

## **2 General information related to the MOBILITY of workers in the European Union countries.**

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### **1. Presentation of the European legal regime and of the policy of the European Union on mobility**

#### **1.1 Summary presentation of the legal regime on mobility<sup>1</sup>**

According to the EC Treaty, the free movement of persons constitutes one of the fundamental rights and aims to the creation of a market without borders, in which the free movement of Union citizens is directly conferred by the Treaty itself (see article 14(2) of the treaty). Furthermore, Union citizenship introduces the right of every citizen of the European Union to enter, to reside and to remain in the territory of another Member State within the meaning of articles 17 and 18 of the EC Treaty. Finally, the development of mobility of students, researchers, teachers and professors as well as other groups of citizens is recognized as a political priority of the European Union.

As concerns the basic legislation on free movement and residence within the European Union, the following apply:

According to the communication of the European Commission to the European Parliament and Council, on the right of citizens of the Union to move freely (COM(98)403 final), the Commission has adopted the opinion that citizenship of the European Union confer to all citizens the right to enter, the right to reside and the right to remain in the territory of another Member State.

More specifically, the council directives 68/360/EEC, 73/148/EEC, 90/365/EEC of 1990 and 93/96/EEC of 1993 describe the conditions of exercising the right of European citizens and their family members to free movement and residence of workers, independent professionals, unemployed, pensioners and students. Restrictions only concern special cases referring to special political issues, public safety issues or public health issues.

#### **1.2 The policy of the EU on Mobility<sup>2</sup>**

##### **a) Why does the European Commission promote mobility**

More mobility of labour either occupational or geographical may contribute to a more successful and dynamic European economy and a balanced geographical and social distribution of the rewards of faster economic growth. It also allows the European economy, employment and labour to adapt to the changing circumstances in a smoother and more efficient manner and guide the changes within the competitive global economy.

More mobility between the member states will also encourage a closer political integration in the EU. Europe offers tremendous opportunities to those wishing to

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<sup>1</sup> COM(2001)257 final, Brussels 23.5.2001, "Proposal for a European Parliament and Council Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States", presented by the Commission.

<sup>2</sup> COM(2002)72 final, Brussels 13.2.2002, "Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions: Commission's Action Plan for skills and mobility".

move in order to progress professionally. Europeans are however still extremely reluctant as concerns occupational mobility.

In 1999, 1.2% of the EU population moved from one region to another while 5.9% of the USA population moved from one state to the other. In the year 2000, approximately 225,000 persons (0.1% of the EU population) moved between two EU member states, while 0.2% of the overall economically active population of the EU lives in one country and works in another. Out of the 34 million workers living in border regions, 1.4%, that is to say 497,000 persons, work outside the borders of their country (1999 data). 16.4% of the workers in the EU were employed by an employer for less than one year against 30% in the USA (in 2000).

### **b) What are the advantages of moving to another country**

Many are the advantages from a period of studies or work abroad: substantial change of environment, new personal horizons, daily contact with a different culture, ideal opportunity to learn a new foreign language, possibility to work or study with persons of different background, opportunity to exchange ideas and compare experiences, are only some of those advantages.

### **c) The EU policy on the mobility of professionals**

The EU policy on the mobility of professionals, that was formed during the recent years through a series of actions, such as the report of the European Commission on the New European Labour Market {COM (2001) 116 final}, February 2001, the conclusions of the European Council of Stockholm in March 2001 and the final report of the high level task force on skills and mobility submitted to the European Commission in December 2001, is formulated in the EC Action Plan for skills and mobility of workers. The main objective of the Action Plan is to create a favourable environment for a more open and accessible European Labour Market by the end of the year 2005.

The action plan is also linked to other relevant existent initiatives such as the European Research Area and life-long learning. The political vision of the Action Plan is to promote the human resources in the European Union in compliance with the objectives of Lisbon, first to create the opportunities for Union citizens to move freely for educational or occupational reasons and to benefit more easily from the advantages of European Integration, including the single European market. In order to achieve the objectives of Lisbon in terms of more and better job positions, greater social cohesion and dynamic economy based on knowledge, an available high quality labour force is required. This objective is strongly linked to the increase of mobility in the labour market, the improvement of the level of skills of the workers and the removal of obstacles to mobility.

In order to guarantee the creation of a European labour market open to all, three basic categories of problems must be handled:

- a. insufficient occupational mobility
- b. reduced geographical mobility
- c. lack of information and transparency on employment opportunities

## **A. INSUFFICIENT OCCUPATIONAL MOBILITY**

The EU is traditionally characterized by low levels of occupational mobility, that is to say of movement of workers from one job position to another in the same professional field or to other occupational fields. For the sake of indication, if one notices the statistical data related to workers in the same job position between one and 2 years and in the same job position for more than 2 years in 1995, the percentages related to the first category vary in the 15 member states from 5.6% (Spain) to 11.3% (Denmark) with an average community percentage of 8.5%. For the second category, the corresponding percentages are 66% (Denmark), 86.5% (Italy) with a community average of 76.7% [source: EUROSTAT].

The same data for the year 2000 feature the following: the percentages for the first category vary in the 15 member states from 6.1% (Greece) to 13.3% (Denmark) with a community average of 10.1%. For the second category, the corresponding percentages are 63.5% (Denmark), 84.3% (Greece) with a community average of 73.5% [source: EUROSTAT].

