, that the provisions of this Regulation do not affect the measures taken under Article 51 of the Treaty.

II. AMENDMENTS TO DIRECTIVE 68/360/EEC

1. Jobseekers and trainees

One of the main objectives of amending the Directive is to facilitate jobseekers' right of entry and residence. According to the Court's decisions[31], it is indisputable that workers' right to freedom of movement implies the right of residence in order to look for a job. Regulation (EEC) No 1612/68 aims to reflect this legal reality in the legislation. Directive 68/360/EEC has to be amended accordingly.

Thus, in Article 2(1) it is stated that freedom of movement also implies the right to leave the territory of the Member States in order to look for a job or undergo vocational training in another Member State.

Along the same lines, in Article 8(1) a new subparagraph (d) is added, stipulating that the Member States shall acknowledge a jobseeker's right of residence without the need for a residence permit. This right of residence is recognised automatically for jobseekers for a period of six months. The right of residence is maintained after that period in so far as the jobseeker is actively seeking employment and has reasonable prospects of finding a job. This provision is directly based on the case-law from the Court on jobseekers[32].

Furthermore, the present labour market does not always make for immediate stability in employment. Consequently, the beginning of working life in a Member State may result in a worker having a number of temporary jobs interrupted by periods of unemployment. In order to avoid the administrative problems that this sort of situation may pose, it should be stated in Article 6(4) that the Community worker who already has a temporary residence permit is entitled to have it automatically renewed even if he is unemployed, provided that he continues to look for work.

It is also important to stipulate that, when the jobseeker has acquired the right to unemployment benefits, his permit must be valid for the duration of this entitlement. In such a case, the unemployed person for whom the employment office takes responsibility is still part of the national labour market, even though he is seeking employment, and must therefore enjoy the right of residence.

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31 See the aforementioned *Antonissen* and *Commission* v *Belgium* judgments.

32 See *Antonissen* and *Commission* v *Belgium* judgments.

Lastly, the second paragraph of Article 7 must be repealed. A worker who has a five-year residence permit is in a situation where Community law presumes that he is likely to remain permanently in the host Member State. The fact that he has lost his job is not enough to destroy this presumption. Consequently, there are grounds for considering that such a worker is still part of the national labour market. In these circumstances, there is no reason to limit the duration of the renewal of his residence permit.

Moreover, Article 2(1), as proposed here, also mentions trainees. Similarly, in Article 4 (3)(b) it is stated that an attestation that a worker is undergoing vocational training is sufficient to obtain a residence permit. As the Commission affirmed in its Green Paper "Education, training and research. The obstacles to transnational mobility", trainees' administrative situation must be improved. Continuing training and apprenticeship with a view to vocational retraining or readaptation are key elements of an active employment policy aimed at preparing workers for the industrial changes of the future. In these circumstances, it is essential to eliminate the administrative obstacles and the legal uncertainty that in many cases governs the freedom of movement of trainees, whose status - between student and worker - is not defined at present. The inclusion of trainees in Regulation (EEC) No 1612/68 does not affect their fiscal and social status, which is the responsibility of the Member States. It is aimed solely at facilitating their right of residence and ensuring equality of treatment with national trainees.

2. Family members

Regulation (EEC) No 1612/68 as amended introduces important changes to the family status of the migrant worker, while granting individual direct rights to the members of his family. These changes must therefore be incorporated into Directive 68/360/EEC.

Family reunification

The amendments made to Regulation (EEC) No 1612/68 are aimed at improving the scope of the right to family reunification and abolishing the age condition for descendants and the dependency condition for ascendants and descendants. Moreover, the members of the family who were dependent on or were living under the same roof as the worker in the country whence he comes are granted the right to family reunification. These changes are reflected in Article 4(3)(e).

Lastly, and in the same spirit of facilitating family reunification, it is proposed that Article 3 should be extended to include a third paragraph. This provision is aimed at making it easier for the members of families from third countries who are already normally and permanently resident in a Member State to obtain visas. For the members of such families the right to move within the Union, although solely in their capacity as members of a family, is derived directly from Community law. The visa requirement is no longer wholly indispensable and, in any event, the visa serves only to declare a situation and does not in itself form the basis of the right. Consequently, these members of the family, should they require a visa, ought to be able to obtain one in the Member State in which they live or in the Member State where they are going to settle with the worker. It is in particular important to prevent a situation where members of families who are already normally resident in a Member State are obliged to return to their country of origin to obtain a visa for residence purposes when moving with a worker from one Member State to another.

This proposal regarding visas is based on a realistic approach which takes account of the technical problems connected with the disappearance of visas. However, this approach does not run counter to the reflection which the Commission has initiated about the possibility of proposing in the future the total abolition of visas for the members of the family of Community workers. As mentioned above. for these family members, the right of residence is in fact derived directly from Community law in so far as they have a right to family reunification.

Family members' independent right of residence

The new version of Regulation (EEC) No 1612/68 aims to grant an independent right of residence to family members who have resided with the worker under Article 10 in the event of dissolution of the marriage. As stated above, this independent right of residence for the benefit of third country family members has its legal basis in Article 49 of the Treaty and constitutes a necessary corollary to the free movement of workers.

As Community law now stands, freedom of movement is an unquestionable part of the social integration of the worker's family. The worker's going to another country, in exercise of freedom of movement, is not just a professional and economic but also a family decision. Consequently, the family members cannot be regarded indefinitely as "appendages" of the worker, particularly if the family is broken up as a result of the dissolution of the marriage.

