

ANNEX I.1

COUNCIL RESOLUTION

of 20 June 1994

on limitations on admission of third-country nationals to the territory of the Member States for employment

THE COUNCIL OF THE EUROPEAN UNION,

It agreed to examine the matter at a later date.

Having regard to the Treaty on European Union, and in particular Article K.1 thereof,

- (v) Member States reserve the right to allow, in accordance with their national law, the spouse and dependent children to accompany persons admitted in accordance with this resolution.

HEREBY ADOPTS THIS RESOLUTION:

A. General considerations on policy

- (i) The Council recalls that, in the report adopted by the European Council held in Maastricht in 1991, priority was given to the harmonization of policies on admission for work as an employed or self-employed person, although it was emphasized that these policies should of necessity be restrictive.
- (ii) The Council acknowledges the contribution of migrant workers to the economic development of their respective host countries. At present, however, no Member State is pursuing an active immigration policy. All States have, on the contrary, curtailed the possibility of permanent legal immigration for economic, social and thus political reasons. Admission for temporary employment may therefore be considered only in terms of what is purely exceptional.
- (iii) The Council recognizes that the present high levels of unemployment in the Member States increase the need to bring Community employment preference properly into practice by making full use of the Eures system to improve the transparency of the labour markets and facilitate placement within the European Community. The Council further recognizes that the provisions within the European Community. The Council further recognizes that the provisions of the EC Treaty and the EEA Agreement enable job vacancies to be filled as far as possible by nationals of other Member States or of Member States or of EFTA countries which are parties to the EEA Agreement.
- (iv) The Council agreed not to regulate via this resolution the issue of third-country nationals lawfully resident on a permanent basis in the territory of a Member State, but who have no right of admission and residence in another Member State.

- (vi) In the light of these considerations, the Council resolves that the present restrictive measures should be continued and where necessary reinforced as regards the admission of third-country nationals for employment. To this end, the Council agrees that the national policies of Member States in respect of third-country nationals seeking admission to, or permission to remain in, their territories for employment should be governed by the principles set out below, which may not be relaxed by Member States in their national legislation. It agrees to have regard to these principles in any proposals for the revision of national legislation. The Member States will further endeavour to seek to ensure by 1 January 1996 that national legislation is in conformity with such principles. The principles are not legally binding on the Member States and do not afford a ground for action by individual workers or employers.

B. Persons to whom this resolution does not apply

The harmonization principles do not apply to:

- persons who have right of free movement under Community law, i.e. nationals of Member States, nationals of EFTA countries parties to the Agreement on the European Economic Area and members of their families,
- third-country nationals who have been allowed admission for the purpose of family reunification to join nationals of a Member State or of a third country resident in the Member State concerned,
- third-country nationals whose access to employment is covered by rights stemming from agreements governed by Community law concluded with third countries,

- persons undertaking casual work in the course of youth exchange or youth mobility schemes, including 'au pairs',
- persons entering Member States in order to pursue economic activities as self-employed persons or to set up and/or manage a business/undertaking which they effectively control. Such persons will be governed by the principles to be set out in a draft resolution covering the self-employed;
- persons who are lawfully present in a Member State as:
 - refugees under the terms of the Geneva Convention,
 - applicants for asylum,
 - third-country nationals admitted for asylum,
- displaced persons who are temporarily admitted,
- persons exceptionally allowed to stay on humanitarian grounds.

C. Principles governing Member States' policies

(i) *General criteria*

- Member States will refuse entry to their territories of third-country nationals for the purpose of employment,
- Member States will consider requests for admission to their territories for the purpose of employment only where vacancies in a Member State cannot be filled by national and Community manpower or by non-Community manpower lawfully resident on a permanent basis in that Member State and already forming part of the Member State's regular labour market. In this context they will apply the procedure laid down in Part II of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community⁽¹⁾, in the light of Commission Decision 93/569/EEC⁽²⁾ on the implementing of the Regulation, in particular with regard to Article 15 (16);

- without prejudice to the application of the above two criteria, third-country nationals may, if necessary, be admitted on a temporary basis and for a specific duration to the territory of a Member State for the purpose of employment where:

- such an offer is made to a named worker or named employee of a service provider and is of a special nature in view of the requirement of specialist qualifications (professional qualifications, experience, etc.),

- an employer offers named workers vacancies only where the competent authorities consider, if appropriate, that the grounds adduced by the employer, including the nature of the qualifications required, are justified in view of a temporary manpower shortage on the national or Community labour market which significantly affects the operation of the undertaking or the employer himself,

- vacancies are offered to:

- seasonal workers, whose numbers are strictly controlled on admission to the territory of the Member States and who undertake well-defined jobs, normally fulfilling a traditional need in the Member State in question. Member States will restrict the admission of these workers to cases where there is no reason to believe that the persons concerned will seek to stay within their territory on a permanent basis,

- trainees,

- frontier workers,

- the persons concerned are intra-corporate transferees being transferred temporarily by the company as key personnel.

