

I

(Legislative acts)

REGULATIONS

REGULATION (EU) No 492/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 5 April 2011****on freedom of movement for workers within the Union****(codification)****(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 46 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

(1) Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community ⁽³⁾ has been substantially amended several times ⁽⁴⁾. In the interests of clarity and rationality the said Regulation should be codified.

(2) Freedom of movement for workers should be secured within the Union. The attainment of this objective entails the abolition of any discrimination based on nationality between workers of the Member States as

regards employment, remuneration and other conditions of work and employment, as well as the right of such workers to move freely within the Union in order to pursue activities as employed persons subject to any limitations justified on grounds of public policy, public security or public health.

(3) Provisions should be laid down to enable the objectives laid down in Articles 45 and 46 of the Treaty on the Functioning of the European Union in the field of freedom of movement to be achieved.

(4) Freedom of movement constitutes a fundamental right of workers and their families. Mobility of labour within the Union must be one of the means by which workers are guaranteed the possibility of improving their living and working conditions and promoting their social advancement, while helping to satisfy the requirements of the economies of the Member States. The right of all workers in the Member States to pursue the activity of their choice within the Union should be affirmed.

(5) Such right should be enjoyed without discrimination by permanent, seasonal and frontier workers and by those who pursue their activities for the purpose of providing services.

(6) The right of freedom of movement, in order that it may be exercised, by objective standards, in freedom and dignity, requires that equality of treatment be ensured in fact and in law in respect of all matters relating to the actual pursuit of activities as employed persons and to eligibility for housing, and also that obstacles to the mobility of workers be eliminated, in particular as regards the conditions for the integration of the worker's family into the host country.

⁽¹⁾ OJ C 44, 11.2.2011, p. 170.

⁽²⁾ Position of the European Parliament of 7 September 2010 (not yet published in the Official Journal) and decision of the Council of 21 March 2011.

⁽³⁾ OJ L 257, 19.10.1968, p. 2.

⁽⁴⁾ See Annex I.

- (7) The principle of non-discrimination between workers in the Union means that all nationals of Member States have the same priority as regards employment as is enjoyed by national workers.
- (8) The machinery for vacancy clearance, in particular by means of direct cooperation between the central employment services and also between the regional services, as well as by coordination of the exchange of information, ensures in a general way a clearer picture of the labour market. Workers wishing to move should also be regularly informed of living and working conditions.
- (9) Close links exist between freedom of movement for workers, employment and vocational training, particularly where the latter aims at putting workers in a position to take up concrete offers of employment from other regions of the Union. Such links make it necessary that the problems arising in this connection should no longer be studied in isolation but viewed as interdependent, account also being taken of the problems of employment at the regional level. It is therefore necessary to direct the efforts of Member States toward coordinating their employment policies,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

EMPLOYMENT, EQUAL TREATMENT AND WORKERS' FAMILIES

SECTION 1

Eligibility for employment

Article 1

1. Any national of a Member State shall, irrespective of his place of residence, have the right to take up an activity as an employed person, and to pursue such activity, within the territory of another Member State in accordance with the provisions laid down by law, regulation or administrative action governing the employment of nationals of that State.

2. He shall, in particular, have the right to take up available employment in the territory of another Member State with the same priority as nationals of that State.

Article 2

Any national of a Member State and any employer pursuing an activity in the territory of a Member State may exchange their applications for and offers of employment, and may conclude and perform contracts of employment in accordance with the provisions in force laid down by law, regulation or administrative action, without any discrimination resulting therefrom.

Article 3

1. Under this Regulation, provisions laid down by law, regulation or administrative action or administrative practices of a Member State shall not apply:

- (a) where they limit application for and offers of employment, or the right of foreign nationals to take up and pursue employment or subject these to conditions not applicable in respect of their own nationals; or
- (b) where, though applicable irrespective of nationality, their exclusive or principal aim or effect is to keep nationals of other Member States away from the employment offered.