The proposed new Article 4a lays down the conditions for the exercise of this independent right by family members.

This provision covers family members who do not have the nationality of a Member State and would find themselves without any protection as regards the right of residence if the marriage were dissolved (the non-Community spouse and the non-Community family members who had benefited from Article 10 of Regulation (EEC) No 1612/68). For Community family members, the right of residence is ensured, in the event of dissolution of the marriage, by the relevant rules applicable to workers, non-active persons or students as the case may be.

Thus, in order for the right of residence to be recognised in the event of divorce Article 4a lays down a condition of sufficient financial resources and health insurance for family members who are not economically active.

For family members who are engaged in a paid economic activity, the residence conditions are the same as for Community workers, in so far as the provisions of Directive 68/360/EEC are applicable to them.

It should be noted that this legal development constitutes a key element of the policy of integrating legal immigrants in the European Union. This political priority was clearly set out by the Commission in its Communication of 23 February 1994 on immigration and asylum policies[33]. In this Communication, the Commission stresses that "integration means offering migrants and their descendants the opportunity to live normally in the host country". Further on, the Commission states:

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33 COM(94) 23 final.

"124. Any successful integration policy must of necessity include several components. The first essential elements are the prospect and security of permanent residence status. Security of stay and permanent residence for all those satisfying stability criteria constitute the fundamental prerequisites for successful integration . . .".

Consequently, the legal security of family members, irrespective of their nationality, must be seen as not only a legal objective, based on Article 48, but also a political and social one. It is clear, however, that as Community law now stands, third-country nationals do not have the right to free movement, and the amendments made to Regulation (EEC) No 1612/68 and Directive 68/360/EEC do not create such a right.

3. Reinforcement of the right of residence and streamlining of administrative procedures

The Court of Justice has acknowledged on a number of occasions that administrative documents do not have any constitutive value on the right of residence. It is therefore necessary to streamline the administrative procedures in order to prevent them from hampering the effective exercise of this right.

Article 6(1)(b) stipulates that a residence permit valid for at least five years is automatically renewable. It is proposed, with a view to reinforcing the security of the migrant worker and his family with regard to their residence, to make provision for renewal for periods of ten years. Certain Member States already grant ten-year residence permits or permanent ones.

An addition is made to Article 6(2), laying down for both social and legal reasons that breaks in residence for medical reasons or for reasons of maternity, study or posting do not affect the right of residence.

In accordance with the High-Level Group's conclusions, Article 6(3) last indent contains an important innovation. This Article provides for the granting of a five-year residence permit where the worker holds, for a period of 18 months, a number of jobs lasting for less than a year. The present system forces the worker to obtain a new residence permit whenever he is taken on for a period of less than a year. A worker could thus accumulate temporary residence permits during years of residence without ever being entitled to a renewable five-year permit unless he signs an open-ended contract. The requirement of having worked for 12 months during an 18-month period contained in the new Article is designed to prevent having to count up short periods of work with considerable intervals between them.

Article 9(3) lays down that the Member States shall bring the administrative procedures for the granting of residence permits into line with the existing procedures for national identity documents. This administrative approximation, which might well alleviate the red tape, would also have the advantage of strengthening the feeling of belonging to Europe and European citizenship.

With a view also to raising the profile of European citizenship, it is proposed to amend, in Article 4, the title of the residence permit by introducing the phrase "residence permit of a European Union citizen". The Annex to the Directive is amended accordingly.

Lastly, a Community worker or the members of his family may lose their right of residence if measures are taken on the grounds of public order or public security. Given that the revision of the right of residence and the treatment of workers and their families which is the subject of this proposal is aimed at integrating them fully in the host Member State, it is proposed to limit the scope of expulsion measures.

Accordingly, a second paragraph is added to Article 10, with the aim of limiting the application of expulsion measures in cases where the person concerned is fully integrated in the host Member State and has special social, cultural and family ties with the Member State of residence.

Proposal for a

EUROPEAN PARLIAMENT AND COUNCIL REGULATION

amending Council Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community

98/0229 (COD)

(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 49 thereof,

Having regard to the proposal from the Commission[34],

Having regard to the Opinion of the Economic and Social Committee[35],

Acting in accordance with the procedure laid down in Article 189b of the Treaty[36],

1. Whereas the legal situation of workers from Member States who move within the Community to take up employment, and that of their families, must adapt as European integration progresses;

2. Whereas Article 8 of the Treaty established European citizenship; whereas freedom of movement for workers without impediment is an essential part of this European citizenship;

3. Whereas the European contribution to national employment policies recognised in the Council Resolution of 15 December 1997 on the 1998 Employment Guidelines[37] requires the full mobility of workers; whereas mobility provides workers with access to training and work experience in other Member States and is thus an important factor in ensuring adaptability and employability;

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34 OJ C

35 OJ C

36 OJ C

37 OJ C 30, 28.1.1998, p. 1.

4. Whereas Council Regulation (EEC) No 1612/68[38], as last amended by Regulation (EEC) No 2434/92[39] should be adapted to the new socio-economic and political conditions of the Community; whereas the principles of the case-law of the Court of Justice of the European Communities should be incorporated into the legislative provisions;

5. Whereas discrimination on grounds of sex, race or ethnic origin, religion or convictions, disability, age or sexual orientation represents an obstacle to the free movement of workers and their families; whereas the integration of migrant workers exercising their right to freedom of movement, and that of their families, into the host country can be seriously impaired by discrimination of this kind; whereas it is therefore essential to prohibit such discrimination within the scope of Regulation (EEC) No 1612/68;