(ii) *Procedure for admission employment*

A third-country national will not be admitted for employment unless prior authorization has been given for him to take up employment in the territory of the Member State concerned. Such prior authorization may be in the form of a work permit issued either to the employer or to the employee.

In addition, third-country nationals must also be in possession of any necessary visa or, if the Member State concerned so requires, of a residence permit.

⁽¹⁾ OJ No L 257, 19. 10. 1968, p. 2. Regulation as last amended by Regulation (EEC) No 2434/92 (OJ No L 245, 26. 8. 1992, p. 1).

⁽²⁾ OJ No L 274, 6. 11. 1993, p. 32.

(iii) *Restrictions as to the scope of employment*

Initial authorization for employment will normally be restricted to employment in a specific job with a specified employer.

(iv) *Restrictions as to the period of admission for employment*

A seasonal worker will be admitted for a maximum of six months in any 12-month period, and must remain outside the territories of the Member States for a period of at least six months before being readmitted for employment.

Trainees will be admitted for a maximum period of one year in the first instance. This period may be fixed at more than a year and extended exclusively for the time needed to obtain a professional qualification recognized by the Member State concerned in the sphere of their activity.

Other third-country nationals admitted to the territories of the Member States for employment will only be admitted for a period not exceeding four years in the first instance.

(v) *Applications to extend a stay for the purpose of employment*

A person already present in the territory of a Member State as a visitor or student will not in principle be permitted to extend his stay for the purpose of taking or seeking employment. Such persons must return to their own countries on conclusion of their visit or studies.

In principle, a person admitted as a trainee or service provider or employee of a service provider will not be permitted to extend his stay in authorized employment except in order to complete the training or activity under contract for which he was admitted.

A seasonal worker will not be permitted to extend his stay for the purpose of taking employment of a different type. An extension of the period of his stay may be authorized to allow him to complete the work for which the original authorization was granted. However, the total length of his stay may not exceed six months in any 12-month period.

Other workers may be permitted to extend their period to stay in authorized employment, but only if the criteria originally applied to the decision on

whether to admit them for authorized employment continue to be met, in any event when the first extension is granted.

The Member States will examine the desirability of issuing a permanent residence permit to third-country nationals who have had restrictions on their employment lifted.

(vi) *Business visitors*

Nothing in these principles prevents a Member State from admitting as workers third-country nationals not residing in the territory of a Member State who are seeking entry in particular to:

- negotiate for the supply of goods or services,
- deliver goods or assemble machinery manufactured in a third country as part of a supply contract,

provided that such persons will be dealing only with businesses in the territory of the Member State and not with the general public and that any one visit and possibly the work permit do not exceed six months.

(vii) *Third countries with close links with a Member State*

Nothing in these principles prevents a Member State from continuing to admit third-country nationals to its territory for the purpose of employment pursuant to arrangements concluded by that Member State by the date of adoption of this resolution for nationals of a third country with which it has especially close links.

The Member States will undertake as soon as possible to renegotiate such arrangements in accordance with the terms of this resolution.

Where these arrangements concern the employees of a service provider, the Member States undertake to examine them in the spirit of this resolution within a reasonable period of time not exceeding three years, and to arrive at an assessment.

When this examination is carried out, account should be taken of the economic development of the States with which the Member States concluded the agreements in question.

The above provisions do not apply to arrangements covering employment of persons for instruction and vocational training purposes.

*Annex to Annex I.1***Definitions**

'Trainees' means workers whose presence in the territory of a Member State is strictly limited in duration and closely connected with increasing their skills and qualifications in their chosen profession before returning to their own countries to pursue their careers.

'Seasonal workers' means workers who are resident in a third country but are employed in an activity dependent on the rhythm of the seasons in the territory of a Member State on the basis of a contract for a specified period and for specific employment.

'Frontier workers' means workers who are employed in the frontier zone of a Member State but who return each day or at least once a week to the frontier zone of a neighbouring country in which they reside and of which they are nationals.

'Intra-corporate transferee' means a natural person working within a legal person, other than a non-profit making organization, established in the territory of a WTO member, and being temporarily transferred in the context of the provision of a service through commercial presence in the territory of a Member State of the Community; the legal persons concerned must have their principal place of business in the territory of a WTO member other than the Community and its Member States and the transfer must be to an establishment (office, branch or subsidiary) of that legal person, effectively providing like services in the territory of a Member State to which the EC Treaty applies. In Italy, 'intra-corporate transferee' is defined as a natural person working within a legal person constituted as a SPA (joint stock company) or an SRL (capital stock company with limited responsibility).
