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INFORMATION MEMO

REGULATION AND DIRECTIVE ON
FREE MOVEMENT OF WORKERS - SECOND STAGE

After obtaining the opinion of the European Parliament and of the Economic and Social Committee, the Council has approved in the four Community languages the regulation and directive on the free movement of workers in the Community. These measures were the subject of Commission proposals on 5 October 1962 and they will come into force on May 1, 1964, replacing Regulation No. 15, which has been in operation since 1 September 1961, and the directive of 16 August 1961.

The legal basis

The provisions are based in part on Article 48 of the Treaty, which lays down that the free movement of workers must be achieved at latest by the end of the transitional period, in part on Article 52 of Regulation No. 15, requiring the Commission to submit to the Council, by 30 September 1962, proposals for a regulation on the liberalization measures to be applied in a second stage.

These rules, which are a very appreciable advance on Regulation No. 15 and the directive of 16 August 1961, do not yet represent the final measures for the full attainment of the aims of Article 48 of the Treaty. Account must be taken of Article 49, which provides that free movement is to be introduced progressively, thus avoiding risks of imbalance within the Community. New rules will therefore have to be substituted for the present ones in 1968 in order to attain the objectives of the Treaty.

Measures adopted for the second stage

A. Main points

Unlike Regulation No. 15, the regulation now adopted applies to all wage-earners and not merely to permanent workers. It covers frontier workers and seasonal workers, to whom Regulation No. 15 did not apply and who will forthwith be accorded the same rights as other workers in the second stage. These rules apply moreover to wage-earners accompanying a person supplying services or supplying such service on his behalf. Liberalization measures for these workers were necessary to give full effect to the directives approved by the Council on 18 December 1961 as part of the general programme for the abolition of restrictions on the free supply of services.

Regulation No. 15 laid down that subject to certain adjustments and exceptions, the recruitment of nationals of other Member States would, in the first stage, be conditional on the national labour market situation, which continued to have priority. The present regulation abolishes this priority, subject, however, to certain reservations: the Member States can maintain or even re-introduce priority in those regions and trades where there is surplus manpower.

Any such action must be reported to the Commission and justified by the Member State concerned, and the right to take such action continues to be subject to the exceptions and limitations shown in Regulation No. 15: exception in the case of individual offers based on reasons connected with the professional specialisation, the confidential nature of the offered employment, on former links or on the family links specified in the regulation.

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In these cases the labour permit has to be issued. If a Member State re-introduces the priority of the national labourmarket in a certain profession or in a certain part of its territory, this priority is limited in that, at the end of 15 days, needed to look for suitable workers on the national labourmarket (three weeks were to this end provided for in Regulation No. 15) the labour permit has to be issued to the worker who is a national of a Member State.

As regards the rights which the worker acquires as his employment goes on, there has also been an important advance on Regulation No. 15. After two years in regular employment the worker will now be placed, as far as the exercise of paid employment is concerned, on the same footing as workers who are nationals of the country concerned. It should be pointed out that in practice these measures will now apply only in regions and trades where the priority of the national market is maintained under the clause referred to above, since in the other regions and trades nationals of the six Member States will enjoy access to employment throughout the Community on a footing of absolute equality, of course subject to the rule that non-nationals must obtain a labour permit.

Progress has also been made on the workers' right to be joined by their family. Whereas Regulation No. 15 limited this right to the worker's spouse and children under the age of 21 years, the new regulation extends it to relations, both ascendants and descendants, dependent on the worker or his spouse, and there is no age limit as regards dependent children. The exercise of this right is, however, conditional on the worker having a normal dwelling available for his family. A "normal" dwelling is defined as one which would be considered normal for national workers in the region where the worker from another Member State is employed.

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One particularly important individual right granted to workers should be noted: from now on the worker will not only be entitled to vote in the workers' representative organization in his firm, he will also be eligible for office. For the present, however, one special condition is attached to the right of non-nationals to stand for election. Apart from the other qualifications demanded of national workers - except, of course, those concerned with nationality - they must show that they have been three years with the firm.

The aim here is to limit election in the second stage to workers who offer certain guarantees of stability and have the experience necessary to fulfil the duties of their office.

The institutional side of Regulation No. 15 has been taken over in the new Regulation without modification. The European Office for Co-ordination, the Consultive Committee and the Technical Committee set up under the regulation will continue to handle the tasks previously entrusted to them.

One essential provision of the regulation deserves particular attention. This is the one concerning priority for the Community labour market. The Council considered that the principle of non-discrimination written into the Treaty means that in each Member State workers from Member States must have the same prior right to the available jobs as nationals of the country concerned. This priority is the subject of Article 8 of the regulation. The procedure laid down for implementing this priority is intended to respect the principle of non-discrimination without impairing, by time-consuming formalities, the rapid supply of the labour required by industry in the Member States; it is set out in Articles 29 and 30, which point out that the Member States, in close collaboration with the Commission, shall each year make a review of the situation on the Community's labour market and establish, in the light of manpower needs and the foreseeable availabilities, which measures can be taken to ensure clearing arrangements within the Community. These exercises will also make it possible to see, at the end of each year, how far the forecasts have been borne out by the facts.

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In this way Community workers will have, within the Community, a privileged position when they apply for the available jobs - and this is only right - without the economy, which has manpower needs that the Community is unable to satisfy, being hampered by an unnecessarily cumbersome administrative procedure.

B. Structure of the regulation and of the directive

This is parallel to that found in Regulation No. 15 and the directive of 16 August 1961. The regulation, then, contains four parts: Part I establishes the rules for the introduction and employment of workers and the introduction of members of their family; Part II concerns the clearing of vacancies notified and applications for work; Part III deals with the Consultative and Technical Committees, and Part IV contains the final provisions.

Like the directive of 16 August 1961, the new directive covers the conditions of issue and validity of the workers' passports, national identity cards and residence permits.

One further point should be mentioned: the arrangements concerning labour permits which figured in the directive of 16 August 1961 are now included in the regulation and, therefore, are directly applicable in each Member State.