

**EUROPEAN ECONOMIC AREA  
JOINT PARLIAMENTARY COMMITTEE**

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**REPORT ON  
THE FREE MOVEMENT OF WORKERS**

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## EEA JOINT PARLIAMENTARY COMMITTEE

### REPORT ON THE FREE MOVEMENT OF WORKERS

#### I INTRODUCTION

1. The free movement of workers is, both in the Treaty of Rome and in the EEA Agreement, considered to be one of the fundamental rights of European citizens and a pillar of the internal market, alongside the free movement of goods, services and capital.
2. What makes the free movement of persons different from the other freedoms is that it should not be seen in a purely economic perspective but it should be seen as a possibility for improving the individual's living and working conditions, as well.
3. In order to facilitate the free movement of persons, provisions have been made in the area of social security, where, although each country maintains its own social security system, employees can aggregate insurance periods and receive social security benefits when moving within the EEA area. Another important factor for increased mobility are the provisions established in the area of mutual recognition of diplomas. This report will revert to these issues in more detail later.
4. The implementation of the *acquis communautaire* in the area of free movement of persons has not been without certain complications in some Member States and a High Level Panel, chaired by Madame Simone Veil, presented a report in March 1997 outlining the existing practical problems and obstacles encountered by European citizens. This report has served as a basis for a Commission Communication from November 1997 entitled an **Action Plan for the Free Movement of Workers**.
5. With the political impetus given by the agreements reached in Amsterdam in June 1997 and the importance placed on employment policies, the Action Plan outlines that during the course of 1998 a number of specific measures to streamline and eliminate existing problems and obstacles in this area will be presented by the Commission. Specific proposals for amendments to Regulation 1612/68 on the free movement of workers and other initiatives will also be taken to update and simplify Regulation 1408/71 on social security.

#### II FREE MOVEMENT OF WORKERS

##### Legal Base

6. The legal base establishing the right of free movement of workers can be found in the Treaty of Rome's Article 48, the wording of which has been reproduced in Article 28 of the EEA Agreement. The general principle of non-discrimination based on nationality, as provided for in Article 7 of the Treaty of Rome and Article 4 of the EEA Agreement is therefore extended to include not only the free movement of workers between the EU Member States and the EEA EFTA States but also between the three EEA EFTA States Iceland,

Liechtenstein and Norway. In practical terms this means that a worker from one country must be treated equally with workers in the host country and there is no need for work permits for nationals from any of the EEA States.

7. It should be noted, however, that the free movement of workers provided for in the EEA Agreement is not without certain restrictions. The limitations can only be justified on grounds of public policy, public security or public health and here the individual States are free, in principle, to determine what this constitutes. Several rulings of the European Court of Justice stress that these limitations, especially as regards public policy, should be interpreted restrictively and any unilateral action by a Member State would be subject to control by the EU institutions. The EFTA Surveillance Authority would control the appropriate practice among the EFTA States.

### **EEA Relevant Acquis**

8. In order to put into force the obligations set out in Article 48 of the Treaty of Rome it became necessary to implement a certain number of secondary legislation and the basic act in the area of free movement of workers is **Council Regulation (EEC) 1612/68**<sup>1</sup>. This Regulation is an integral part of the EEA Agreement. The original thought behind the free movement of workers was based on the theory that a balance of supply and demand of labour and that this could create improved economic conditions in the Member States.

9. It is estimated that around 5.5 million Europeans, or between 2 and 3 per cent of the population, today live in a Member State of the EU other than their home country and thereof some 2 million are working. The migration patterns have changed over time. In the 1950s and 60s the tendency was a migration of labour from the poorer countries in the south of Europe to the richer countries in the north. The mobility and demand of labour in the past was mainly concentrated around lower skilled jobs whereas the trend in the 1990s changed dramatically. With the increased standard of living in the European countries the mobility of labour today has shifted to a more skilled and educated work force and this trend is likely to continue also in the foreseeable future. The fact that a number of European countries now face a higher degree of unemployment has also had an impact on the migration trends.

10. An important development this year in the European Union is the start of accession talks with a number of Central and Eastern European countries. It should not be forgotten that the applicant states will not only become members of the European Union but they will in addition also be part of the internal market and the EEA. The possible consequences of enlargement related to the free movement of persons are not clear and the extent of migration from the candidate countries to the EEA area once they become members of the EU will depend on a number of variables. The timing of accession, the economic and social situation in the countries as well as the level of unemployment in the EEA area are all factors which will play an important role in this connection. Both the EU and EEA EFTA States will follow these developments with great interest and vigour.

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Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (OJ No L 257, 19.10.1968, p. 2), Annex V EEA, point 2.