6. Whereas freedom of movement for workers means full and effective integration of migrant workers exercising their right to freedom of movement, and that of their families; whereas family reunification must be enhanced to ensure that the migrant worker's family is not broken up as a result of free movement;

7. Whereas the integration of family members will not be complete without true *de jure* integration; whereas it is therefore necessary to grant rights to family members direct, so that they can themselves assert their entitlement to equal treatment direct, whilst maintaining the link between those rights and their status as family members;

8. Whereas family members, particularly those who are not citizens of the European Union, should not be deprived of all legal protection regarding right of residence if the marriage is dissolved; whereas they must therefore be allowed to stay in the host Member State after a period of residence of three years; by which time they can reasonably be considered to be sufficiently integrated into the host State;

9. Whereas, in the interests of the effective exercise of the fundamental right of freedom of movement for workers and with a view to improving conditions for job creation in the Community, any remaining obstacles to the individual right of workers to free movement should be removed, particularly those arising from territorial conditions which restrict the operation of equal treatment and make it difficult to take into account a worker's professional and personal circumstances which have come into being in a Member State other than the Member State of employment;

10. Whereas the employment situation in the Community and the Employment Guidelines underline the need for workers to be able to move freely within the Community to look for work or undertake vocational training courses; whereas these workers should have access to all the openings for supplementary training, retraining and vocational guidance necessary to enhance their employability and adaptability;

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38 OJ L 257, 19.10.1968, p. 2.

39 OJ L 245, 26.8.1992, p. 1.

11. Whereas Regulation (EEC) No 1612/68 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1612/68 is hereby amended as follows:

(1) Paragraph 1 of Article 1 is replaced by the following:

"1. Any national of a Member State shall, irrespective of his place of residence, have the right to seek employment, to join a vocational training course or 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) Article 1a is inserted:

"Article 1a

Within the scope of this Regulation, all discrimination on grounds of sex, racial or ethnic origin, religion, belief, disability, age or sexual orientation shall be prohibited."

(3) A second paragraph is added to Article 5, as follows:

"He shall also be entitled to the recruitment aids available to nationals wishing to take up employment, or to join a vocational training course."

(4) Article 7 is amended as follows.

(a) Paragraphs 1, 2 and 3 are replaced by the following:

"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, particularly as regards health, safety and hygiene, remuneration and dismissal or occupational rehabilitation, reinstatement or re-employment, should he become unemployed or fully or partially unfit for work.

2. A worker who is a national of a Member State shall enjoy the same financial, fiscal, social, cultural and other advantages as national workers.

3. A worker who is a national of a Member State shall, by virtue of the same right and under the same conditions as national workers, have access to all levels of education and university or other vocational training and to vocational rehabilitation, retraining and further training."

(b) The following paragraph 5 is added:

"5. Where working conditions, professional advancement or certain advantages accorded to workers depend, in a Member State, on the occurrence of certain facts or events, any comparable facts or events which have occurred in any other Member State shall entail the same consequences or confer the same advantages accorded."

(5) Article 7a is inserted:

"Article 7a

A Member State shall not refuse the benefits under Article 7(2) to a national of a Member State who works on its territory while residing outside that territory."

(6) In the first subparagraph of Article 8(1), the second part of the first sentence is replaced by the following:

"; he may be excluded from taking part in the management of bodies governed by public law and from holding office governed by public law, only where such functions involve acting in the exercise of the powers of a public authority and safeguarding the general interests of the State or local authorities."

(7) Paragraph 1 of Article 9 is replaced by the following:

"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, and loans and grants."

(8) Article 9a is inserted:

"Article 9a

The provisions of Articles 7, 8 and 9 shall apply to any national of a Member State carrying out an activity in the territory of a Member State who is seconded by his employer to the territory of another Member State or to a place outside the territory of the European Union, and to any worker who is a national of a Member State and employed in non-member countries if his employment relationship has a sufficiently close link to the law of a Member State."

(9) Articles 10 and 11 are replaced by the following:

"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 or any person corresponding to a spouse under the legislation of the host Member State, and their descendants;

   (b) relatives in the ascending line of the worker and his spouse;

   (c) any other member of the family of the worker or that of his spouse who is dependent on the worker or is living under his roof in the Member State whence he comes.

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

3. Members of the family entitled to live in a Member State under the terms of paragraphs 1 and 2 shall be entitled to all financial, tax, social, cultural or other advantages available to nationals.

4. Members of the family falling within the provisions of this Article who are not nationals of a Member State retain the right of residence in the Member State of residence if the marriage is dissolved, on condition that they have lived in that country under the terms of this Article for a period of three consecutive years.

   The procedure for issuing a residence permit to such members of the family following dissolution of the marriage shall be as laid down in Article 4a of Council Directive 68/360/EEC* ....

Article 11

Where a national of a Member State is pursuing an activity as an employed or self-employed person in the territory of a Member State, members of his family covered by Article 10 shall have the right to take up any activity as an employed or self-employed person throughout the territory of that same State and to pursue it in accordance with the laws, regulations and administrative provisions governing the employment of workers who are nationals of that State. They retain this right if the marriage is dissolved, on condition that they have lived in the territory under the terms of Article 10(1) for a period of at least five consecutive years.

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* OJ L 257, 19.10.1968, p. 13."

