

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(90) 108 final - SYN - 185

Brussels, 9 April 1990

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

---

Modified Proposal for a  
COUNCIL REGULATION (EEC)  
amending Directive 68/360/EEC on the abolition of restrictions  
on movement and residence of workers of Member States  
and their families within the Community

---

(presented by the Commission pursuant to Article 149(3)  
of the EEC Treaty)

# COMMISSION OF THE EUROPEAN COMMUNITIES

## CORRIGENDUM

AU DOC. COM(90)108 final-SYN 185  
DU 9/04/90.  
CONCERNE TOUTES LES VERSIONS  
LINGUISTIQUES

COM(90) 108 final /2 - SYN 185

Brussels, 27 June 1990

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

Modified Proposal for a  
COUNCIL REGULATION (EEC)  
amending Directive 68/360/EEC on the abolition of restrictions  
on movement and residence of workers of Member States  
and their families within the Community

(presented by the Commission pursuant to Article 149(3)  
of the EEC Treaty)

CORRIGENDUM

Explanatory Memorandum

The amendment to the initial proposals seek to clarify the scope of the rule on equal treatment for nationals and other Community nationals (Article 9a Regulation (EEC) No 1612/68).

Modified Proposal for a  
COUNCIL REGULATION (EEC)

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

---

Point 7 of Article 1 is replaced by the following text:

A new Article 9a is inserted :

"Article 9a :

Any national of a Member State, who is employed by an undertaking in another Member State where he usually carries out an activity, shall with respect to that Member State continue to be covered by the provisions of Title II when performing temporary contractual duties for the employer, either on the territory of another Member State or outside the territory of the Community."

Explanatory Memorandum

1. Pursuant to Article 49 of the EEC Treaty, the European Parliament was consulted by the Council on the Commission proposals to the Council in respect of the amendments to Regulation 1612/68 and Directive 68/360/EEC.

At the meeting on 14 February 1990, the European Parliament, subject to the reservation regarding the amendments it had introduced, approved the Commission proposals and requested it to amend its proposal accordingly.

After a thorough examination of the amendments proposed by the European Parliament, pursuant to Article 149(3) of the EEC Treaty, the Commission decided to present the amended proposals to the Council.

2. The amendments to the initial proposals mainly seek to:
  - clarify the scope of the rule on equal treatment for nationals and other Community nationals (Article 7(1) and (3) of Regulation (EEC) No 1612/68;
  - extend the category of direct beneficiaries of Community law in the context of family reunion to include any person treated on the same footing as the spouse of the worker in the system of the host country (Article 10 of Regulation (EEC) No 1612/68; Article 4(3) of Directive 68/360/EEC);
  - delete provisions that have become superfluous (Articles 38, 39, 40 and 41 of Regulation (EEC) No 1612/68);
  - draw up a report on the implementation of the freedom of movement of workers in the Community (Article 44 of Regulation (EEC) No 1612/68; Article 12 of Directive 68/360/EEC);
  - facilitate the issue of a residence permit valid for five years (Article 6(3) and Article 9(1) of Directive 68/360/EEC);
  - provide for a transitional provision to ensure the continuous validity of residence permits issued pursuant to the Directive prior to its amendment.

**Modified Proposal for a  
COUNCIL REGULATION (EEC)  
amending Regulation (EEC) No 1612/68 on freedom of movement  
for workers within the Community**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas, under the terms of Article 8a of the Treaty, the Community must adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992, and the internal market is to comprise an area without internal frontiers in which the free movement of persons is ensured in accordance with the provisions of the Treaty;

Whereas it is important to prevent the situation of workers of the Member States who move for reasons of employment and that of members of their families from deteriorating, more especially in view of the fact that the provisions currently in force no longer fully meet the requirements of a society undergoing important changes;