11. Council Regulation 1612/68 has general application in all EU and EEA EFTA States, is binding in its entirety and directly applicable in the EEA Area. The Regulation does not only cover workers but also provides for the right of the member of the family of a non-national worker to settle with the worker irrespective of their nationality. The spouse and children under the age of 21 or dependants have the right to take up an activity as an employed in the host State, even if they are not nationals of any EEA State.

12. Another important piece of acquis is **Council Directive 68/360<sup>2</sup>** concerning the abolition of restrictions on movement and residence of workers and their families in the EU Member States, which is also applicable in the EEA EFTA States following the entry into force of the EEA Agreement on 1 January 1994. This Directive contains rules on the right to leave the territory of a Member State and the formalities which a Member State is allowed to impose in this regard. The Directive also requires Member States to issue residence permits. A resident permit should normally be issued on the production of a worker's passport and a job contract from the employer in the host state. The right of residence is not only applicable to workers and their families but it also gives job seekers the possibility to look for a job in a host State for a "reasonable period" which for the United Kingdom is considered to be six months and for most other countries considered to be three months.

### **Special situation of Liechtenstein**

13. Although the EEA EFTA States in general incorporate EC legislation in the area of free movement of workers without major adaptations or transitional periods, the special situation of Liechtenstein should be mentioned. When Liechtenstein joined the EEA Agreement on 1 May 1994, Protocol 15 of the Agreement was provided for to give Liechtenstein a transitional period for the free movement of persons. The Protocol granted Liechtenstein a transitional period in this area until 31 December 1997 and stated that at the end of the transitional period, the transitional measures be jointly reviewed by the Contracting Parties, duly taking into account the specific geographical situation of Liechtenstein.

14. A number of meetings were held in the course of 1997 between the Liechtenstein authorities and the Commission and the EFTA States were informed about the progress made in meetings of Subcommittee III. At the end of 1997 no overall solution had been found so Liechtenstein decided introducing a limited number of safeguard measures from 1 January 1998. Both sides hope for a solution in the early part of 1998.

### **EFTA Involvement**

15. The EFTA States increased co-operation with the EU side in the area of free movement of persons with the nomination of independent experts to participate in a Commission group reviewing the national implementation of EC acts in this area. A number of events were being planned in 1997 in connection with the 30<sup>th</sup> Anniversary of Regulation 1612 on free movement of persons in 1998. The EFTA States were invited to organise

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<sup>2</sup> Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families (OJ No L 257, 19.10.1968, p.13), Annex V EEA, point 3.

national seminars prior to the pan-European conference in June 1998 and both Iceland and Norway are to organise such seminars in the first half of 1998.

16. The EFTA side continued to follow with interest the activities related to the *Citizens First Initiative* which was launched in November 1996. A meeting between Commission officials and EFTA States took place in February 1997 in order to discuss how the material produced on the EU side could serve as a possible basis for information efforts in the EFTA States. The Commission was very forthcoming in its attitude and Norway launched its own information initiative in June 1997 called *Meeting Point Europe* with Guides in Norwegian concerning the EEA Agreement, and on studying and working in Europe. Additional Guides are being planned and translations into English are also being considered. Discussions are going on in Iceland with regard to possible similar effort there. The established references to the EFTA EEA States and the EFTA Secretariat in Brussels as a contact point can be found in all the Commission's Guides for this initiative.

17. The Citizens First Initiative proved in 1997 to be a real success and by late in the year more than 75 million Europeans knew of the campaign. In view of the discussions held at the Amsterdam Summit in June 1997 a permanent mechanism - a Dialogue with Citizens - was established and will concentrate on widening the subject coverage and on maximising the feedback from citizens.

### **Future Initiatives**

18. The work carried out by the High Level Panel presided by Mme Simone Veil was the basis for a Commission Communication from November 1997, referred to in the introduction. The Communication, entitled an Action Plan for the Free Movement of Workers, is an ambitious document outlining specific areas which need being looked into further.

19. The main recommendations of the High Level Panel concerning free movement of workers were the following:

- Information for and about people moving around the Union must be improved
- Access to employment in the Member States must be facilitated
- Employment in the public sector must be opened up
- Social rights needs modernising
- Family rights should be amended to reflect social change
- Training across the EU (vocational, language training) must be facilitated
- Greater equality of tax treatment should be achieved
- The situation of legally resident third country nationals must be improved.

20. The EFTA side has been pleased to note that the Commission plans to present concrete proposals to amend the earlier mentioned Council Directive 360/68 to clarify the administrative situation of job seekers, in accordance with the case law of the European Court of Justice on right of residence for job seekers. Proposals will also be made in order to provide for the accumulation of residence periods for short term contracts, avoiding repetitive renewal of residence documents.