The first subparagraph shall not apply to conditions relating to linguistic knowledge required by reason of the nature of the post to be filled.

2. There shall be included in particular among the provisions or practices of a Member State referred to in the first subparagraph of paragraph 1 those which:

- (a) prescribe a special recruitment procedure for foreign nationals;
- (b) limit or restrict the advertising of vacancies in the press or through any other medium or subject it to conditions other than those applicable in respect of employers pursuing their activities in the territory of that Member State;
- (c) subject eligibility for employment to conditions of registration with employment offices or impede recruitment of individual workers, where persons who do not reside in the territory of that State are concerned.

Article 4

1. Provisions laid down by law, regulation or administrative action of the Member States which restrict by number or percentage the employment of foreign nationals in any undertaking, branch of activity or region, or at a national level, shall not apply to nationals of the other Member States.

2. When in a Member State the granting of any benefit to undertakings is subject to a minimum percentage of national workers being employed, nationals of the other Member States shall be counted as national workers, subject to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications ⁽¹⁾.

⁽¹⁾ OJ L 255, 30.9.2005, p. 22.

Article 5

A national of a Member State who seeks employment in the territory of another Member State shall receive the same assistance there as that afforded by the employment offices in that State to their own nationals seeking employment.

Article 6

1. The engagement and recruitment of a national of one Member State for a post in another Member State shall not depend on medical, vocational or other criteria which are discriminatory on grounds of nationality by comparison with those applied to nationals of the other Member State who wish to pursue the same activity.

2. A national who holds an offer in his name from an employer in a Member State other than that of which he is a national may have to undergo a vocational test, if the employer expressly requests this when making his offer of employment.

SECTION 2

Employment and equality of treatment*Article 7*

1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and, should he become unemployed, reinstatement or re-employment.

2. He shall enjoy the same social and tax advantages as national workers.

3. He shall also, by virtue of the same right and under the same conditions as national workers, have access to training in vocational schools and retraining centres.

4. Any clause of a collective or individual agreement or of any other collective regulation concerning eligibility for employment, remuneration and other conditions of work or dismissal shall be null and void in so far as it lays down or authorises discriminatory conditions in respect of workers who are nationals of the other Member States.

Article 8

A worker who is a national of a Member State and who is employed in the territory of another Member State shall enjoy equality of treatment as regards membership of trade unions and the exercise of rights attaching thereto, including the right to vote and to be eligible for the administration or management posts of a trade union. He may be excluded from taking part in the management of bodies governed by public law and from holding an office governed by public law. Furthermore, he shall have the right of eligibility for workers' representative bodies in the undertaking.

The first paragraph of this Article shall not affect laws or regulations in certain Member States which grant more extensive rights to workers coming from the other Member States.

Article 9

1. A worker who is a national of a Member State and who is employed in the territory of another Member State shall enjoy all the rights and benefits accorded to national workers in matters of housing, including ownership of the housing he needs.

2. A worker referred to in paragraph 1 may, with the same right as nationals, put his name down on the housing lists in the region in which he is employed, where such lists exist, and shall enjoy the resultant benefits and priorities.

If his family has remained in the country whence he came, they shall be considered for this purpose as residing in the said region, where national workers benefit from a similar presumption.

SECTION 3

Workers' families*Article 10*

The children of a national of a Member State who is or has been employed in the territory of another Member State shall be admitted to that State's general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if such children are residing in its territory.

Member States shall encourage all efforts to enable such children to attend these courses under the best possible conditions.

CHAPTER II

CLEARANCE OF VACANCIES AND APPLICATIONS FOR EMPLOYMENT

SECTION 1

Cooperation between the Member States and with the Commission*Article 11*

1. The Member States or the Commission shall instigate or together undertake any study of employment or unemployment which they consider necessary for freedom of movement for workers within the Union.

The central employment services of the Member States shall cooperate closely with each other and with the Commission with a view to acting jointly as regards the clearing of vacancies and applications for employment within the Union and the resultant placing of workers in employment.