Whereas there is an imperative need to adapt the provisions of Council Regulation (EEC) No 1612/68<sup>1</sup>, as amended by Regulation (EEC) No 312/76<sup>2</sup>, to the new socio-economic context and to consolidate the accumulated rulings of the Court of Justice of the European Communities by incorporating the principles enunciated by the Court into the legislation of the Community;

Whereas, in view of the prospective completion of the internal market and in order to ensure that the effective exercise of the fundamental right of free movement is as complete as possible, it is important that any obstacles to the mobility of workers which still exist on the level of individual rights, in particular those taking the form of limitations stemming from the condition of territoriality on the application of equal treatment and the restrictions imposed by the provisions currently in force on the right of family reunification, should be removed;

Whereas in its Resolution of 10 July 1985<sup>3</sup>, on guidelines for a Community migration policy, the Council recognized that in the field of the Community rules relating to the free movement of workers, priority must be assigned to improving the application of the rules, in particular by making such amendments or additions to them as may be deemed necessary;

Whereas control by the Member State over the application of the principle of equal treatment should be strengthened,

HAS ADOPTED THIS REGULATION:

---

1. OJ No L 257, 19.10.1968, p. 2.  
2. OJ No L 39, 14.2.1976, p. 2.  
3. OJ No C 186, 26.7.1985, p. 2.

Article 1

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

1. The following paragraph is added to Article 5:

"He shall also receive aid to promote mobility and recruitment available to nationals travelling either within the country or to other Member or non-Member States to take up activity as an employed person."

2. Article 7(1) is 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, especially with respect to health, safety and hygiene, and with respect to remuneration, dismissal, social security, occupational re-integration or re-employment if he has become unemployed or if he is the victim of total or partial incapacity for work."

3. Article 7(3) is replaced by the following:

"3. He shall also, by virtue of the same right and under the same conditions as national workers, have access to all levels of education and training, readaption and retraining, vocational training and retraining."

4. The following paragraph is added to Article 7:

"5. A Member State whose laws, regulations or administrative provisions attribute legal effects or make social or tax advantages subject to the occurrence of certain facts or events shall, where necessary, take into account the said facts or events which occurred in any other Member State as if they had occurred on the national territory."

5. In the first paragraph of Article 8, the following is added after the words "holding an office governed by public law":

"In so far as the activities in question are connected with the exercise of official authority".

6. The following is added to Article 9(1):

"and to means of financing and subsidies";

7. A new Article 9a is inserted:

**"Article 9a:**

The provisions of Title II shall apply to any national of a Member State who is sent by his employer, exercising an activity in the territory of a Member State, to perform his contractual duties either in another Member State or outside the territory of the Community."

8. Article 10 is replaced by the following:



Article 10

The following shall, even if they are not nationals of a Member State, have the right to install themselves with the national of a Member State who is employed in the territory of another Member State:

- (a) the spouse or any person with similar status under the system of the host country and their descendents;
- (b) relatives in the ascending line of the worker or the spouse or any person with similar status under the system of the host country;
- (c) any other member of the family in the country of origin who is dependent on or living under the roof of the worker or the spouse or person with similar status under the system of the host country."

9. Article 11 is replaced by the following:

"Article 11

The members of the family referred to in Article 10 of a worker pursuing an activity as an employed or self-employed person in the territory of a Member State who do not have the nationality of a Member State shall have the right to take up any activity as an employed person throughout the territory of that same State, and to perform that activity in accordance with the provisions laid down by law, regulation or administrative action governing the employment of nationals of that State.

The death of the worker on whom the members of the family are dependent or the dissolution of the marriage shall not affect that right."

10. Article 12 is replaced by the following:

**"Article 12**

The members of the family of a worker referred to in Article 10 who are resident in the territory of the Member State in which the worker is or has been employed shall enjoy the same social advantages as the nationals of that State; they shall also be admitted to general education, apprenticeship and vocational training courses of university or non-university level on the same terms as the nationals of that State.

