

ANNEX K

Free movement of persons (Chapter VIII)

I. BASIC PROVISIONS

ARTICLE 1

Objectives

The objectives of this Annex, for the benefit of nationals of the Member States, are:

- (a) to accord a right of entry, residence, access to work as employed persons, establishment on a self-employed basis and the right to stay in the territory of the Member States;
- (b) to facilitate the provision of services in the territory of the Member States, and in particular to liberalise the provision of services of brief duration;
- (c) to accord a right of entry into, and residence in, the territory of the Member States to persons without an economic activity in the host State;
- (d) to accord the same living, employment and working conditions as those accorded to nationals of the host State.

ARTICLE 2

Non-discrimination

Nationals of one Member State who are lawfully resident in the territory of another Member State shall not, in application of and in accordance with the provisions of Appendices 1, 2 and 3 to this Annex, be the subject of any discrimination on grounds of nationality.

ARTICLE 3

Right of entry

The right of entry of nationals of one Member State into the territory of another Member State shall be guaranteed in accordance with the provisions laid down in Appendix 1.

ARTICLE 4

Right of residence and access to an economic activity

The right of residence and access to an economic activity shall be guaranteed unless otherwise provided in Article 10 and in accordance with the provisions of Appendix 1.

ARTICLE 5

Persons providing services

1. Without prejudice to other specific agreements between the Member States specifically concerning the provision of services (including the Government Procurement Agreement in so far as it covers the provision of services), persons providing services, including companies in accordance with the provisions of Appendix 1, shall have the right to provide a service in the territory of another Member State for a period not exceeding 90 days' of actual work in a calendar year.
2. Providers of services shall have the right of entry into, and residence in, the territory of the other Member State:
 - (a) where they have the right to provide a service under paragraph 1 or by virtue of the provisions of an agreement mentioned in paragraph 1; or
 - (b) if the conditions specified in (a) are not fulfilled, where they have received authorisation to provide a service from the competent authorities of the Member State concerned.
3. Nationals of a Member State entering the territory of another Member State solely to receive services shall have the right of entry and residence.
4. The rights referred to in this Article shall be guaranteed in accordance with the provisions laid down in Appendices 1, 2 and 3. The quantitative limits of Article 10 may not be relied upon as against persons referred to in this Article.

ARTICLE 6

Right of residence for persons not pursuing an economic activity

The right of residence in the territory of a Member State shall be guaranteed to persons not pursuing an economic activity in accordance with the provisions of Appendix 1 relating to non-active people.

ARTICLE 7

Other rights

The Member States shall make provision, in accordance with Appendix 1, for the following rights in relation to the free movement of persons:

- (a) the right to equal treatment with nationals in respect of access to, and the pursuit of, an economic activity, and living, employment and working conditions;
- (b) the right to occupational and geographical mobility which enables nationals of the other Member States to move freely within the territory of the host State and to pursue the occupation of their choice;
- (c) the right to stay in the territory of a Member State after the end of an economic activity;
- (d) the right of residence for members of the family, irrespective of their nationality;
- (e) the right of family members to pursue an economic activity, irrespective of their nationality;
- (f) the right to acquire immovable property in so far as this is linked to the exercise of rights conferred by this Annex;
- (g) during the transitional period, the right, after the end of an economic activity or period of residence in the territory of a Member State, to return there for the purposes of pursuing an economic activity and the right to have a temporary residence permit converted into a permanent one.

ARTICLE 8

Coordination of social security systems

The Member States shall make provision, in accordance with Appendix 2, for the coordination of social security systems with the aim in particular of:

- (a) securing equality of treatment;
- (b) determining the legislation applicable;
- (c) aggregating, for the purpose of acquiring and retaining the right to benefits, and of calculating such benefits, all periods taken into consideration by the national legislation of the States concerned;
- (d) paying benefits to persons residing in the territory of the Member States;

- (e) fostering mutual administrative assistance and co-operation between authorities and institutions.

ARTICLE 9

Mutual recognition of professional qualifications (diplomas, certificates and other evidence of formal qualifications)

In order to make it easier for nationals of the Member States to gain access to and pursue activities as employed and self-employed persons and to provide services, the Member States shall take the necessary measures, in accordance with Appendix 3, concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications, and with the coordination of the laws, regulations and administrative provisions of the Member States on access to and pursuit of activities as employed and self-employed persons and the provision of services.

II. GENERAL AND FINAL PROVISIONS

ARTICLE 10

Transitional provisions and development of this Annex

1. For 5¹ years after the entry into force of the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation of the other, on the free movement of persons (hereinafter the “Swiss-EC Agreement on the free movement of persons”), Switzerland may maintain quantitative limits in respect of access to an economic activity for the following two categories of residence: residence for a period of more than four months and less than one year and residence for a period equal to, or exceeding, one year. There shall be no restriction on residence for less than four months.

From the beginning of the 6th year, all quantitative limits applicable to nationals of the other Member States shall be abolished.

2. For a maximum period of 2 years after the entry into force of the Swiss-EC Agreement on the free movement of persons, the Member States may maintain the controls on the priority of workers integrated into the regular labour market and wage and working conditions applicable to nationals of other Member States, including the persons providing services referred to in Article 5. Before the end of the first year, the Committee referred to in Article 14 (hereinafter the “Committee”) shall consider whether these restrictions need to be maintained. The Council may curtail the maximum period. The controls on the priority of workers integrated into the regular labour market shall not apply to providers of services liberalised under Annexes P, Q and R in so far as it covers the provision of services.

¹ The transitional period should expire at the same time as the corresponding period in the bilateral agreement between Switzerland and the European Community.