2. To this end the Member States shall designate specialist services which shall be entrusted with organising work in the fields referred to in the second subparagraph of paragraph 1 and cooperating with each other and with the departments of the Commission.

The Member States shall notify the Commission of any change in the designation of such services and the Commission shall publish details thereof for information in the *Official Journal of the European Union*.

Article 12

1. The Member States shall send to the Commission information on problems arising in connection with the freedom of movement and employment of workers and particulars of the state and development of employment.

2. The Commission, taking the utmost account of the opinion of the Technical Committee referred to in Article 29 (the Technical Committee), shall determine the manner in which the information referred to in paragraph 1 of this Article is to be drawn up.

3. In accordance with the procedure laid down by the Commission taking the utmost account of the opinion of the Technical Committee, the specialist service of each Member State shall send to the specialist services of the other Member States and to the European Coordination Office referred to in Article 18 such information concerning living and working conditions and the state of the labour market as is likely to be of guidance to workers from the other Member States. Such information shall be brought up to date regularly.

The specialist services of the other Member States shall ensure that wide publicity is given to such information, in particular by circulating it among the appropriate employment services and by all suitable means of communication for informing the workers concerned.

SECTION 2

Machinery for vacancy clearance

Article 13

1. The specialist service of each Member State shall regularly send to the specialist services of the other Member States and to the European Coordination Office referred to in Article 18:

- (a) details of vacancies which could be filled by nationals of other Member States;
- (b) details of vacancies addressed to third countries;
- (c) details of applications for employment by those who have formally expressed a wish to work in another Member State;

- (d) information, by region and by branch of activity, on applicants who have declared themselves actually willing to accept employment in another country.

The specialist service of each Member State shall forward this information to the appropriate employment services and agencies as soon as possible.

2. The details of vacancies and applications referred to in paragraph 1 shall be circulated according to a uniform system to be established by the European Coordination Office referred to in Article 18 in collaboration with the Technical Committee.

This system may be adapted if necessary.

Article 14

1. Any vacancy within the meaning of Article 13 communicated to the employment services of a Member State shall be notified to and processed by the competent employment services of the other Member States concerned.

Such services shall forward to the services of the first Member State the details of suitable applications.

2. The applications for employment referred to in point (c) of the first subparagraph of Article 13(1) shall be responded to by the relevant services of the Member States within a reasonable period, not exceeding 1 month.

3. The employment services shall grant workers who are nationals of the Member States the same priority as the relevant measures grant to nationals vis-à-vis workers from third countries.

Article 15

1. The provisions of Article 14 shall be implemented by the specialist services. However, in so far as they have been authorised by the central services and in so far as the organisation of the employment services of a Member State and the placing techniques employed make it possible:

- (a) the regional employment services of the Member States shall:
 - (i) on the basis of the information referred to in Article 13, on which appropriate action will be taken, directly bring together and clear vacancies and applications for employment;

(ii) establish direct relations for clearance:

- of vacancies offered to a named worker,
- of individual applications for employment sent either to a specific employment service or to an employer pursuing his activity within the area covered by such a service,
- where the clearing operations concern seasonal workers who must be recruited as quickly as possible;

(b) the services territorially responsible for the border regions of two or more Member States shall regularly exchange data relating to vacancies and applications for employment in their area and, acting in accordance with their arrangements with the other employment services of their countries, shall directly bring together and clear vacancies and applications for employment.

If necessary, the services territorially responsible for border regions shall also set up cooperation and service structures to provide:

- users with as much practical information as possible on the various aspects of mobility, and
- management and labour, social services (in particular public, private or those of public interest) and all institutions concerned, with a framework of coordinated measures relating to mobility,

(c) official employment services which specialise in certain occupations or specific categories of persons shall cooperate directly with each other.

2. The Member States concerned shall forward to the Commission the list, drawn up by common accord, of services referred to in paragraph 1 and the Commission shall publish such list for information, and any amendment thereto, in the *Official Journal of the European Union*.