Member States shall adopt measures to enable such persons to have access to all levels of education and these courses under the best possible conditions and shall take action to simplify the formalities so that the costs of opening a personal file are similar to those for nationals of the State."

11. A new Article 12a is inserted:

**"Article 12a**

The provisions of Title III shall also apply to the members of the family of a national worker who is seconded as described in Article 9a."

12. Articles 38, 39, 40 and 41 are deleted.

13. Article 43 is replaced by the following:

**"Article 43**

1. Member States shall take such measures as are necessary to ensure the application by all natural and legal persons of the principle of equal treatment in the fields covered by this Regulation and to curb any infringement of that principle.
  2. Member States shall, for information purposes, communicate to the Commission the texts of agreements, conventions or arrangements concluded between them in the manpower field between the date of their being signed and that of their entry into force."
14. Article 44 is replaced by the following:

**"Article 44**

1. The Commission shall adopt the necessary implementing rules for the application of this regulation. To this end, it will act in close cooperation with the authorities of the Member States and the two sides of industry.
2. The Commission shall forward to the Council and the European Parliament every three years, starting on 1 January 1992, a communication on the implementation of freedom of movement for workers in the Community.
3. The Commission shall communicate, as soon as possible, the instructions needed for providing adequate information concerning this regulation to the national, regional and local authorities and to the users; the Commission shall publish within six months of the entry into force of this regulation a practical guide on the freedom of movement for workers".

15. In Article 47, the reference to Articles 2, 3, 10 and 11 is replaced by reference to Articles 2, 3, 5, 9a, 10 and 11.

**Article 2**

This Regulation shall enter into force on 1 January 1991.

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

Done at Brussels

For the Council

**Modified Proposal for a  
COUNCIL REGULATION (EEC)  
amending Directive 68/360/EEC on the abolition of restrictions  
on movement and residence of workers of Member States  
and their families within the Community**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas Council Directive 68/360/EEC<sup>1</sup>, as last amended by the Act of Accession of Spain and Portugal, lays down the circumstances in which certain restrictions on movement and residence are abolished or alleviated for persons covered by Council Regulation (EEC) No 1612/68<sup>2</sup>, as last amended by Regulation (EEC) No ...<sup>3</sup>,

Whereas Council Regulation (EEC) No .../... amended Regulation (EEC) No 1612/68 to extend the personal scope of the latter, whereas the need has consequently emerged to adapt the provisions of Directive 68/360/EEC in line with those amendments, both as regards workers and members of their families who are nationals of a Member State and as regards members of their families who are not nationals of a Member State;

---

1. OJ No L 257, 19.10.1968, p. 13.

2. OJ No L 257, 19.10.1968, p. 2.

3. OJ No L

Whereas the procedures linked to the issue of residence cards and related documents have in many cases proved too long and the costs very high, and these difficulties constitute an objective obstacle to the organization of the daily lives of those concerned and a constraint on their integration into the host country;

Whereas, from the point of view of stability of residence, account should be taken of the new conditions obtaining on the employment market, particularly as regards the increase in insecure and intermittent employment;

Whereas in the context of a People's Europe, the feeling of belonging to a European people should be promoted by entitling the residence card, "European Communities Residence Card",

HAS ADOPTED THIS DIRECTIVE:

#### Article 1

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

1. In Article 4(2), the first sentence is replaced by the following:  
  
"As proof of the right of residence, a document entitled "European Communities Residence Card" shall be issued".
  
2. In Article 4(3), the beginning of the sentence is replaced by the following:  
  
"For the issue of a European Communities Residence Card ..."

3. The following is added to Article 4(3), first indent, point (b):

"In the cases referred to in Article 6(4), a certificate proving the worker's entitlement to unemployment benefit issued in the host State;"

4. Article 4(3), second indent, point (e) is replaced by the following:

"(e) For the members of the family as referred to in Article 10(c) of Regulation (EEC) No 1612/68 a document issued by the competent authority of the State whence they came or of the State of origin certifying that they are dependent on the worker or the spouse or person with similar status under the system of the host country or that they live under the roof of the latter."