21. Regulation 1612/68 should also be amended to include non-dependant children over 21 years of age together with ascendant relatives which are not dependant, as well as including unmarried partners of EU workers, provided that the legislation of the Member State concerned assimilates to the spouse the unmarried partner of a national worker.

22. Some initiatives will also be forthcoming later this year concerning Regulation 1612/68 clarifying that a migrant worker is entitled to equal treatment with national workers as regards any advantage of a social, economic, fiscal or cultural nature or any other, to ensure full integration in the host State. These various advantages should also be available to the migrant worker's family and should be incorporated into the legislation.

23. More than 500.000 Europeans work today in frontier regions and the so-called cross-border mobility is an important aspect of provisions related to the free movement of persons. Frontier workers face, however, a range of specific problems related to differences in national systems in terms of social security, taxation, health care protection, etc. The Commission will look into these matters and try to remedy the situation in order not to curtail the cross-border mobility.

### III SOCIAL SECURITY

#### Legal Base

24. The Treaty of Rome establishes in Article 51 a legal basis for the Council to adopt such measures in the field of social security as are necessary to provide freedom of movement of workers. This was done as early as in 1959 with Regulation Nos. 3 and 4. These Regulations were entirely revised and replaced on 1 October 1972 by **Regulation 1408/71**<sup>3</sup> on the application of social security schemes to employed persons, to self-employed persons and to member of their families moving within the Community, and **Regulation 574/72**<sup>4</sup> laying down the procedure for implementing Regulation 1408/71.

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<sup>3</sup> Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their family moving within the Community. The Regulation was last consolidated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ L 28, 30.01.1997).

<sup>4</sup> Regulation (EEC) No 574/71 of 21 March 1972 laying down the procedures for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their family moving within the Community. The Regulation was last consolidated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ L 28, 30.01.1997).

25. By virtue of the EEA Agreement the social security co-ordination rules also apply in the European Economic Area. Article 29 of the EEA Agreement reproduces the wording of the relevant parts of Article 51 of the Treaty of Rome, while Annex VI of the EEA Agreement contains references to the relevant Community secondary legislation in the field of social security, i.e. Regulations 1408/71 and 574/72.

### **EEA Relevant Acquis**

26. The objective of Community legislation in the field of social security is not to harmonise the legislation of the Member States or the EEA EFTA States, but to co-ordinate the different national social security schemes, so that differences between national provisions do not hinder the mobility of workers within the Community. In other words the Member States and the EEA EFTA States are free to decide who is to be insured under its legislation; which benefits are granted and under what conditions; how these benefits are calculated and how many contributions should be paid.

27. However, Community provisions in the field of social security establish common rules and principles which have to be observed by all national authorities, social security institutions, courts and tribunals when applying national laws. The co-ordination rules contained in Regulation 1408/71 are, moreover, built on four basic principles. Firstly, the applicable national legislation has to be determined, as one can only be subject to the legislation of one EU or EEA EFTA State. Secondly, the principle of equal treatment in all EU and EEA EFTA States of nationals from other EEA States must apply. Thirdly, the aggregation of insurance periods for the purpose of determination of entitlement to benefits must be provided for as well as, lastly, the exportation of benefits.

28. At present, the Community provisions on social security do not apply to all persons moving or staying within the European Union and the European Economic Area, and only the following persons are covered:

- Employed and self-employed persons who are nationals of a State belonging to the European Economic Area and are insured or have been insured under the legislation of one of these States;
- Pensioners who are nationals of these States, even if they had already become pensioners before their country joined the European Union or the European Economic Area;
- Members of the families and survivors of the above-mentioned persons, regardless of their nationality. Their protection, however, is limited to rights derived from the workers or pensioners concerned;
- Civil servants and the members of their families are protected only in so far as they are not insured with a special scheme for civil servants, but with a general scheme covering the whole (active) population.

29. Lastly, it should be mentioned that the Community provisions on social security apply to all national legislation in the Member States and the EEA EFTA States with regard to the following branches of social security:

- sickness and maternity
- accident at work
- occupational diseases
- invalidity benefits
- old age benefits
- survivors' benefits
- death grants
- unemployment benefits
- family benefits

30. As the co-ordination of national social security schemes is a dynamic process, it must at all time take into account the changes occurring in national legislation, as well as the case law of the Court of Justice and new development in European policy. This dynamic element is reflected in the fact that Regulations 1408/71 and 574/72 have been revised on average once a year<sup>5</sup>. To be in line with the dynamic development of Community legislation in the area of social security, Annex VI to the EEA Agreement has also been amended and updated on several occasions<sup>6</sup>.