(10) The first indent of Article 12 is replaced by the following:

"The members of the family of a national of a Member State who is or has been employed in the territory of another Member State who are covered by Article 10 shall be admitted to that State's general educational, apprenticeship and university or non-university vocational training courses under the same conditions as nationals of that State, if they are residing in that territory."

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

Proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

amending Directive 68/360/EEC on the ablition of restrictions on movement and residence within the Community for workers of Member States and their families

98/0230 (COD)

(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 49 thereof,

Having regard to the proposal from the Commission[40],

Having regard to the opinion of the Economic and Social Committee[41],

Acting in accordance with the procedure laid down in Article 189b of the Treaty[42],

1. Whereas Council Directive 68/360/EEC[43], as last amended by the Act of Accession of Austria, Finland and Sweden, lays down conditions for the abolition of certain restrictions on movement and residence for persons covered by Council Regulation (EEC) No 1612/68[44] on freedom of movement for workers within the Community, as last amended by European Parliament and Council Regulation (EC) No .../...[45];

2. Whereas Regulation (EEC) No 1612/68 has been amended to cover a wider range of persons; whereas this makes it necessary to adjust, in line with these amendments, the provisions of Directive 68/360/EEC as regards workers and family members who are citizens of the European Union, and also family members who are not citizens of the European Union;

3. Whereas, as the Court of Justice of the European Communities has pointed out on several occasions, the administrative position of job seekers has not always been clear, even though they are effectively covered by Article 48 of the Treaty and by Regulation (EEC) No 1612/68; whereas their right of residence for the purpose of looking for work, for the length of time this takes, without the need to hold a residence permit, should be clearly laid down;

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40 OJ C

41 OJ C

42 OJ C

43 OJ L 257, 19.10.1968, p. 13.

44 OJ L 257, 19.10.1968, p. 2.

45 OJ L

4. Whereas it is desirable to allow the aggregation of periods of residence so as to enable a worker who has been in employment for over 12 months during a continuous residence period of over 18 months to obtain a five-year permit; whereas this amendment is important in order to cater for temporary relocations and to respond to the reality of the Community's labour market where it is not always possible for workers to obtain permanent employment immediately on taking up their first contract;

5. Whereas a worker who has resided for a period of five years in the territory of a Member State should be entitled to automatic renewal of his residence permit for periods of ten years; whereas the procedure involved in issuing residence permits should be simplified and, if possible, brought into line with the procedure used to issue national identity papers;

6. Whereas the expulsion of Community workers or members of their family on grounds of public policy or public security is a radical step which may seriously harm persons who, availing themselves of the rights and freedoms laid down in the Treaty, have truly integrated themselves into the host Member State; whereas the scope of these measures should be restricted, regard being had to the degree of integration and the financial and family ties of the person affected;

7. Whereas the grant of an autonomous right of residence to members of the family who have lived in the country for a period of three consecutive years has been incorporated into Regulation (EEC) No 1612/68; whereas this should therefore be included in Directive 68/360/EEC so that the procedures for conferring this right can be established;

8. Whereas Directive 68/360/EEC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 68/360/EEC is hereby amended as follows:

(1) The first sentence of Article 2(1) is replaced by the followoing:

"Member States shall grant the nationals referred to in Article 1 the right to leave their territory in order to seek employment, to join vocational training courses or to take up activities as employed persons and to pursue such activities in the territory of another Member State."

(2) The following subparagraph is added to Article 3(2):

"However, Member States shall allow family members who are nationals of a third country and who normally reside in a Member State to obtain the necessary visas or equivalent documents in the Member State in which they were residing or in the Member State in which these persons are to take up residence with the worker under the terms of Article 10 of Regulation (EEC) No 1612/68."

(3) Article 4 is amended as follows:

(a) In paragraph 2, the term "Residence Permit for a National of a Member State of the EEC" is replaced by "Residence Permit for a Citizen of the European Union".

(b) Paragraph 3 is amended as follows:

(i) in the opening phrase the term "Residence Permit for a National of a Member State of the EEC" is replaced by "Residence Permit for a Citizen of the European Union";

(ii) point (b) is replaced by the following:

"(b) a confirmation of engagement by the employer or an employment or vocational training course certificate;"

(iii) point (e) is replaced by the following:

"(e) In the cases referred to in point (c) of Article 10(1) and in Article 10(2) of Regulation (EEC) No 1612/68, a document issued by the competent authority of the State of origin or the State whence they came, testifying that they are dependent on the worker or that they live under his roof in such country."

(4) Article 4(a) is inserted:

"Article 4a

1. In the event of dissolution of the marriage, Member States shall recognise the right of residence on their territory of members of the family of a Community worker who are not nationals of a Member State but who have lived for a period of three consecutive years in a Member State under Article 10 of Regulation (EEC) No 1612/68 in accordance with paragraphs 2 and 3 of this Article.

2. Where the family members are not economically active, the right of residence is recognised provided that they can provide evidence that they have sufficient financial resources for themselves and their dependants and that they have health insurance covering all risks in the Member State in which they are living.

The provisions of Council Directive 90/364/EEC* relating to the assessment of sufficient resources, the duration of residence permits and their renewal shall apply *mutatis mutandis* to the application of the first subparagraph.

3. The right of residence of family members pursuing economic activities under Article 11 of Regulation (EEC) No 1612/68 shall be recognised on presentation of a contract of employment, a certificate of employment or a declaration of self-employment. Articles 6 and 9 of this Directive shall apply *mutatis mutandi* to the duration of the residence permit and conditions for renewal.

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* OJ L 180, 13.7.1990, p. 26."

