

DECISION OF THE EEA JOINT COMMITTEE**No 158/2007****of 7 December 2007****amending Annex V (Free movement of workers) and Annex VIII (Right of establishment) to the EEA Agreement**

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as 'the Agreement', and in particular Article 98 thereof,

Whereas:

- (1) Annex V to the Agreement was amended by Decision of the EEA Joint Committee No 43/2005 of 11 March 2005 ⁽¹⁾.
- (2) Annex VIII to the Agreement was amended by Decision of the EEA Joint Committee No 43/2005 of 11 March 2005.
- (3) 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 ⁽²⁾, 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, is to be incorporated into the Agreement.
- (4) Commission Regulation (EC) No 635/2006 of 25 April 2006 repealing Regulation (EEC) No 1251/70 on the right of workers to remain in the territory of a Member State after having been employed in that State ⁽³⁾ is to be incorporated into the Agreement.
- (5) Directive 2004/38/EC repeals, with effect from 30 April 2006, Council Directives 64/221/EEC ⁽⁴⁾, 68/360/EEC ⁽⁵⁾, 72/194/EEC ⁽⁶⁾, 73/148/EEC ⁽⁷⁾, 75/34/EEC ⁽⁸⁾, 75/35/EEC ⁽⁹⁾, 90/364/EEC ⁽¹⁰⁾, 90/365/EEC ⁽¹¹⁾ and 93/96/EEC ⁽¹²⁾, which are incorporated into the Agreement and which are consequently to be repealed under the Agreement.
- (6) Directive 2004/38/EC repeals, with effect from 30 April 2006, Articles 10 and 11 of Council Regulation (EEC) No 1612/68 ⁽¹³⁾, which is incorporated into the Agreement.
- (7) Regulation (EC) No 635/2006 repeals, with effect from 30 April 2006, Commission Regulation (EEC) No 1251/70 ⁽¹⁴⁾, which is incorporated into the Agreement and which consequently is to be repealed under the Agreement.
- (8) The concept of 'Union Citizenship' is not included in the Agreement.
- (9) Immigration policy is not part of the Agreement.

⁽¹⁾ OJ L 198, 25.7.2005, p. 45.

⁽²⁾ OJ L 158, 30.4.2004, p. 77.

⁽³⁾ OJ L 112, 26.4.2006, p. 9.

⁽⁴⁾ OJ 56, 4.4.1964, p. 850/64.

⁽⁵⁾ OJ L 257, 19.10.1968, p. 13.

⁽⁶⁾ OJ L 121, 26.5.1972, p. 32.

⁽⁷⁾ OJ L 172, 28.6.1973, p. 14.

⁽⁸⁾ OJ L 14, 20.1.1975, p. 10.

⁽⁹⁾ OJ L 14, 20.1.1975, p. 14.

⁽¹⁰⁾ OJ L 180, 13.7.1990, p. 26.

⁽¹¹⁾ OJ L 180, 13.7.1990, p. 28.

⁽¹²⁾ OJ L 317, 18.12.1993, p. 59.

⁽¹³⁾ OJ L 257, 19.10.1968, p. 2.

⁽¹⁴⁾ OJ L 142, 30.6.1970, p. 24.

- (10) The Agreement does not apply to third country nationals. Family members within the meaning of the Directive having third country nationality shall nevertheless enjoy certain derived rights such as those foreseen in Articles 12(2), 13(2) and 18 when entering or moving to the host country.
- (11) Decision of the EEA Joint Committee No 191/1999 ⁽¹⁾ of 17 December 1999 introduced new sectoral adaptations to Annex V and Annex VIII to the Agreement with regard to Liechtenstein, which were amended by the Agreement on the Participation of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic in the European Economic Area ⁽²⁾, signed in Luxembourg on 14 October 2003.
- (12) The incorporation of Directive 2004/38/EC into the Agreement shall be without prejudice to these sectoral adaptations with regard to Liechtenstein,

HAS DECIDED AS FOLLOWS:

Article 1

Annex VIII to the Agreement shall be amended as follows:

- 1) the text of point 3 (Council Directive 73/148/EEC) shall be replaced by the following:

‘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”.
- 2) the texts of points 4 (Council Directive 75/34/EEC), 5 (Council Directive 75/35/EEC), 6 (Council Directive 90/364/EEC), 7 (Council Directive 90/365/EEC) and 8 (Council Directive 93/96/EEC) shall be deleted.

Article 2

Annex V to the Agreement shall be amended as follows:

- 1) the text of point 1 (Council Directive 64/221/EEC) shall be replaced by the following:

‘The act referred to in point 3 of Annex VIII to this Agreement (Directive 2004/38/EC of the European Parliament and of the Council), as adapted for the purposes of the Agreement shall apply, as appropriate, to the fields covered by this Annex.’;

⁽¹⁾ OJ L 74, 15.3.2001, p. 29.

⁽²⁾ OJ L 130, 29.4.2004, p. 11.

- 2) the following indent shall be added in point 2 (Council Regulation (EEC) No 1612/68):
- ‘— **32004 L 0038**: Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 (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).’;
- 3) the text of point 4 (Commission Regulation (EEC) No 1251/70) shall be replaced by the following:
- ‘**32006 R 0635**: Commission Regulation (EC) No 635/2006 of 25 April 2006 repealing Regulation (EEC) No 1251/70 on the right of workers to remain in the territory of a Member State after having been employed in that State (OJ L 112, 26.4.2006, p. 9).’;
- 4) the texts of points 3 (Council Directive 68/360/EEC) and 5 (Council Directive 72/194/EEC) shall be deleted.

Article 3

The texts of Directive 2004/38/EC and Regulation (EC) No 635/2006 in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 4

This Decision shall enter into force on 8 December 2007, provided that all the notifications under Article 103(1) of the Agreement have been made to the EEA Joint Committee (*).

Article 5

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 7 December 2007.

For the EEA Joint Committee
The President
Stefán Haukur JÓHANNESSEN

(*) Constitutional requirements indicated.

Joint Declaration by the Contracting Parties to Decision of the EEA Joint Committee No 158/2007 incorporating Directive 2004/38/EC of the European Parliament and of the Council into the Agreement

The concept of Union Citizenship as introduced by the Treaty of Maastricht (now Articles 17 seq. EC Treaty) has no equivalent in the EEA Agreement. The incorporation of Directive 2004/38/EC into the EEA Agreement shall be without prejudice to the evaluation of the EEA relevance of future EU legislation as well as future case law of the European Court of Justice based on the concept of Union Citizenship. The EEA Agreement does not provide a legal basis for political rights of EEA nationals.

The Contracting Parties agree that immigration policy is not covered by the EEA Agreement. Residence rights for third country nationals fall outside the scope of the Agreement with the exception of rights granted by the Directive to third country nationals who are family members of an EEA national exercising his or her right to free movement under the EEA Agreement as these rights are corollary to the right of free movement of EEA nationals. The EFTA States recognise that it is of importance to EEA nationals making use of their right of free movement of persons, that their family members within the meaning of the Directive and possessing third country nationality also enjoy certain derived rights such as foreseen in Articles 12(2), 13(2) and 18. This is without prejudice to Article 118 of the EEA Agreement and the future development of independent rights of third country nationals which do not fall within the scope of the EEA Agreement.