### **EFTA Involvement**

31. The most important EC committee in the area of social security is the Administrative Commission on Social Security for Migrant Workers which was set up and functions in accordance with provisions contained in Regulation 1408/71<sup>7</sup>. The Administrative Commission has a whole range of tasks, but one of the most important is to discuss and prepare new Community legislation in the area of social security and, moreover, to deal with question of interpretation of existing regulations. The interpretation agreed by the Administrative Commission is given in the form of decisions and recommendations which in principle are non-binding but which in practice play a very important role for the application of the Community system for the co-ordination of the national social security schemes of the Member States and in particular Regulation 1408/71. The interpretation given by the Administrative Commission which is relevant for the EEA purposes is also referred to in Annex VI of the EEA Agreement.

32. The fact that representatives from the EEA EFTA States participate and take part in discussions in the meetings of the Administrative Commission<sup>8</sup> has lead to a close co-

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<sup>5</sup> Regulation (EEC) No 1408/71 was last amended by Council Regulation No 1290/97 (OJ L 176, 04.07.1997) and the 1997 miscellaneous amendments proposal was adopted by the Commission on 18 July 1997, C 290, 23.09.97.

<sup>6</sup> See Annex I.

<sup>7</sup> See Regulation (EEC) No 1408/71 Article 80 and 81.

<sup>8</sup> The Administrative Commission on Social Security for Migrant Workers is listed in Protocol 37 of the EEA Agreement.

operation and understanding between the EU and EEA EFTA side in the area of social security, and has also given the EEA EFTA State a unique opportunity to take part in the decision shaping process. The modalities for EEA EFTA participation in the Administrative Commission are set out at the end of Annex VI to the EEA Agreement.

33. It should also be mentioned that representatives from the EEA EFTA States in the area of social security participate in the Audit Board, the Technical Commission on data processing and have recently also been granted access to the meetings of Director -Generals for Social Security.

### **Future Initiatives**

34. In the **Action Plan for the Free Movement of Workers**, forthcoming key actions for the Community are also set out with regard to social security.

35. Firstly, the Commission announces that it intends to present, before the end of 1998, a proposal to reform an **simplify Regulation 1408/71**. This is considered necessary in order to make the Regulation more efficient, transparent and user friendly. In this exercise the Commission will draw on the outcome of national seminars currently being organised in the Member States. The seminars, which brings together the parties involved in social policy in each country (public authorities, competent institutions, social partners, representatives of NGO's, experts etc.), has as its aim to describe and analyse the problems encountered in the countries with regard to the implementation of Regulation 1408/71. The Commission has encouraged the arrangement of similar seminars in the EEA EFTA States, and both Norway and Iceland has announced that they intends to host seminars later this spring.

36. Secondly, the Commission intends to press for the adoption of pending proposals before the Council concerning the **modernising of Regulation 1408/71**<sup>9</sup> in particular, the proposal to extend the scope of Regulation 1408/71 to cover special schemes for civil servants which are currently excluded from it and to include students and other persons not yet covered<sup>10</sup>. After the judgement of the European Court of Justice (case C-443/93 Vougioukas) concerning special schemes for civil servants, the Commission is making new efforts in order to ensure the full implementation of Community law.

37. Thirdly, a proposal to **extend Regulation 1408/71 to third country nationals**<sup>11</sup> is part of the Commission's long-standing policy to improve the legal situation of third country nationals residing in the Community. The Commission finds it no longer justifiable that a worker who is covered by national social security arrangements should be completely excluded from the protection offered by the Community co-ordination systems simply because he or she is not an EU national. The proposal which was presented in parallel with the

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<sup>9</sup> See COM (95) 735- proposal for extension of Regulation (EEC) No 1408/71 to cover pre-retirement benefits (OJ C 62, 01.03.1996) and COM (95) 734 - proposal to amend Regulation (EEC) No 1408/71 to extend the exportability of unemployment benefits (OJ C 68, 06.03.1996).

<sup>10</sup> See COM (91) 528 (OJ C 46, 20.02.1992).

<sup>11</sup> See COM (97) 561 final (OJ C 6, 10.01.1998).

presentation of the action plan for free movement of workers in 1997 should also been seen within the framework of the European Year against Racism as well as a follow up to the report of the High Level Panel on Free Movement. The proposal does not imply granting of a right to free movement of third country nationals, but will, however, considerably strengthen the social protection of third country nationals when they obtain the right to work and reside in another Member State within the European Union. It will also achieve an important legal and administrative simplification, because the social security co-ordination between Member states for third country nationals is currently regulated by numerous bilateral and multilateral agreements.