Article 16

Adoption of recruiting procedures as applied by the implementing bodies provided for under agreements concluded between two or more Member States shall not be obligatory.

SECTION 3

Measures for controlling the balance of the labour market

Article 17

1. On the basis of a report from the Commission drawn up from information supplied by the Member States, the latter and

the Commission shall at least once a year analyse jointly the results of Union arrangements regarding vacancies and applications.

2. The Member States shall examine with the Commission all the possibilities of giving priority to nationals of Member States when filling employment vacancies in order to achieve a balance between vacancies and applications for employment within the Union. They shall adopt all measures necessary for this purpose.

3. Every 2 years the Commission shall submit a report to the European Parliament, the Council and the European Economic and Social Committee on the implementation of Chapter II, summarising the information required and the data obtained from the studies and research carried out and highlighting any useful points with regard to developments on the Union's labour market.

SECTION 4

European Coordination Office

Article 18

The European Office for Coordinating the Clearance of Vacancies and Applications for Employment ('the European Coordination Office'), established within the Commission, shall have the general task of promoting vacancy clearance at Union level. It shall be responsible in particular for all the technical duties in this field which, under the provisions of this Regulation, are assigned to the Commission, and especially for assisting the national employment services.

It shall summarise the information referred to in Articles 12 and 13 and the data arising out of the studies and research carried out pursuant to Article 11, so as to bring to light any useful facts about foreseeable developments on the Union labour market; such facts shall be communicated to the specialist services of the Member States and to the Advisory Committee referred to in Article 21 and the Technical Committee.

Article 19

1. The European Coordination Office shall be responsible, in particular, for:

(a) coordinating the practical measures necessary for vacancy clearance at Union level and for analysing the resulting movements of workers;

(b) contributing to such objectives by implementing, in cooperation with the Technical Committee, joint methods of action at administrative and technical levels;

(c) carrying out, where a special need arises, and in agreement with the specialist services, the bringing together of vacancies and applications for employment for clearance by those specialist services.

2. It shall communicate to the specialist services vacancies and applications for employment sent directly to the Commission, and shall be informed of the action taken thereon.

Article 20

The Commission may, in agreement with the competent authority of each Member State, and in accordance with the conditions and procedures which it shall determine on the basis of the opinion of the Technical Committee, organise visits and assignments for officials of other Member States, and also advanced programmes for specialist personnel.

CHAPTER III

COMMITTEES FOR ENSURING CLOSE COOPERATION BETWEEN THE MEMBER STATES IN MATTERS CONCERNING THE FREEDOM OF MOVEMENT OF WORKERS AND THEIR EMPLOYMENT

SECTION 1

The Advisory Committee

Article 21

The Advisory Committee shall be responsible for assisting the Commission in the examination of any questions arising from the application of the Treaty on the Functioning of the European Union and measures taken in pursuance thereof, in matters concerning the freedom of movement of workers and their employment.

Article 22

The Advisory Committee shall be responsible in particular for:

- (a) examining problems concerning freedom of movement and employment within the framework of national manpower policies, with a view to coordinating the employment policies of the Member States at Union level, thus contributing to the development of the economies and to an improved balance of the labour market;
- (b) making a general study of the effects of implementing this Regulation and any supplementary measures;
- (c) submitting to the Commission any reasoned proposals for revising this Regulation;
- (d) delivering, either at the request of the Commission or on its own initiative, reasoned opinions on general questions or

on questions of principle, in particular on exchange of information concerning developments in the labour market, on the movement of workers between Member States, on programmes or measures to develop vocational guidance and vocational training which are likely to increase the possibilities of freedom of movement and employment, and on all forms of assistance to workers and their families, including social assistance and the housing of workers.

Article 23

1. The Advisory Committee shall be composed of six members for each Member State, two of whom shall represent the Government, two the trade unions and two the employers' associations.

2. For each of the categories referred to in paragraph 1, one alternate member shall be appointed by each Member State.

3. The term of office of the members and their alternates shall be 2 years. Their appointments shall be renewable.

On expiry of their term of office, the members and their alternates shall remain in office until replaced or until their appointments are renewed.