4. Absences not exceeding six consecutive months and absences in connection with the completion of military service or for reasons of health, for maternity or study shall not constitute an interruption of the period of residence for the purpose of calculating the three-year period referred to in paragraph 1.

(5) Article 6 is amended as follows:

(a) Point (b) of paragraph 1 is replaced by the following:

"(b) must be valid for at least five years from the date of issue and must be automatically renewable for à period of ten years."

(b) Paragraph 2 is replaced by the following:

"2. Breaks in residence not exceeding six consecutive months and absence on military service or due to reasons of health, maternity, study or posting for employment shall not affect the validity of a residence permit."

(c) The following subparagraph is inserted after the first subparagraph of paragraph 3:

"Nevertheless, where a worker has had several successive temporary jobs over a total period of more than 12 months during a residence period of 18 months, the host Member State shall issue him with the residence permit mentioned in the first subparagraph on presentation of a declaration of employment or a certificate of employment, even if the job is of a duration of under one year."

(d) The following paragraph 4 is added:

"4. Subject to the provisions of point (d) of Article 8(1), a worker who is unemployed after a period working in a Member State and has a residence permit under the first subparagraph of paragraph 3 has the right to automatic renewal of that residence permit for periods of at least six months as long as he is seeking work.

Without prejudice to the first subparagraph, if the person in question has acquired the right to unemployment benefit, the residence permit shall be renewed automatically until his entitlement to unemployment benefit ceases."

(6) Article 7 is replaced by the following:

"Article 7

A valid residence permit may not be withdrawn from a worker solely on the grounds that he is no longer in employment, either because he is tempoprarily incapable of work as a result of illness, accident, or maternity, or because he is involuntarily unemployed, this being duly confirmed by the competent employment services.

If it expires during the time when he is incapable of work, it shall be renewed automatically in accordance with Article 6."

(7) The following point (d) is added to Article 8(1):

"(d) a national of a Member State who is seeking employment in its territory. If the person is seeking employment for longer than six months, the Member State may ask the job seeker to prove that he is actively looking for work and that he has a reasonable chance of being offered employment."

(8) Article 9 is amended as follows:

(a) Paragraph 1 is replaced by the following:

"1. The residence documents granted to persons covered by this Directive shall be issued and renewed free of charge or on payment of an amount not exceeding the dues and taxes charged for the issue of identity cards to nationals."

(b) Paragraph 3 is replaced by the following:

"3. Member States shall take the necessary measures to bring the procedures for issuing residence documents in this Directive into line with existing procedures for the issuing of national identity cards or other equivalent national papers."

(9) Article 10 is replaced by the following:

"Article 10

Member States shall not derogate from the provisions of this Directive save on grounds of public policy, public security or public health.

Nevertheless, in applying the derogations referred to in the first paragraph, Member States shall take into account the degree to which the person affected by such measures has been integrated into their territory, with a view to possibly restricting the extent of such derogation.

To determine the extent which a person has been integrated into the Member State of residence, Member States shall take into account circumstances such as the fact that the person in question was born in that State, has undertaken most of his studies or training in that State or has major cultural, social, professional or family links with that State."

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2000 at the latest. They shall forthwith inform the Commission thereof.

   When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of domestic law which they adopt in the field governed by this Directive.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

PART TWO

Proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DECISION

establishing an Advisory Committee on freedom of movement and social security for Community workers and amending Council Regulations (EEC) No 1612/68 and (EEC) No 1408/71

EXPLANATORY MEMORANDUM

1. Reasons for the proposed Decision

Regulation (EEC) No 1612/68 and Regulation (EEC) No 1408/71 each established a tripartite advisory committee responsible for examining problems concerning the free movement of workers and coordination of social security schemes. These two institutions, now over 20 years old, provide Community forums in which the Commission, Member States and social partners are able to make a significant contribution to freedom of movement.

With a view to improving their operation and rationalising financial and human resources, however, the social partners have called for these committees to be merged.

In its Communication of 18 September 1996 concerning the social dialogue, the Commission takes up this request by the social partners for a review of the responsibilities and working methods of the committees on freedom of movement and social security[46]. The need for a review of these and other committees had, in fact, already been established in the recommendation from the cross-industry social partners (June 1993).

In its Communication containing an action plan for free movement of workers, the Commission states its intention of proposing such a review. The Commission Communication of 20 May 1998 "Adapting and promoting the social dialogue at Community level"[47] reiterates this intention.

This proposal for a Decision is in response to the said request from the social partners.

Furthermore, in its action plan on freedom of movement the Commission identified a need for an overall strategy which would make freedom of movement an integral part of Community policy and powers, particularly in the coordination of national employment policies. With the signing of the Treaty of Amsterdam, the European Union has embarked on a course which will involve it in making an increased contribution to the employment issue in Europe.

In view of this, freedom of movement must be seen in the economic and political context of European integration. Merging of the committees on freedom of movement and social security will give rise to a new institution capable of centralising the contribution of the social partners to this new broader approach to freedom of movement.

While maintaining continuity with the work of the existing committees, the new advisory committee will have a new political role going beyond purely technical matters to provide a discussion forum for the issue of mobility in Europe at a time when developments in the social, demographic, political and economic outlook are making a new approach to worker mobility within the European Union essential.

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46 COM(96) 448 final.

47 COM(1998) 322 final.

2. Legal basis

This Decision is based on Articles 49, 51 and 235 of the Treaty. Articles 49 and 51 of the Treaty constitute the respective legal bases for Regulations (EEC) No 1612/68 and (EEC) No 1408/71, which established the present advisory committees. Amendment of these Regulations to establish a new committee merging the present committees must therefore be founded on the same legal bases.