38. Lastly, in the area of social security, the **proposal for a Council Directive on safeguarding the supplementary pensions rights of employed and self-employed people moving with the European Union**<sup>12</sup> should be highlighted. The proposal is aimed at removing certain obstacles to cross-boarder mobility of workers encountered in the field of supplementary pensions, as there is no co-ordination mechanism for supplementary pensions, as there is for statutory pensions through Regulation 1408/71. The proposal, which is based on the recommendations contained in the Report of the High Level Panel on Free Movement, concerns: preservation of acquired rights; facilitating cross boarder payments and possibility of affiliation to the pensions schemes of the State of origin for posted workers while serving short term employment in another Member State. Furthermore, the Commission's Green Paper on supplementary pensions<sup>13</sup> considers the remaining obstacles to free movement related to the diversity of supplementary pensions schemes. The EEA EFTA States have within the framework of the EFTA Working Group on Social Security and the EFTA Working Group of Financial Services submitted their comments both as regards the proposal for a directive on supplementary pensions<sup>14</sup> and the Green Paper on Supplementary Pensions.<sup>15</sup>

## IV MUTUAL RECOGNITION OF DIPLOMAS

### Legal Base

39. In order to facilitate the taking up and pursuit of professional activities throughout the European Economic Area, the EEA Agreement sets out, inter alia, conditions concerning the mutual recognition of diplomas.

40. Mutual recognition of diplomas, certificates and other evidence of formal qualifications is set out in Article 30 and Annex VII of the EEA Agreement which reproduces the relevant elements of the wording of Article 57 (1) and (2) of the Rome Treaty. The provisions aim to facilitate the free movement, the freedom of establishment and the freedom to provide services for persons who are engaged in the professions and activities concerned.

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<sup>12</sup> See COM (97) 486 final (OJ C 5, 09.01.1998).

<sup>13</sup> See Supplementary Pensions in the Single Market: A Green Paper (COM(97)283, 10.06.1997).

<sup>14</sup> See 3/SS/W/005, 11 July 1997.

<sup>15</sup> See 2/FS/W/002, 3 February 1998.

### **EEA Relevant Acquis**

41. Prior to negotiation of the EEA Agreement, the “acquis communautaire” in the field of mutual recognition had developed in three stages. From 1964, the so-called **Transitional Measures and Liberalisation Directives** covering activities in the fields of commerce and intermediaries were gradually adopted. Approximately eleven years later, the Community began adopting the so-called **Sectoral Directives** which lay down minimum requirements for the EU Member States in seven specific professions, and in 1989, the **First General System** of recognition of diplomas was introduced, which was complemented by a **Second General System** three years later. The aforementioned elements, which constitute the EEA framework in the area of mutual recognition, are set out in more detail below.

42. The so-called **Transitional Measures and Liberalisation Directives** cover professions in the fields of commerce and intermediaries including whole sale trade and a number of other professions such as film industry, manufacturing and processing industries. The directives give self-employed persons, who have gained a certain number of years of professional experience in the relevant areas, the right to pursue their activity in any other EEA Member State.

43. In 1975, the Community started adopting the so-called **Sectoral Directives** which apply to nurses responsible for general care, midwives, dentists, veterinary surgeons, architects, pharmacists and medical doctors. By introducing these directives, the Community set minimum requirements for the training in each of the aforementioned professions, including conditions of access to, and duration, and content of these professions. Consequently, the EEA States are, in principle, obliged to recognise the national qualifications a foreign applicant has acquired in accordance with these minimum rules.

44. Given that harmonisation of professional qualifications was a slow and limited process, the adoption of a **First General System**<sup>16</sup> of the mutual recognition of professional qualifications was seen as a necessity in 1988. With the adoption of Council Directive 89/48/EEC, a first instrument, which set up a general system for the mutual recognition of professional qualifications obtained after three or more years of higher education, was established.

45. Unlike the Sectoral Directives, the system is not based on harmonisation, but each EEA State instead has the right to decide whether an activity is to be regulated in which case it is up to the Member State concerned to determine the required training. With the introduction of the general system based on mutual trust, a basic principle was agreed whereby the qualification to exercise a profession in the home country, suffices to exercise the same profession in any other EEA State. In contrast to the Sectoral Directives, the authorities of the EEA States may request additional requirements of applicants if they consider the education and training to be substantially different from that of the home country. The General System applies to all regulated professions which have not been subject to a Sectoral Directive prior to its adoption. In 1992, the First General System was complemented with a Directive on a

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<sup>16</sup> Council Directive 89/48/EEC, OJ L 19, 24.1.1989, p.16.