5. Article 4(4) is deleted.

6. The following paragraph is added to Article 5:

"These formalities shall be completed as quickly as possible."

7. Article 6(1)(b) is replaced by the following:

"(b) must be valid for at least five years from the date of issue; it shall be automatically renewable for periods of ten years."

8. In Article 6(2), the following words are inserted after "military service":

"or for medical reasons, maternity or study, or in the event of secondment as described in Article 9a of Regulation (EEC) No 1612/68."

9. In Article 6(3), the following subparagraph is inserted after the first:

"However, when the worker has held several successive temporary jobs for a total period of not less than twelve months, with an uninterrupted residence period of eighteen months, the host Member State shall issue to him the residence card referred to in paragraph 1 on presentation of confirmation of engagement or a certificate of employment even for a period of less than one year."

10. In Article 6, the following is added:

"4. Where the worker has been employed for a period exceeding three months but not exceeding one year in the host State and has acquired an entitlement to unemployment benefit under the legislation of the said State, the residence card issued to him under the first subparagraph of paragraph 3 shall be automatically renewable until his entitlement to unemployment benefit has expired.

Where the worker has been employed for a period of less than three months in the host State and has acquired an entitlement to unemployment benefit under the legislation of the said State, the residence card issued to him under the first subparagraph of paragraph 3 shall be automatically renewable until his entitlement to unemployment benefit has expired".

11. In Article 7(1), the words "as a result of illness or accident" are replaced by the words "as a result of illness, accident or maternity".

12. In Article 7(1), the following subparagraph is added:

"When the residence card expires during a period of incapacity for work, it shall be automatically renewed in accordance with Article 6."

13. Article 7(2) is deleted.



14. Article 9(1) is replaced by the following:

"1. The residence documents and supporting documents issued to persons enjoying the rights conferred by this Directive shall be issued and renewed free of charge;"

15. The following paragraph is added to Article 9:

"4. Presentation of the residence card may not be demanded on crossing frontiers."

16. The following paragraphs 3 and 4 are added to Article 12:

"3. Member States shall report to the Commission every two years on the application of this Directive and the national provisions adopted in compliance with it; the Commission shall notify the European Parliament thereof.

4. The Commission shall draw up a report on the implementation of this Directive before the end of the second year following the application of the amended Directive, and every three years thereafter.

The Commission shall present this report to the Council, the European Parliament and the Economic and Social Committee".

17. Article 13 is replaced by the following:

**"Article 13**

The residence permits issued pursuant to the Directive prior to its amendment by Directive .../.../EEC and which are valid at the time of entry into force of these amendments shall remain valid until their expiry date."

18. The wording of the statement contained in the Annex to the Directive and provided for in Article 4(2) is replaced by the following:

"This European Communities residence card is issued pursuant to Council Regulation (EEC) No 1612/68 of 15 October 1968 and to the measures taken in implementation of Council Directive 68/360/EEC of 15 October 1968.

The holder of this card has the right to take up and pursue an activity as an employed person on .....<sup>1</sup> territory under the same conditions as .....<sup>1</sup> nationals.

---

<sup>1</sup>Nationality of State issuing the card."

#### Article 2

Member States shall take the measures necessary to comply with this Directive within six months of its notification and shall forthwith inform the Commission thereof.

The provision adopted pursuant to the first paragraph shall make express reference to this Directive.

#### Article 3

This Directive is addressed to the Member States.

Done at Brussels

For the Council

ISSN 0254-1475

COM(90) 108 final

# DOCUMENTS

EN

05

---

Catalogue number : CB-CO-90-151-EN-C

ISBN 92-77-59360-1

---

Office for Official Publications of the European Communities

L-2985 Luxembourg