The new advisory committee will also be empowered to discuss and analyse matters concerning the situation in the European Union of workers who are nationals of third countries and who are not members of the family of a Community national.

As Community law stands at present, Articles 49 and 51 do not provide a legal basis for dealing with matters concerning nationals of third countries. It for this reason that it is necessary to invest the new advisory committee with such powers under Article 235. Article 235 is being used as a complementary legal base, given that the new committee's competence on issues related to third country nationals is fundamental. Moreover, the new Treaty of Amsterdam specifically includes within Community competence the rights and obligations of third-country nationals in the European Union. In this context, the new committee would have competences that would shortly be incomplete, if they did not already cover issues concerning third-country nationals.

3. Structure of the Advisory Committee on freedom of movement and social security

The proposed structure and rules of procedure are based very largely on those of the two existing advisory committees. The tripartite composition and number of members are exactly the same. When appointing new members, however, it is important to ensure that the degree of expertise and representation are maintained in the two fields concerned, i.e. freedom of movement for workers and social security which, while interconnected, have certain independent characteristics.

This is why, in Article 3, it is proposed that governments should be represented by one member of the Technical Committee on freedom of movement and one member of the Administrative Commission on Social Security for Migrant Workers.

Furthermore, experience has shown a term of office of two years to be too short to enable the committee members to work effectively. It has therefore been decided to extend the mandate to four years, as is usual with other committees.

A further change to be brought in by the new provisions, with a view to simplifying the rules on appointments, is that Member States are to notify the Commission directly of the names of their national representatives.

Finally, the new Article 2(3) requires Member States to endeavour to ensure that men and women are equally represented on the Committee. This implements the recommendations of the fourth action programme for equal opportunities between men and women on incorporating equal opportunities into other Community policies (mainstreaming).

4. Responsibilities of the Advisory Committee

The new Committee will take over the responsibilities of the two current committees.

Of these, employment will be an essential area of the new Committee's work. The Advisory Committee's main responsibilities will include emphasising the contribution mobility makes to national employment policies. As indicated above, there must be a broad-based approach to worker mobility which will demonstrate how it is linked to and affects national employment policy.

The coordination of national employment policies, today one of Europe's priorities, has, of course, been a fundamental element of the responsibilities of the existing advisory committees, particularly of the Advisory Committee on freedom of movement. Even 30 years before the Amsterdam Treaty, this Committee was required to contribute to coordinating European policy on employment under Regulation (EEC) No 1612/68.

While this possibility may not have been exploited to the full in the past, the new Advisory Committee will still be able to draw benefit from the pioneering experience in the field of employment. Merging of the committees and the new political framework following on from the action plan are likely to boost the importance of the Advisory Committee in this field. The Commission has, in fact, already launched the debate in its action plan on freedom of movement for workers. The action plan is based on the premise that freedom of movement is not only a legal mechanism enabling people to move around in their occupations more easily, but that worker mobility can be seen as an instrument of employment policy in Europe.

Without prejudice to these powers in the employment field, the Advisory Committee retains full competence in all matters concerning mobility itself, including the coordination of social security schemes and the specific problems of particular professions, such as cultural ones (artists, for instance).

The Advisory Committee's envisaged responsibilities also include examining questions concerning the situation of third country nationals in the European Union. In their Recommendation of June 1993, the social partners indicated that they would like the Committee to assume more responsibility in this direction. Matters concerning third country nationals are already the subject of consultations within the Committee, as, for example, when extending Regulation (EEC) No 1408/71 to cover nationals of third countries legally resident in the European Union. A further point is that the Treaty of Amsterdam provides for Community jurisdiction in matters concerning the rights and obligations of nationals of third countries residing in the European Union. The Advisory Committee must therefore be adapted to the Community's future powers as envisaged in the Treaty of Amsterdam.

5. Disbandment of the current committees

The situation as described above means that the two existing committees will have to be disbanded to make room for the new structure. This will not, however, in any way affect the continuity of the work or mean losing the experience accumulated. The members of the Technical Committee on freedom of movement and the Administrative Commission on Social Security will also sit on the Advisory Committee. Furthermore, the social partner representatives on the present committees have a great deal of experience on

freedom of movement and will be able to pool both this and their experience on the coordination of social security schemes.

Proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DECISION

establishing an Advisory Committee on freedom of movement and social security for Community workers and amending Council Regulations (EEC) No 1612/68 and (EEC) No 1408/71

98/0231 (COD)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty establishing the European Community, and in particular Articles 49, 51 and 235 thereof;

Having regard to the proposal from the Commission[48],

Having regard to the opinion of the Economic and Social Committee[49],

Acting in accordance with the procedure laid down in Article 189b of the Treaty[50],

1. Whereas consultation of the social partners is an essential element in implementing freedom of movement;

2. Whereas the coordination of social security schemes is the essential corollary to the proper exercise of freedom of movement of labour; whereas it is important to have an overview taking in all aspects of freedom of movement and the coordination of social security schemes;

3. Whereas the social partners have requested that the existing Advisory Committees on freedom of movement and social security be merged with a view to rationalising their resources and improving their operation;

4. Whereas the creation of a single Advisory Committee to discuss matters in connection with social security and freedom of movement is likely to make that Committee more effective by enabling it to adopt an overall strategy on freedom of movement;