**Second General System**<sup>17</sup> which applies to Community nationals who have obtained higher education diplomas of less than three years, to holders of secondary education course certificates and to persons without such education and training but who possess attestation of competence.

### **EFTA Involvement**

46. The EFTA side participates in the meetings of the Co-ordinators Group set up by Council Directive 89/48/EEC on the **First General System**. EEA Member States have designated co-ordinators who are responsible for co-ordinating activities of the national authorities and for promoting the uniform application of the Directive to all the professions concerned. The task of the Co-ordinators Group is to facilitate the implementation of the Directive and to collect all useful information for its application in the Member States.

47. The Co-ordinators Group set up under the aforementioned directive is also responsible for fulfilling the same obligations under the Council Directive 92/51/EEC on the **Second General System**. The Second General System, furthermore, sets up a Committee (Article 15) which is responsible for amending Annexes C and D concerning lists on education and training courses. This committee is a so-called comitology committee (Type II-management) in which the EFTA EEA side participates according to Article 100 of the EEA Agreement. With regard to the so-called **Sectoral Directives**, the EFTA side participates informally in the Advisory Committees and their subgroups set up by relevant Council Decisions.

### **Current developments**

48. The most recent decisions by the EEA Joint Committee in the area of mutual recognition of diplomas were adopted in April 1997 and in January 1998<sup>18</sup>. The former incorporates Commission Directive 95/43<sup>19</sup> amending Annexes C and D of the Second General System, while the latter incorporates Commission Directive 97/38/EC<sup>20</sup> which further amends Annex C of the Second General System.

49. At the end of 1997, Directive 97/50/EC amending *Directive 93/16/EEC to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications*<sup>21</sup> was adopted on the EU side in order to introduce procedures which concern lists of medical specialisations and lists related to the minimum length of training courses for the specialisations. The EFTA side is currently considering the incorporation of the Directive into the EEA Agreement.

50. In December 1997, a **directive to facilitate the practice of the profession of lawyer on a permanent basis in a Member State other than in which the qualification was**

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<sup>17</sup> Council Directive 92/51/EEC, OJ No L 209, 24.7.1992, p.25.

<sup>18</sup> See Annex II.

<sup>19</sup> Commission Directive 95/43/EC, OJ No L 184, 03.08.1995, p.21.

<sup>20</sup> Commission Directive 97/38/EC, OJ No L 184, 12.07.1997, p.31.

<sup>21</sup> Council/EP Directive 97/50/EC, OJ L 291, 24.10.1997, p.35.

**obtained**<sup>22</sup> was adopted by the EU. The directive sets out the permanent nature of establishment under the home professional title, simplified arrangements for acquiring the professional title of the host Member State and rules on joint practice. The EEA EFTA States submitted comments on the proposal to the Commission in November 1996. The EFTA side raised questions concerning the right of establishment and the right of the host Member State to check whether conditions have been fulfilled. Article 10 of the adopted Directive, takes account of the concerns of the EFTA side by giving the host Member State the right to check that the conditions are met and, in the absence of proof, the power to refuse the exemption from the aptitude test. Preparations for incorporation of the Directive into the EEA Agreement are underway.

### **Future Initiatives**

51. As mentioned in relation to the *Transitional Measures and Liberalisation Directives*, a proposal is currently in the pipeline for a **Third General System**<sup>23</sup> which would establish a mechanism for the recognition of qualifications in respect of the professional activities covered by the Directives on liberalisation and transitional measures and supplementing the general systems for the recognition of qualifications. The proposal aims to introduce a recognition machinery for professional activities not covered by Directives 89/48/EEC and 92/51/EEC and proposes to amend Directives 89/48/EEC and 92/51/EEC in order to include nurses responsible for general care. The EFTA EEA side is following developments as a common position on the proposal is expected to be adopted on the EU side in 1998.

52. In response to the SLIM Initiative, which aims at simplifying single market legislation, and in line with the Action Plan for the Single Market, the aim of the Commission was to present a proposal which would propose a re-organisation of the Advisory Committees under the Sectoral Directives and set out a manner in which to simplify the updating of the lists of qualifications eligible for automatic recognition. Consequently, the Commission adopted in December 1997 a proposal for an EP/Council Directive amending the General Systems and the Sectoral Directives<sup>24</sup> simplifying the updating of the lists of qualifications. The proposal has been sent to the EP for its first reading under the co-operation procedure. An opinion of the EP is expected in summer 1998. The proposal to re-organise the Advisory Committees is only covered in the explanatory memorandum of the proposal as the Commission intends to replace six Council Decisions for the six existing Committees on training in certain health care professions by a single Commission Decision. A new proposal, which is expected in summer 1998, would focus on streamlining the operation of the committees by scaling down the number of representatives, extending their term, and redefining the nature of the expert advice that the Commission can seek from the Committees.