Article 24

The members of the Advisory Committee and their alternates shall be appointed by the Council, which shall endeavour, when selecting representatives of trade unions and employers' associations, to achieve adequate representation on the Committee of the various economic sectors concerned.

The list of members and their alternates shall be published by the Council for information in the *Official Journal of the European Union*.

Article 25

The Advisory Committee shall be chaired by a member of the Commission or his representative. The Chairman shall not vote. The Committee shall meet at least twice a year. It shall be convened by its Chairman, either on his own initiative, or at the request of at least one third of the members.

Secretarial services shall be provided for the Committee by the Commission.

Article 26

The Chairman may invite individuals or representatives of bodies with wide experience in the field of employment or movement of workers to take part in meetings as observers or as experts. The Chairman may be assisted by expert advisers.

Article 27

1. An opinion delivered by the Advisory Committee shall not be valid unless two thirds of the members are present.

2. Opinions shall state the reasons on which they are based; they shall be delivered by an absolute majority of the votes validly cast; they shall be accompanied by a written statement of the views expressed by the minority, when the latter so requests.

Article 28

The Advisory Committee shall establish its working methods by rules of procedure which shall enter into force after the Council, having received an opinion from the Commission, has given its approval. The entry into force of any amendment that the Committee decides to make thereto shall be subject to the same procedure.

SECTION 2

The Technical Committee*Article 29*

The Technical Committee shall be responsible for assisting the Commission in the preparation, promotion and follow-up of all technical work and measures for giving effect to this Regulation and any supplementary measures.

Article 30

The Technical Committee shall be responsible in particular for:

- (a) promoting and advancing cooperation between the public authorities concerned in the Member States on all technical questions relating to freedom of movement of workers and their employment;
- (b) formulating procedures for the organisation of the joint activities of the public authorities concerned;
- (c) facilitating the gathering of information likely to be of use to the Commission and the undertaking of the studies and research provided for in this Regulation, and encouraging exchange of information and experience between the administrative bodies concerned;
- (d) investigating at a technical level the harmonisation of the criteria by which Member States assess the state of their labour markets.

Article 31

1. The Technical Committee shall be composed of representatives of the Governments of the Member States. Each Government shall appoint as member of the Technical Committee one of the members who represent it on the Advisory Committee.

2. Each Government shall appoint an alternate from among its other representatives — members or alternates — on the Advisory Committee.

Article 32

The Technical Committee shall be chaired by a member of the Commission or his representative. The Chairman shall not vote. The Chairman and the members of the Committee may be assisted by expert advisers.

Secretarial services shall be provided for the Committee by the Commission.

Article 33

The proposals and opinions formulated by the Technical Committee shall be submitted to the Commission, and the Advisory Committee shall be informed thereof. Any such proposals and opinions shall be accompanied by a written statement of the views expressed by the various members of the Technical Committee, when the latter so request.

Article 34

The Technical Committee shall establish its working methods by rules of procedure which shall enter into force after the Council, having received an opinion from the Commission, has given its approval. The entry into force of any amendment which the Committee decides to make thereto shall be subject to the same procedure.

CHAPTER IV

FINAL PROVISIONS*Article 35*

The rules of procedure of the Advisory Committee and of the Technical Committee in force on 8 November 1968 shall continue to apply.

Article 36

1. This Regulation shall not affect the provisions of the Treaty establishing the European Atomic Energy Community which deal with eligibility for skilled employment in the field of nuclear energy, nor any measures taken in pursuance of that Treaty.

Nevertheless, this Regulation shall apply to the category of workers referred to in the first subparagraph and to members of their families in so far as their legal position is not governed by the above-mentioned Treaty or measures.

2. This Regulation shall not affect measures taken in accordance with Article 48 of the Treaty on the Functioning of the European Union.

