

ANNEX VIII

RIGHT OF ESTABLISHMENT

List provided for in Article 31

INTRODUCTION

When the acts referred to in this Annex contain notions or refer to procedures which are specific to the Community legal order, such as:

- preambles;
- the addressees of the Community acts;
- references to territories or languages of the EC;
- references to rights and obligations of EC Member States, their public entities, undertakings or individuals in relation to each other; and
- references to information and notification procedures;

Protocol 1 on horizontal adaptations shall apply, unless otherwise provided for in this Annex.

SECTORAL ADAPTATIONS

For the purposes of this Annex and notwithstanding the provisions of Protocol 1, the term "Member State(s)" contained in the acts referred to shall be understood to include, in addition to its meaning in the relevant EC acts, Iceland, Liechtenstein, Norway []^{1} []^{2}.

The following shall apply to Liechtenstein. Duly taking into account the specific geographic situation of Liechtenstein, this arrangement shall be reviewed every five years, for the first time before May 2009.^{3}

I

Nationals of Iceland, Norway and the EU Member States may take up residence in Liechtenstein only after having received a permit from the Liechtenstein authorities. They have the right to obtain this permit, subject only to the restrictions specified below. No such residence permit shall be necessary for a period less than three months per year, provided no employment or other permanent economic activity is taken up, nor for persons providing cross-border services in Liechtenstein.

The conditions concerning nationals of Iceland, Norway and the EU Member States cannot be more restrictive than those which apply to third country nationals.

II

^{1} Words "and Switzerland" deleted by the Adjusting Protocol.

^{2} Words 'Austria, Finland' and 'Sweden' deleted by Decision 43/2005 (OJ No L 198, 28.7.2005, p. 45 and EEA Supplement No 38, 28.7.2005, p. 26), e.i.f. 12.3.2005.

^{3} Text added by Decision No 191/1999 (OJ No L 74, 15.3.2001, p. 29 and EEA Supplement No 14, 15.3.2001, p. 130 (Norwegian) and p. 217 (Icelandic)), e.i.f. 1.6.2000, and subsequently replaced by the 2004 EEA Enlargement Agreement (OJ No L 130, 29.4.2004, p. 3 and EEA Supplement No 23, 29.4.2004, p. 1), e.i.f. 1.5.2004.

1. The number of residence permits available annually for nationals of Iceland, Norway or an EU Member State exercising an economic activity in Liechtenstein shall be determined in such a way that the yearly net increase from the previous year in the number of economically active nationals of those countries resident in Liechtenstein is not less than 1,75 % of their number on 1 January 1998. Residence permits to persons naturalised in the course of a year shall be deducted from the basis on which the increase for the next year is calculated. Residence permits granted in excess of the minimum number shall not be counted against the increase due the following year.
2. The Liechtenstein authorities shall grant residence permits in a way that is not discriminatory and does not distort competition. Half of the net increase in the permits available shall be granted in accordance with a procedure that gives an equal chance to all applicants.
3. Residents who have a short-term permit and who exercise an economic activity shall be included in the quota. Such persons may remain in Liechtenstein under the conditions defined in the Agreement after the expiry of the permit, within the quota under which they entered the country. The permit under the quota shall be re-attributed when the person to whom it was attributed changes his residence to another country. The number of short-term permits available for the purposes of exercising an economic activity shall not deviate by more than 10 % from what it was in 1997.

III

Family members of nationals of Iceland, Norway and EU Member States residing lawfully in Liechtenstein shall have the right to obtain a permit of the same validity as that of the person on whom they depend. They shall have the right to take up an economic activity, in which case they will be included in the number of permits granted to economically active persons. However, the conditions in point II may not be invoked to refuse them a permit in the event that the annual number of permits available to economically active persons is filled.

Persons giving up their economic activity may remain in Liechtenstein under conditions defined in Commission Regulation (EEC) No 1251/70 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 and in Council Directive 75/34/EEC of 17 December 1974 concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity: they will no longer be counted in the number of permits available to economically active persons nor will they be included in the quota defined in point IV.

IV

A supplementary annual quota of 0,5% of the basis referred to in point II shall be available for persons who wish to take up residence on the basis of rights defined in Council Directive 90/364/EEC of 28 June 1990 on the right of residence, 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 and Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students.