53. While considerable progress has been made in the past years with regard to mutual recognition of diplomas, it must be admitted that people often encounter difficulties and bureaucratic delay when attempting to get their qualifications recognized, in order to move freely and work in another EEA state. The time and effort needed to obtain recognition can act as a hindrance to free movement, when a great deal of persistence is needed to achieve results.

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<sup>22</sup> Council/EP Directive 98/5/EC. OJ No L 77, 14.03.1998, p.36.

<sup>23</sup> COM (97) 363, 15.07.1997.

<sup>24</sup> COM (97) 638 final, 02.12.1997.

While the rapporteurs recognize the importance of the future initiatives outlined above, we would like to see further steps considered, so that we might reach a stage of true free movement of workers. One of the co-rapporteurs is of the opinion that a possibility that should be looked into by the member states and the Commission is the concept of a “green card” for professionals, which would be valid in all EEA states. According to this concept, basic criteria would be set for education in a certain field. Any educational institution fulfilling this criteria could then issue graduates with such “green cards”, which would enable them to work in any of the EEA member states, without having to go through any further steps to gain recognition in other member states.

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**EEA Joint Committee decisions adopted in the area of social security since the entering into force of the EEA Agreement:**

- \* Decision No 7/94 of 21 March 1994 (OJ No L 160, 28.6.94)  
- amending Protocol 47 and certain Annexes to the EEA Agreement)
- \* Decision No 24/94 of 2 December 1994 (OJ No L 339, 29.12.1994, p. 83)  
- incorporating into the EEA Agreement Decision Nos. 153 and 154 of the Adm. Com.
- \* Decision No 49/95 of 22 June 1995 (OJ No L 30, 8.2.96, p. 53)  
- incorporating into the EEA Agreement Decision No 151 of the Adm. Com.
- \* Decision No 1/96 of 26 January 1996 (OJ No L 90, 11.4.96, p.38)  
- incorporating into the EEA Agreement Decision No 156 of the Adm. Com.
- \* Decision No 11/96 of 12 March 1996 (OJ No L 124, 23.5.96, p. 21)  
- incorporating into the EEA Agreement Decision No 155 of the Adm. Com.
- \* Decision No 24/96 of 26 April 1996 (OJ No L 186, 25.7.96, p.76)  
- incorporating into the EEA Agreement Decision No 159 of the Adm. Com.
- \* Decision No 61/96 of 22 November 1996 (OJ No L 71, 13.3.97, p. 29)  
- incorporating into the EEA Agreement Decision No 160 of the Adm. Com.
- \* Decision No 62/96 of 22 November 1996 (OJ No L 71, 13.3.97, p.30)  
- incorporating into the EEA Agreement Decision No 161 of the Adm. Com.
- \* Decision No 63/96 of 22 November 1996 (OJ No L 71, 13.3.97, p.31)  
- incorporating into the EEA Agreement Council Regulation Nos. 3095/95 and 3096/95
- \* Decision No 64/96 of 22 November 1996 (OJ No L 71, 13.3.97, p.34)  
- miscellaneous amendments to Annex VI
- \* Decision No 77/96 of 13 December 1996 (OJ No L 100, 17.4.97, p. 66)  
- incorporating into the EEA Agreement Decision No 162 of the Adm. Com.
- \* Decision No 78/96 of 13 December 1996 (OJ No L 100, 17.4.97, p. 67)  
- incorporating into the EEA Agreement Decision No 163 of the Adm. Com.
- \* Decision No 2/97 of 10 February 1997 (OJ No L 85, 27.3.1997, p.67)  
- incorporating into the EEA Agreement Recommendation No 20 of the Adm. Com.
- \* Decision No 82/97 of 12 November 1997 (Not yet published)  
- replacement of text of Annex VI with new updated text
- \* Decision No 96/97 of 28 November 1997 (Not yet published)

- incorporating into the EEA Agreement Recommendation No 21 of the Adm. Com.