3. This Regulation shall not affect the obligations of Member States arising out of special relations or future agreements with certain non-European countries or territories, based on institutional ties existing on 8 November 1968, or agreements in existence on 8 November 1968 with certain non-European countries or territories, based on institutional ties between them.

Workers from such countries or territories who, in accordance with this provision, are pursuing activities as employed persons in the territory of one of those Member States may not invoke the benefit of the provisions of this Regulation in the territory of the other Member States.

Article 37

Member States shall, for information purposes, communicate to the Commission the texts of agreements, conventions or arrangements concluded between them in the manpower field between the date of their being signed and that of their entry into force.

Article 38

The Commission shall adopt measures pursuant to this Regulation for its implementation. To this end it shall act in close cooperation with the central public authorities of the Member States.

Article 39

The administrative expenditure of the Advisory Committee and of the Technical Committee shall be included in the general budget of the European Union in the section relating to the Commission.

Article 40

This Regulation shall apply to the Member States and to their nationals, without prejudice to Articles 2 and 3.

Article 41

Regulation (EEC) No 1612/68 is hereby repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

Article 42

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 5 April 2011.

For the European Parliament
The President
J. BUZEK

For the Council
The President
GYŐRI E.

ANNEX I

REPEALED REGULATION WITH LIST OF ITS SUCCESSIVE AMENDMENTS

Council Regulation (EEC) No 1612/68
(OJ L 257, 19.10.1968, p. 2)

Council Regulation (EEC) No 312/76
(OJ L 39, 14.2.1976, p. 2)

Council Regulation (EEC) No 2434/92
(OJ L 245, 26.8.1992, p. 1)

Directive 2004/38/EC of the European Parliament and of the Council
(OJ L 158, 30.4.2004, p. 77)

Only Article 38(1)

ANNEX II

Correlation Table

Regulation (EEC) No 1612/68	This Regulation
Part I	Chapter I
Title I	Section 1
Article 1	Article 1
Article 2	Article 2
Article 3(1), first subparagraph	Article 3(1), first subparagraph
Article 3(1), first subparagraph, first indent	Article 3(1), first subparagraph, point (a)
Article 3(1), first subparagraph, second indent	Article 3(1), first subparagraph, point (b)
Article 3(1), second subparagraph	Article 3(1), second subparagraph
Article 3(2)	Article 3(2)
Article 4	Article 4
Article 5	Article 5
Article 6	Article 6
Title II	Section 2
Article 7	Article 7
Article 8(1)	Article 8
Article 9	Article 9
Title III	Section 3
Article 12	Article 10
Part II	Chapter II
Title I	Section 1
Article 13	Article 11
Article 14	Article 12
Title II	Section 2
Article 15	Article 13
Article 16	Article 14
Article 17	Article 15
Article 18	Article 16
Title III	Section 3

Regulation (EEC) No 1612/68	This Regulation
Article 19	Article 17
Title IV	Section 4
Article 21	Article 18
Article 22	Article 19
Article 23	Article 20
Part III	Chapter III
Title I	Section 1
Article 24	Article 21
Article 25	Article 22
Article 26	Article 23
Article 27	Article 24
Article 28	Article 25
Article 29	Article 26
Article 30	Article 27
Article 31	Article 28
Title II	Section 2
Article 32	Article 29
Article 33	Article 30
Article 34	Article 31
Article 35	Article 32
Article 36	Article 33
Article 37	Article 34
Part IV	Chapter IV
Title I	—
Article 38	—
Article 39	Article 35
Article 40	—
Article 41	—
Title II	—
Article 42(1)	Article 36(1)

Regulation (EEC) No 1612/68	This Regulation
Article 42(2)	Article 36(2)
Article 42(3), first subparagraph, first and second indents	Article 36(3), first subparagraph
Article 42(3), second subparagraph	Article 36(3), second subparagraph
Article 43	Article 37
Article 44	Article 38
Article 45	—
Article 46	Article 39
Article 47	Article 40
—	Article 41
Article 48	Article 42
—	Annex I
—	Annex II