Point II shall apply *mutatis mutandis*.

V

1. Liechtenstein may maintain in force for 5 years national provisions obliging seasonal workers and members of their family to leave the territory of Liechtenstein for at least three months at the expiry of their seasonal permit. Such persons may not be subject to any further restrictions. The seasonal permits shall be automatically renewed for seasonal workers holding a work contract on their return to Liechtenstein. The number of permits available to seasonal workers having the nationality of Iceland, Norway or an EU Member State shall not be less than the number of permits granted in 1997 less the number of permits for persons benefiting from the liberalisation in accordance with the following paragraph.
2. The number of persons exempted from the obligation to leave the territory of Liechtenstein annually shall be determined as the number of outstanding permits divided by the number of years remaining until the end of the transitional period for seasonal workers. The order of persons to

benefit from the liberalisation shall be determined by the number of consecutive renewals of seasonal permits and by the date of issue of the first such permit within this sequence.

3. Persons who have benefited from the liberalisation in accordance with the preceding paragraph shall not occupy a place under the quotas in accordance with points II and IV. Such persons will however be counted in the case of family members taking up economic activity in accordance with point III.

VI

Applicants for a residence permit shall receive a written reply by the end of the third month from the date of application. Rejected applicants shall have the right to a reasoned refusal in writing. They shall have the same legal remedies as Liechtenstein citizens as regards administrative decisions.

VII

A person employed in but whose residence is not in Liechtenstein (a frontier worker) shall return daily to his country of residence.

VIII

Liechtenstein shall provide the other Contracting Parties and to the EFTA Surveillance Authority all such information as may be necessary to control compliance with this Annex.

TRANSITION PERIOD^{4}

The transitional arrangements set out in the Annexes to the Act of Accession of 16 April 2003 for the Czech Republic (Annex V, Chapter 1), Estonia (Annex VI, Chapter 1), Latvia (Annex VIII, Chapter 1), Lithuania (Annex IX, Chapter 2), Hungary (Annex X, Chapter 1), Malta (Annex XI, Chapter 2), Poland (Annex XII, Chapter 2), Slovenia (Annex XIII, Chapter 2) and the Slovak Republic (Annex XIV, Chapter 1) shall apply.

^{5}The transitional arrangements set out in the Annexes to the Act of Accession of 25 April 2005 or, as the case may be, to the Protocol of Accession of 25 April 2005 for Bulgaria (Annex VI, Chapter 1) and Romania (Annex VII, Chapter 1), shall apply.

^{6}With regard to the safeguard mechanisms contained in the transitional arrangements referred to in the previous paragraphs, with the exception of the arrangements for Malta, PROTOCOL 44 ON SAFEGUARD MECHANISMS PURSUANT TO ENLARGEMENTS OF THE EUROPEAN ECONOMIC AREA shall apply.

ACTS REFERRED TO

1. **361 X 1201 P 0032/62:** General Programme for the abolition of restrictions on freedom to provide services (French version: OJ No 2, 15.1.1962, p. 32). English version: English Special Edition (2nd Series) IX, p. 3).

The provisions of the General Programme shall, for the purposes of the Agreement, be read with the following adaptations:

- (a) in Title III, first paragraph, first indent, the reference to Article 55 of the EEC Treaty shall be replaced by reference to Article 32 of this Agreement;

^{4} Heading and text added by the 2004 EEA Enlargement Agreement (OJ No L 130, 29.4.2004, p. 3 and EEA Supplement No 23, 29.4.2004, p. 1), e.i.f. 1.5.2004.

^{5} Text replaced by the 2007 EEA Enlargement Agreement (OJ No L 221, 25.8.2007 and EEA Supplement No 39, 26.7.2008), provisionally applicable as of 1.8.2007, e.i.f. 9.11.2011.

^{6} Text added by the 2007 EEA Enlargement Agreement (OJ No L 221, 25.8.2007 and EEA Supplement No 39, 26.7.2008), provisionally applicable as of 1.8.2007, e.i.f. 9.11.2011.