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**EEA Joint Committee decisions adopted in the area of mutual recognition of diplomas since the entering into force of the EEA Agreement:**

EEA Joint Committee decisions adopted in the area of mutual recognition of diplomas since the entering into force of the EEA Agreement:

Decision of the EEA Joint Committee Decision No 5/94 of 8 February 1994 amending Protocol 37 and Annex VII to the EEA Agreement OJ No L 85, 30.3.1994, p. 71

Decision of the EEA Joint Committee No 25/94 of 2 December 1994 amending Annex VII (Mutual Recognition of Professional Qualifications) to the EEA Agreement + EC Act: 394 L 0038 OJ No L 339, 29.12.1994, p. 84

Decision of the EEA Joint Committee No 22/97 of 25 April 1997 amending Annex VII (Mutual Recognition of Professional Qualifications) to the EEA Agreement (contains three EC act: 395L0043) OJ No L 242, 4.9.97, p. 69

Decision of the EEA Joint Committee No 6/98 of 8 December 1997 amending Annex VII (Mutual Recognition of Professional Qualifications) to the EEA Agreement (has not been published in the Official Journal)

**RESOLUTION****on the free movement of workers in the EEA**

The EEA Joint Parliamentary Committee of the European Economic Area:

- A. noting that free movement of workers is a fundamental right of European citizens and a pillar of the internal market and yet, of all the fundamental freedoms, it has come least close to achievement,
- B. recalling the resolution on the 4 freedoms adopted at the second meeting of the EEA JPC and the recommendations contained therein on the free movement of persons,
- C. noting the Veil report of March 1997 and the recommendations contained therein and the consequent Commission communication on an Action Plan for the free movement of workers (November 1997),
- D. whereas there is a lack of knowledge and information on the rights and opportunities associated with free movement,
- E. noting the special situation of Liechtenstein with regard to free movement of persons, due to its specific geographical situation,
- F. noting that 1998 marks the 30<sup>th</sup> anniversary of Regulation 1612/68 on the free movement of persons,
  - 1. Welcomes the upcoming pan-European conference on the free movement of persons, as well as the EFTA EEA involvement in said conference;
  - 2. Calls on the Commission, in the aftermath of the pan-European Conference, to come up with concrete proposals to remedy any existing impediments to the free movement of persons;
  - 3. Calls on the Commission and Liechtenstein to find a solution to the issue of free movement of persons, which takes into account the special situation of Liechtenstein;
  - 4. Underlines the need to move swiftly forward with initiatives and legislation to realize the recommendations of the Action Plan, especially as regards the modernization of social rights, greater equality of tax treatment, family rights and facilitation of access to employment;
  - 5. Welcomes the Commission's intention to modernize Regulation 1408/71, and the intention of EFTA EEA states to hold national seminars in Spring 1998 on the implementation of said regulation, and calls for the conclusions of these seminars, as well as seminars of EU member states, to be taken into account by the Commission when finalizing its proposals;

6. Emphasizes the importance of safeguarding supplementary pension rights to facilitate free movement of workers, but feels that the Commission should submit further legislative proposals regulating the right to a European transfer of credits for employees changing employer or EEA member state, and laying down conditions under which it is possible to continue pension provisions with the original pension provider;
7. Calls on the Commission to promote the establishment of new EURES cross border-crossing partnerships, and closer cooperation among the national labour market authorities, and therefore increase the budget regarding the full integration of Norway and Iceland in the EURES network;
8. Welcomes the Commission plans to present concrete proposals to amend Council Directive 360/68 (concerning the right of residence) and calls on the Commission to present these proposals before the end of 1998;
9. Calls for the speedy incorporation of Directives 97/50/EC (facilitating free movement of doctors and mutual recognition of diplomas) and 98/5/EC (facilitating the practice of the profession of lawyer on a permanent basis in a Member State other than in which the qualification was obtained) into the EEA Agreement;
10. Notes the proposal for an EP/Council Directive amending the General Systems and Sectoral Directives and stresses the importance of maintaining an EFTA presence in the Advisory Committees pertaining to Sectoral Directives;
11. Stresses that there is still much work to be done in the area of social rights and pensions, taking into account the very different pension systems between countries, and calls for a study on the feasibility of setting rules for a minimum standard of social protection in all EEA member states, calls at the same time on EEA member states to remove from national legislation on supplementary pension provisions any stipulations leading to obstacles to the mobility of workers and flexible forms of work, such as waiting periods and other conditions of access;
12. Stresses the importance of EEA coordination of legislation regarding social security for third country nationals and urges the EEA countries to take note of the way Nordic countries organize coordination in the field of social security;
13. Calls on the Commission to provide a clear breakdown for migrating workers in EEA member states of existing legal and fiscal consequences of emigration and its implications for social benefits and supplementary pension entitlements in the different EEA member states;
14. Calls for the EEA member states and the Commission to consider the feasibility of setting up a system of "green cards", which would allow educational institutions throughout the EEA, which fulfil minimum criteria for given professional qualifications, to issue such cards to graduates, who would then be allowed to work anywhere in the EEA without further recognition procedure.