3. Upon entry into force of the Swiss-EC Agreement on the free movement of persons, and until the end of the 5th year, each year Switzerland shall reserve, within its overall quotas, for employed and self-employed persons of the other Member States, at least 300 new residence permits valid for a period equal to, or exceeding, one year and 200 valid for more than four months and less than one year. If the agreed quota should not suffice, arrangements will be made by the Council.

4. The number of new residence permits issued by Switzerland to employed and self-employed persons of the other Member States may not be limited to fewer than 300 per year valid for a period equal to, or exceeding, one year and 200 per year valid for more than four months and less than one year.

5. The transitional provisions of paragraphs 1 to 4, and in particular those of paragraph 2 concerning the priority of workers integrated into the regular labour market and controls on wage and working conditions, shall not apply to employed and self-employed persons who, at the time of the entry into force of the Swiss-EC Agreement on the free movement of persons, are authorised to pursue an economic activity in the territory of the Member States. Such persons shall in particular enjoy occupational and geographical mobility. The holders of residence permits valid for less than one year shall be entitled to have their permits renewed; the exhaustion of quantitative limits may not be invoked against them. The holders of residence permits valid for a period equal to, or exceeding, one year shall automatically be entitled to have their permits extended. Such employed and self-employed persons shall therefore enjoy the rights to free movement accorded to established persons in the basic provisions of this Annex, and in particular Article 7 thereof, from its entry into force.

6. Switzerland shall regularly and promptly forward to the Council any useful statistics and information, including measures implementing paragraph 2. A Member State may request a review of the situation.

7. No quantitative limits may be applied to frontier workers.

8. The transitional provisions on social security and the retrocession of unemployment insurance contributions are laid down in Protocols 1, 2 and 3 to Appendix 2.

ARTICLE 11

Processing of appeals

1. The persons covered by this Annex shall have a right of appeal to the competent authorities of the Member State concerned in respect of the application of the provisions of this Annex.

2. Appeals must be processed within a reasonable period of time.

3. Persons covered by this Annex shall have the opportunity to appeal to the competent national judicial body in respect of decisions on appeals, or the absence of a decision within a reasonable period of time.

ARTICLE 12

More favourable provisions

This Annex shall not preclude any more favourable national provisions which may exist for both nationals of the Member States and their family members.

ARTICLE 13

Standstill

The Member States undertake not to adopt any further restrictive measures vis-à-vis each other's nationals in fields covered by this Annex.

ARTICLE 14

Committee on the movement of persons

1. The Council shall establish a Committee on the movement of persons, which shall be responsible for the management and proper application of the Annex. To that end it shall issue recommendations. It may set up working groups on the coordination of social security systems and on the mutual recognition of professional qualifications.
2. For the purposes of proper implementation of this Annex, the Member States shall regularly exchange information and, at the request of one Member State, shall hold consultations within the Committee.
3. The Council may decide to modify the Appendices 2 and 3 of this Annex.

ARTICLE 15

Safeguard measures

In the event of serious economic or social difficulties, the Committee shall meet, at the request of one Member State, to examine appropriate measures to remedy the situation. The Council may decide what measures to take within 60 days of the date of the request. This period may be extended by the Council. The scope and duration of such measures shall not exceed that which is strictly necessary to remedy the situation. Preference shall be given to measures that least disrupt the working of this Annex.

ARTICLE 16

Reference to Community law

1. In order to attain the objectives pursued by this Annex, the Member States shall take all measures necessary to ensure that rights and obligations equivalent to those contained in the legal acts of the European Community to which reference is made, as incorporated in the EEA Agreement and in the Swiss – EC Agreement on the free movement of persons, are applied in relations between them.

2. Insofar as the application of this Annex involves common concepts of the legal instruments referred to in paragraph 1, account shall be taken of relevant case-law prior to 21 June 1999. In order to ensure the good functioning of this Annex, the Council shall, at the request of any Member State, determine the implications of case-law after 21 June 1999.

ARTICLE 17

Development of law

1. As soon as one Member State initiates the process of adopting a draft amendment to its domestic legislation, or as soon as there is a change in the case-law of authorities against whose decisions there is no judicial remedy under domestic law in a field governed by this Annex, it shall inform the other Member States through the Committee.

2. The Committee shall hold an exchange of views on the implications of such an amendment for the proper functioning of this Annex.

ARTICLE 18

Relationship to bilateral social security agreements

Unless otherwise provided for under Appendix 2, bilateral social security agreements between the Member States shall be suspended upon entry into force of this Annex, in so far as the latter covers the same subject matter.

ARTICLE 19

Relationship to bilateral agreements on double taxation

1. The provisions of bilateral agreements between the Member States on double taxation shall be unaffected by the provisions of this Annex. In particular, the provisions of this Annex shall not affect the double taxation agreements' definition of 'frontier workers'.

2. No provision of this Annex may be interpreted in such a way as to prevent the Member States from distinguishing, when applying the relevant provisions of their fiscal legislation, between taxpayers whose situations are not comparable, especially as regards their place of residence.

3. No provision of this Annex shall prevent the Member States from adopting or applying measures to ensure the imposition, payment and effective recovery of taxes or to forestall tax evasion under their national fiscal legislation or agreements aimed at preventing double taxation between the Member States, or any other tax arrangements.

ARTICLE 20

Relationship to bilateral agreements on matters other than social security and double taxation

1. Notwithstanding the provisions of Articles 18 and 19, this Annex shall not affect bilateral agreements between Member States, such as those concerning private individuals, economic operators, cross-border co-operation or local frontier traffic, in so far as they are compatible with this Annex.

2. In the event of incompatibilities between such agreements and this Annex, the latter shall prevail.

ARTICLE 21

Acquired rights

In the event of termination or non-renewal, rights acquired by private individuals shall not be affected. The Member States shall settle by mutual agreement what action is to be taken in respect of rights in the process of being acquired.