- (b) in Title III, first paragraph, second indent, the reference to Article 56 of the EEC Treaty shall be replaced by reference to Article 33 of this Agreement;
- (c) in Title III, first paragraph, third indent, the reference to Article 61 of the EEC Treaty shall be replaced by reference to Article 38 of this Agreement;
- (d) in Title VI, first paragraph, the reference to Article 57(3) of the EEC Treaty shall be replaced by reference to Article 30 of this Agreement.

2. **361 X 1202 P 0036/62:** General Programme for the abolition of restrictions on freedom of establishment (French version: OJ No 2, 15.1.1962, p. 36; English version: English Special Edition (2nd Series) IX, p. 7).

The provisions of the General Programme shall, for the purposes of the Agreement, be read with the following adaptations:

- (a) in the first paragraph of Title I, the first phrase until "attained independence after the entry into force of the Treaty" shall not apply;
- (b) the following paragraph shall be added to Title I:

"The references to overseas countries and territories shall be read in the light of the provisions of Article 126 of the EEA Agreement.";
- (c) in Title V, first paragraph, the reference to Article 57(3) of the EEC Treaty shall be replaced by reference to Article 30 of the EEA Agreement;
- (d) in Title VII, the reference to Articles 92 *et seq.* of the EEC Treaty shall be replaced by reference to Articles 61 *et seq.* of the EEA Agreement.

- 3.^{7} **32004 L 0038:** Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77), as corrected by OJ L 229, 29.6.2004, p. 35, OJ L 30, 3.2.2005, p. 27 and OJ L 197, 28.7.2005, p. 34.

The provisions of the Directive shall, for the purposes of the Agreement, be read with the following adaptations:

- (a) The Directive shall apply, as appropriate, to the fields covered by this Annex.
- (b) The Agreement applies to nationals of the Contracting Parties. However, members of their family within the meaning of the Directive possessing third country nationality shall derive certain rights according to the Directive.
- (c) The words 'Union citizen(s)' shall be replaced by the words 'national(s) of EC Member States and EFTA States'.
- (d) In Article 24(1) the word 'Treaty' shall read 'Agreement' and the words 'secondary law' shall read 'secondary law incorporated in the Agreement'.

^{7} Text of point 3 (Council Directive 73/148/EEC) replaced by Decision No 158/2007 (OJ No L 124, 8.5.2008, p. 20 and EEA Supplement No 26, 8.5.2008, p. 17), e.i.f. 1.3.2009.

- 4.{⁸} []
- 5.{⁹} []
- 6.{¹⁰} []
- 7.{¹¹} []
- 8.{¹²} []

9. Notwithstanding Articles 31 to 35 of the Agreement and the provisions of this Annex, Iceland may continue to apply restrictions existing on the date of signature of the Agreement on establishment of non-nationals and nationals who do not have legal domicile in Iceland in the sectors of fisheries and fish processing.
10. Notwithstanding Articles 31 to 35 of the Agreement and the provisions of this Annex, Norway may continue to apply restrictions existing on the date of signature of the Agreement on establishment of non-nationals in fishing operations or companies owning or operating fishing vessels.

⁸ Text of Point 4 (Council Directive 75/34/EEC) deleted by Decision No 158/2007 (OJ No L 124, 8.5.2008, p. 20 and EEA Supplement No 26, 8.5.2008, p. 17), e.i.f. 1.3.2009.

⁹ Text of Point 5 (Council Directive 75/35/EEC) deleted by Decision No 158/2007 (OJ No L 124, 8.5.2008, p. 20 and EEA Supplement No 26, 8.5.2008, p. 17), e.i.f. 1.3.2009.

¹⁰ Text of Point 6 (Council Directive 90/364/EEC) deleted by Decision No 158/2007 (OJ No L 124, 8.5.2008, p. 20 and EEA Supplement No 26, 8.5.2008, p. 17), e.i.f. 1.3.2009.

¹¹ Text of Point 7 (Council Directive 90/365/EEC) deleted by Decision No 158/2007 (OJ No L 124, 8.5.2008, p. 20 and EEA Supplement No 26, 8.5.2008, p. 17), e.i.f. 1.3.2009.

¹² This point, introduced by Decision No 7/94, replaces former point 8, and point 8 (Council Directive 93/96/EEC) subsequently deleted by Decision No 158/2007 (OJ No L 124, 8.5.2008, p. 20 and EEA Supplement No 26, 8.5.2008, p. 17), e.i.f. 1.3.2009.