

COUNCIL DIRECTIVE

of 28 June 1990

on the right of residence for employees and self-employed persons who have
ceased their occupational activity

(90/365/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Article 3 (c) of the Treaty provides that the activities of the Community shall include, as provided in the Treaty, the abolition, as between Member States, of obstacles to freedom of movement for persons;

Whereas Article 8a of the Treaty provides that the internal market must be established by 31 December 1992; whereas the internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured, in accordance with the provisions of the Treaty;

Whereas Articles 48 and 52 of the Treaty provide for freedom of movement for workers and self-employed persons, which entails the right of residence in the Member States in which they pursue their occupational activity; whereas it is desirable that this right of residence also be granted to persons who have ceased their occupational activity even if they have not exercised their right to freedom of movement during their working life;

Whereas beneficiaries of the right of residence must not become an unreasonable burden on the public finances of the host Member State;

Whereas under Article 10 of Regulation (EEC) No 1408/71 ⁽⁴⁾, as amended by Regulation (EEC) No 1390/81 ⁽⁵⁾, recipients of invalidity or old age cash benefits or pensions for accidents at work or occupational diseases are entitled to continue to receive these benefits and pensions even if they reside in the territory of a Member State other than that in which the institution responsible for payment is situated;

Whereas this right can only be genuinely exercised if it is also granted to members of the family;

Whereas the beneficiaries of this Directive should be covered by administrative arrangements similar to those laid down in particular by Directive 68/630/EEC ⁽⁶⁾ and Directive 64/221/EEC ⁽⁷⁾;

Whereas the Treaty does not provide, for the action concerned, powers other than those of Article 235,

HAS ADOPTED THIS DIRECTIVE :

Article 1

1. Member States shall grant the right of residence to nationals of Member States who have pursued an activity as an employee or self-employed person and to members of their families as defined in paragraph 2, provided that they are recipients of an invalidity or early retirement pension, or old age benefits, or of a pension in respect of an industrial accident or disease of an amount sufficient to avoid becoming a burden on the social security system of the host Member State during their period of residence and provided they are covered by sickness insurance in respect of all risks in the host Member State.

The resources of the applicant shall be deemed sufficient where they are higher than the level of resources below which the host Member State may grant social assistance to its nationals, taking into account the personal circumstances of persons admitted pursuant to paragraph 2.

Where the second subparagraph cannot be applied in a Member State, the resources of the applicant shall be deemed sufficient if they are higher than the level of the minimum social security pension paid by the host Member State.

2. The following shall, irrespective of their nationality, have the right to install themselves in another Member State with the holder of the right of residence :

- (a) his or her spouse and their descendants who are dependants;
- (b) dependent relatives in the ascending line of the holder of the right of residence and his or her spouse.

⁽¹⁾ OJ No C 191, 28. 7. 1989, p. 3;
and OJ No C 26, 3. 2. 1990, p. 19.

⁽²⁾ Opinion delivered on 13 June 1990 (not yet published in the Official Journal).

⁽³⁾ OJ No C 329, 30. 12. 1989, p. 25.

⁽⁴⁾ OJ No L 149, 5. 7. 1971, p. 2.

⁽⁵⁾ OJ No L 143, 29. 5. 1981, p. 1.

⁽⁶⁾ OJ No L 257, 19. 10. 1968, p. 13.

⁽⁷⁾ OJ No 56, 4. 4. 1964, p. 850/64.

Article 2

1. Exercise of the right of residence shall be evidenced by means of the issue of a document known as a 'Residence permit for a national of a Member State of the EEC', whose validity may be limited to five years on a renewable basis. However, the Member States may, when they deem it to be necessary, require revalidation of the permit at the end of the first two years of residence. Where a member of the family does not hold the nationality of a Member State, he or she shall be issued with a residence document of the same validity as that issued to the national on whom he or she depends.

For the purposes of issuing the residence permit or document, the Member State may require only that the applicant present a valid identity card or passport and provide proof that he or she meets the conditions laid down in Article 1.

2. Articles 2, 3, 6 (1) (a) and (2) and Article 9 of Directive 68/360/EEC shall apply *mutatis mutandis* to the beneficiaries of this Directive.

The spouse and the dependent children of a national of a Member State entitled to the right of residence within the territory of a Member State shall be entitled to take up any employed or self-employed activity anywhere within the territory of that Member State, even if they are not nationals of a Member State.

Member States shall not derogate from the provisions of this Directive save on grounds of public policy, public security or public health. In that event, Directive 64/221/EEC shall apply.

3. This Directive shall not affect existing law on the acquisition of second homes.

Article 3

The right of residence shall remain for as long as beneficiaries of that right fulfil the conditions laid down in Article 1.

Article 4

The Commission shall, not more than three years after the date of implementation of this Directive, and at three-yearly intervals thereafter, draw up a report on the application of this Directive and submit it to the European Parliament and the Council.

Article 5

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 30 June 1992. They shall forthwith inform the Commission thereof.

Article 6

This Directive is addressed to the Member States.

Done at Luxembourg, 28 June 1990.

For the Council

The President

M. GEOGHEGAN-QUINN