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REGULATION (EEC) No 1251/70 OF THE COMMISSION

of 29 June 1970

on the right of workers to remain in the territory of a Member State after having been employed in that State

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 48 (3) (d) thereof, and Article 2 of the Protocol on the Grand Duchy of Luxembourg;

Having regard to the Opinion of the European Parliament¹;

Whereas Council Regulation (EEC) No 1612/68² of 15 October 1968 and Council Directive No 68/360/EEC of 15 October 1968³ enabled freedom of movement for workers to be secured at the end of a series of measures to be achieved progressively; whereas the right of residence acquired by workers in active employment has as a corollary the right, granted by the Treaty to such workers, to remain in the territory of a Member State after having been employed in that State; whereas it is important to lay down the conditions for the exercise of such right;

Whereas the said Council Regulation and Council Directive contain the appropriate provisions concerning the right of workers to reside in the territory of a Member State for the purposes of employment; whereas the right to remain, referred to in Article 48 (3) (d) of the Treaty; is interpreted therefore as the right of the worker to maintain his residence in the territory of a Member State when he ceases to be employed there;

Whereas the mobility of labour in the Community requires that workers may be employed successively in several Member States without thereby being placed at a disadvantage;

Whereas it is important, in the first place, to guarantee to the worker residing in the territory of a Member State the right to remain in that territory when he ceases to be employed in that State because he has reached retirement age or by reason of permanent incapacity to work; whereas, however, it is equally important to ensure that right for the worker who, after a period of employment and residence in the territory of a Member State, works as an employed person in the territory of another Member State, while still retaining his residence in the territory of the first State;

Whereas, to determine the conditions under which the right to remain arises, account should be taken of the reasons which have led to the termination of employment in the territory of the Member State concerned and, in particular, of the difference between retirement, the normal and foreseeable end of working life, and incapacity to work which leads to a premature and unforeseeable termination of activity; whereas special conditions must be laid down where termination of activity is the result of an accident at work or occupational disease, or where the worker's spouse is or was a national of the Member State concerned;

Whereas the worker who has reached the end of his working life should have sufficient time in which to decide where he wishes to establish his final residence;

Whereas the exercise by the worker of the right to remain entails that such right shall be extended to members of his family; whereas in the case of the death of the worker during his working life, maintenance of the right of residence of the members of his family must also be recognised and be the subject of special conditions;

Whereas persons to whom the right to remain applies must enjoy equality of treatment with national workers who have ceased their working lives;

¹ OJ No C 65, 5.6.1970, p. 16.

² OJ No L 257, 19.10.1968, p. 2.

³ OJ No L 257, 19.10.1968, p. 13.

HAS ADOPTED THIS REGULATION:

Article 3

Article 1

The provisions of this Regulation shall apply to nationals of a Member State who have worked as employed persons in the territory of another Member State and to members of their families, as defined in Article 10 of Council Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community.

Article 2

1. The following shall have the right to remain permanently in the territory of a Member State:

- (a) a worker who, at the time of termination of his activity, has reached the age laid down by the law of that Member State for entitlement to an old-age pension and who has been employed in that State for at least the last twelve months and has resided there continuously for more than three years;
- (b) a worker who, having resided continuously in the territory of that State for more than two years, ceases to work there as an employed person as a result of permanent incapacity to work. If such incapacity is the result of an accident at work or an occupational disease entitling him to a pension for which an institution of that State is entirely or partially responsible, no condition shall be imposed as to length of residence;
- (c) a worker who, after three years' continuous employment and residence in the territory of that State, works as an employed person in the territory of another Member State, while retaining his residence in the territory of the first State, to which he returns, as a rule, each day or at least once a week.

Periods of employment completed in this way in the territory of the other Member State shall, for the purposes of entitlement to the rights referred to in subparagraphs (a) and (b), be considered as having been completed in the territory of the State of residence.

2. The conditions as to length of residence and employment laid down in paragraph 1 (a) and the condition as to length of residence laid down in paragraph 1 (b) shall not apply if the worker's spouse is a national of the Member State concerned or has lost the nationality of that State by marriage to that worker.

1. The members of a worker's family referred to in Article 1 of this Regulation who are residing with him in the territory of a Member State shall be entitled to remain there permanently if the worker has acquired the right to remain in the territory of that State in accordance with Article 2, and to do so even after his death.

2. If, however, the worker dies during his working life and before having acquired the right to remain in the territory of the State concerned, members of his family shall be entitled to remain there permanently on condition that:

- the worker, on the date of his decease, had resided continuously in the territory of that Member State for at least 2 years; or
- his death resulted from an accident at work or an occupational disease; or
- the surviving spouse is a national of the State of residence or lost the nationality of that State by marriage to that worker.

Article 4

1. Continuity of residence as provided for in Articles 2 (1) and 3 (2) may be attested by any means of proof in use in the country of residence. It shall not be affected by temporary absences not exceeding a total of three months per year, nor by longer absences due to compliance with the obligations of military service.

2. Periods of involuntary unemployment, duly recorded by the competent employment office, and absences due to illness or accident shall be considered as periods of employment within the meaning of Article 2 (1).

Article 5

1. The person entitled to the right to remain shall be allowed to exercise it within two years from the time of becoming entitled to such right pursuant to Article 2 (1) (a) and (b) and Article 3. During such period he may leave the territory of the Member State without adversely affecting such right.

2. No formality shall be required on the part of the person concerned in respect of the exercise of the right to remain.

Article 6

1. Persons coming under the provisions of this Regulation shall be entitled to a residence permit which:

- (a) shall be issued and renewed free of charge or on payment of a sum not exceeding the dues and taxes payable by nationals for the issue or renewal identity documents;
- (b) must be valid throughout the territory of the Member State issuing it;
- (c) must be valid for at least five years and be renewable automatically.

2. Periods of non-residence not exceeding six consecutive months shall not affect the validity of the residence permit.

Article 7

The right to equality of treatment, established by Council Regulation (EEC) No 1612/68, shall apply also to persons coming under the provisions of this Regulation.

Article 8

1. This Regulation shall not affect any provisions laid down by law, regulation or administrative action

of one Member State which would be more favourable to nationals of other Member States.

2. Member States shall facilitate re-admission to their territories of workers who have left those territories after having resided there permanently for a long period and having been employed there and who wish to return there when they have reached retirement age or are permanently incapacitated for work.

Article 9

1. The Commission may, taking account of developments in the demographic situation of the Grand Duchy of Luxembourg, lay down, at the request of that State, different conditions from those provided for in this Regulation, in respect of the exercise of the right to remain in Luxembourg territory.

2. Within two months after the request supplying all appropriate details has been put before it, the Commission shall take a decision, stating the reasons on which it is based.

It shall notify the Grand Duchy of Luxembourg of such decision and inform the other Member States thereof;

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

Done at Brussels, 29 June 1970.

For the Commission

The President

Jean REY