5. Whereas the new Advisory Committee is required to maintain continuity when taking over the work of the Advisory Committee on the Free Movement of Workers and the Advisory Committee on social security for Migrant Workers;

6. Whereas it is important that the structure, composition and rules of procedure should be kept similar to those of the current committees;

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48 OJ C

49 OJ C

50 OJ C

7. Whereas it is important that there should be equal representation of men and women on the Committee;

8. Whereas the term of office of the members of the committee should be extended to four years, with a view to bringing it into line with other committees and increasing the continuity and efficiency of the Committee;

9. Whereas the Advisory Committee will, to a large extent, take over the responsibilities of the current committees, but consolidate and rationalise them to achieve greater efficiency and to provide the overview needed for a comprehensive analysis of freedom of movement;

10. Whereas the responsibilities of the Advisory Committee should take into account the importance of coordinating national employment policies, emphasising the role and added-value of worker mobility;

11. Whereas the Advisory Committee's responsibilities should include the study and analysis of the situation of nationals from third countries working in the Member States; whereas it is therefore important for the social partners to have the opportunity of discussing and giving their views on the subject;

12. Whereas it is necessary to delete the relevant provisions of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement of workers within the Community[51], as last amended by Regulation (EC) No [...] of the European Parliament and of the Council[52], and also those of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, self-employed persons and members of their famililies moving within the Community[53], as last amended by Regulation (EC) No 1606/98[54], which had set up advisory committees on freedom of movement and social security matters;

13. Whereas the inclusion of issues relating to third-country nationals within the powers of the committee enables the social partners to deal fully and effectively with all aspects of labour mobility; whereas, to meet this objective, the Treaty does not provide powers other than those of Article 235,

HAVE DECIDED AS FOLLOWS:

Article 1

An Advisory Committee on freedom of movement and social security for workers within the Community (hereinafter: the "Committee") is hereby established, to be responsible for assisting the Commission in the examination of matters arising from the freedom of movement of workers and the coordination of social security schemes, and the link between those matters and employment questions.

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51 OJ L 257, 19.10.1968, p. 2.
52 OJ L
53 OJ L 149, 5.7.1971, p. 2.
54 OJ L 209, 25.7.1998, p. 1.

Article 2

1. The Committee shall be composed of 90 members, comprising, for each Member State:

   (a) two government representatives, one of whom shall be a member of the Administrative Commission on Social Security for Migrant Workers provided for by Article 80 of Regulation (EEC) No 1408/71, and the other a member of the Technical Committee on the free movement of workers provided for in Article 32 of Regulation (EEC) No 1612/68;

   (b) two representatives of trade union organisations;

   (c) two representatives of employers' organisations.

   For each of the categories referred to in the first subparagraph, an alternate member shall be appointed for each Member State.

2. The members and their alternates shall be appointed by the Member States, which shall make every effort, when selecting representatives of trade unions and employers' organisations, to ensure equitable representation on the Committee of the various sectors concerned.

   Each Member State shall notify the Commission of the list of members and their alternates.

3. Member States shall endeavour to ensure that men and women are represented equally on the Committee.

4. The term of office for members and alternates shall be four years. Their appointments may be renewed. On expiry of their term of office, members and alternates shall remain in office until they are replaced or until their appointments are renewed.

Article 3

1. The Committee shall be chaired by a Member of the Commission or his representative. The Chairman shall not vote. Secretarial services shall be provided by the Commission.

2. The Committee shall meet at least once a year. It shall be convened by its Chairman, either on his own initiative or on written application to him by at least one third of the members. Such application must include concrete proposals concerning the agenda.

3. Acting on a proposal from its Chairman, the Committee may decide, in exceptional circumstances, to take advice from any individuals or representatives of organisations with extensive experience in matters of social security or the freedom of movement of workers.

4. The opinions and proposals of the Committee shall state the reasons on which they are based. They shall be delivered by an absolute majority of the votes validly cast, and shall be accompanied by a statement of the views expressed by the minority, where the latter so requests.

Article 4

The Committee shall be empowered, at the request of the Commission, the Administrative Commission on Social Security, or the Technical Committee, or on its own initiative, to perform the following tasks:

(a) to examine questions concerning the freedom of movement and social security of migrant workers, with particular regard to how worker mobility is linked to and affects national employment policy in the Member States;

(b) to make a general study of the effects of implementing Community legislation and any additional provisions on the free movement of workers and coordination of social security schemes;

(c) to submit to the Commission any reasoned proposals for revising Community legislation on the free movement of workers and the coordination of social security schemes;

(d) to deliver, either at the request of the Commission or on its own initiative, opinions on general questions or on questions of principle, in particular on exchange of information concerning developments on the labour market, on the movement of workers between Member States, on programmes or measures to develop vocational guidance and vocational training which are likely to enhance the opportunities of freedom of movement and employment, and on all forms of assistance to workers and their families, including social assistance and the housing of workers;

(e) to examine general questions or questions of principle and the problems raised by the implementation of regulations issued pursuant to the provisions of Article 51 of the Treaty;

(f) to examine matters connected with the rights and obligations in the Member States of workers resident in the Community who are nationals of third countries.

Article 5

1. Until the Member States have appointed their members of the Committee in accordance with Article 2, the convening of members for Committee meetings shall be governed by the rules set out in paragraphs 2 and 3 of this article.

2. The members of the Advisory Committee on freedom of movement and the Advisory Committee on social security shall be considered to be full members of the Committee.

However, only two members for each of the three categories referred to in Article 2(1) shall be entitled to attend the meetings of the Committee. Unless otherwise indicated by a Member State, the Commission shall invite to each meeting the two most senior members for each category, ensuring that the choice includes one representative from the former Advisory Committee on freedom of movement and one representative from the former Advisory Committee on social security. If there are more than two members with the same seniority, the selection shall be made by alphabetical order.

In convening the members of the trade union organisations and employers' associations, the Commission shall ensure adequate representation of the various sectors concerned, irrespective of seniority or alphabetical order.

3. Where the members convened are unable to attend, they may be replaced by other members. If the latter are also unable to attend, they may be replaced by the alternate members of the Technical Committee and the Advisory Committee on social security.

Article 6

Articles 24 to 31 of Regulation (EEC) No 1612/68 and Articles 82 and 83 of Regulation (EEC) No 1408/71 are deleted.

Article 7

Within three months of entry into force of this Decision, the Member States shall forward to the Commission a list of members and alternate members appointed in accordance with Article 2 of this Decision.

Article 8

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Done at Brussels,

For the European Parliament
The Presisent

For the Council
The President

Financial Statement

1. TITLE OF OPERATION

Establishment of an Advisory Committee on freedom of movement and social security for workers within the Community

2. BUDGET HEADING(S) INVOLVED

A 7031

3. LEGAL BASIS

Articles 49, 51 and 235 of the Treaty

4. DESCRIPTION OF OPERATION

4.1 General objective

Merging of the Advisory Committee on freedom of movement for workers and the Advisory Committee on social security for workers into a single Committee to assist the Commission in examining questions raised by the implementation of the Treaty and measures taken in that regard relating to freedom of movement, employment and social security for workers.

4.2 Period covered and arrangements for renewal or extension

Unlimited

5. CLASSIFICATION OF EXPENDITURE OR REVENUE

5.1 Compulsory/Non-compulsory expenditure

5.2 Differentiated/Non-differentiated appropriations

5.3 Type of revenue involved

6. TYPE OF EXPENDITURE OR REVENUE

Administrative appropriations, Part A of the budget, particularly reimbursement of experts' expenses (see 10.3).

7. FINANCIAL IMPACT

Financial impact on Part B of the budget. Operational appropriations (not applicable).

8. FRAUD PREVENTION MEASURES

Specific monitoring measures planned: supporting documents for experts' travel expenses.

9. ELEMENTS OF COST-EFFECTIVENESS ANALYSIS

The Commission announced the reorganisation of two existing committees (Advisory Committee on freedom of movement for workers and the Advisory Committee on the coordination of social security schemes) in its action plan of 12 November 1997 for free movement of workers (COM(97) 586).

Establishing the new Committee should bring about an improvement in and rationalisation of the current committees, giving it, in addition to the technical matters with which it is to deal, a new political role with regard to mobility of employment in the European Union, for instance questions relating to workers from third countries who are resident in the European Union.

10. ADMINISTRATIVE EXPENDITURE (PART A OF SECTION III OF THE BUDGET)

The actual mobilisation of the necessary administrative resources will depend on the Commission's annual decision on the allocation of resources, taking account in particular of the additional staff and sums approved by the budget authority.

10.1 Effect on the number of staff

Will the proposed operation involve an increase in the number of Commission staff? If so, how many?

Type of staff		Staff to be assigned to managing the operation		Of which		Duration
		Permanent staff	Temporary staff	Using existing resources within the DG or service concerned	Using supplementary resources	Unlimited
Officials or temorary agents	A	1		1		
	B					
	C	1		1		
Other resources						
Total		2		2		

10.2 Overall financial impact of human resources

(ECU)

	Amounts	Calculation method
Officials*	216 000	ECU 108 000 x 2 = ECU 216 000/year
Temporary agents		
Other resources (give budget heading)		
Total	216 000	

* Using available resources allocated to management of the operation (calculation based on titles A-1, A-2, A-4, A-5 and A-7)

10.3 Financial impact of other operating expenditure involved in the operation

Indicate the amount of staff and administrative expenditure involved in the proposed operation.

Explain the method of calculation.

(ECU)

Budget line (number and heading)	Amounts	Calculation method
A-7031 Compulsory committee	64 680	2 representatives/Member State x ECU 650 x 15 x 1 meeting/year = ECU 19 500. 4 persons x ECU 753 x 15 x 1 meeting/year = ECU 45 180
Total	64 680	

The appropriations will be taken from the existing DG V budget.

Form on impact on SMEs

The legislative proposals concerning free movement of workers, aim, *inter alia*, at facilitating labour mobility, including crossborder mobility, together with reinforcing the functioning of single European space of professional mobility. To this end, a new article concerns the recognition, in all the Member States, of professional elements acquired in different Member States. This provision will facilitate transparency of competencies and qualifications, contributing to the development of European careers. The proposals also aim at enhancing the conditions for mobility of persons under vocational training.

These objectives will have a favourable impact on SMEs. Effectively, as stated in the BEST report (Business Environment Simplification - Task force), it is important to improve vocational training in order to help them work efficiently for SMEs, and eventually setting up their own SME. In this context, the BEST report stresses the importance of mobility for people under vocational training, together with the importance of fostering exchanges between training institutions and enterprises.

Furthermore, improving labour mobility will also have a favourable impact on SMEs inasmuch as their possibilities for recruiting workers from different Member States may reinforce their competivity on a European scale. In addition, crossborder mobility, which is covered by the legislative proposals, has a fundamental importance for SMEs in crossborder areas.

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