The above data show the strong, almost stable during the last years, tendency of the European citizen, not to change job position. However, in a developing economy of knowledge, occupational mobility is substantial to the adoption of structural changes that are necessary in a strongly competitive world and that will contribute to the achievement of better conditions of operation in the labour market, aiming to a greater productivity, employment, development and competitiveness. The non-existence of suitably trained labour force is a basic parameter of the lack of balance between job offers and demands, both on the geographical level and on the level of occupation fields. One can therefore notice a radically changing labour market with increased requirements for persons capable of adopting new labour modes in the framework of the new technologies, the new occupational fields and a new work environment.

It is obvious that the educational programs, as well as the training systems of the member states must pay serious heed to the new needs of the labour market. The fact that the increase of occupation in fields requiring high level of knowledge (high education) experiences a stride during the recent years and that such increase is three times higher than the average in the other occupational sectors is characteristic.

For the sake of indication, one can mention the data of the Eurostat - Labour Force Survey for the year 2000. Especially concerning the average for the 15 member states, the employment and unemployment percentages per level of studies are the following:

### *1. Employment percentages*

|                     | <b>C.A</b> | <b>Min.</b>    | <b>Max.</b>      |
|---------------------|------------|----------------|------------------|
| Primary Education   | 50.1 %     | 44.1 % (Italy) | 69% (Portugal)   |
| Secondary Education | 69.8 %     | 53.2 % (Spain) | 80.1 % (Denmark) |
| Higher Education    | 63.1 %     | 53.4 % (Italy) | 76.4 % (Denmark) |

### *2. Unemployment percentages*

|                     |        |
|---------------------|--------|
| Primary Education   | 12.1 % |
| Secondary Education | 7.9 %  |

Higher Education 8.4 %

According to the same source, as regards the level of studies of the active population, that is between 25 and 64 years of age, their percentage in the year 2000 all over the EU was greater than 60% for those with at least secondary education. However, important differentiations can be noticed among the various countries. The countries with the higher percentages are Germany (76.7%), Austria (76.1%), Sweden (76.8%) and Denmark (78%), while the countries with the lowest percentages are Portugal (19.2%) and Spain (37.1%).

It is therefore obvious that one must see to the increase of those percentages in view of a maximum number of educated obtaining the highest possible education level. Particularly for women who usually retire early from the labour market for maternity reasons, the high level of education is a substantial prerequisite for their reintegration in the labour market.

Apart from the need to redefine the national education system, the European dimension of education and in general of the training of workers is very important to achieve the objectives expounded here above. The mobility of workers within the European Union may hence give them new perspectives as much in issues of training as in terms of acquisition of experience thus leading to an enhancement of opportunities to create a career. Given the ageing of the European population, more opportunities must be given to the older workers in terms of improvement of their skills in relation to the labour market. Special attention must be paid to the training and education of those persons, especially in new fields occurring from the implementation of new technologies (information technology, electronic commerce, etc.). Ageing of the population requires, therefore, the approach of life-long learning that will ensure the upgrading of the skills and qualifications of the aged individuals. This will enable them to adopt the changes happening in the businesses and in the occupational environment and will give them the advantage of choosing more flexible orientations to create a career.

#### *Ways of enhancing the occupational mobility in the EU*

In order to enhance occupational mobility, a policy of development of new skills and of acquisition of new qualifications must be implemented and address the labour force of the EU. Separate policies – actions that must be implemented concern the following:

1. Actions aiming at the development of key skills in order to satisfy the modern requirements of the labour market.
2. Enhancing the cognitive scopes related to mathematics, sciences and new technologies for those intending to follow a scientific career.
3. Increase of the percentage of persons that must complete secondary education.
4. Develop stronger ties between the education and the industry, with a parallel enhancing of the professional determination.
5. Life-long learning and continuous education.
6. Enhancing the skills of the workers in terms of information technology and electronic commerce.

## **B. REDUCED GEOGRAPHIC MOBILITY**

The mobility from one member state to another as well as within the same European Union member state is generally reduced. According to the 1999 data of the EUROSTAT, a mere 1.4 of the workers in the European union worked in a different location the previous year.

The reduced mobility of workers in the EU is partly due to legal and administrative obstacles and partly to economic and social obstacles inherent to the different cultural customs and habits.

Enhancing the geographic mobility is linked to the existence of two different labour markets. On one hand, the geographical areas with important unemployment and on the other hand the areas with great lack of workers with specialisation and particular skills. The development of policies to enhance occupational mobility must therefore be linked to the enhancing of geographical mobility so as to create the channels for the movement of workers between different occupational sectors and geographic areas. These measures must be taken in the framework of the policy for the promotion of sustainable development in less developed areas of the Community.

The European economy is more and more based on service rendering. The improvement of the conditions for the expansion of such services through national borders and the ensuring of freedom in the dissemination of such services have direct results on enhancing competitiveness, development and employment. In parallel, the geographic mobility of workers, either employed or independent is also enhanced. For this purpose, existing obstacles such as the exclusion of some company that wishes to send its personnel to another country in order to render some services there or the limitation related to the employment of seasonal workers from other member states, must be eliminated.

Other major obstacles to the geographic movement of workers relate to the cost of living in the new residence area, in connection to the level of pays, transport costs, taxation, etc. Other parameters relate to social security, knowledge of the language of the host country, housing, finding a job for the spouse, education of the children and provided medical care. The conditions or the cost of access to such services usually differ from country to country and may substantially influence the will to move.

The measures taken or to be taken by the EU to enhance the geographic mobility, are summarized hereafter:

- Free movement
- Harmonization of national legislations on social security, establishment of a Health insurance card
- Granting of complementary pensions
- Professional recognition for common professions
- Creation of an internal market for the rendering of services
- Measures related to tax benefits and housing
- Enhancing the teaching of languages
- More scholarships in other member states
- Single system of recognition of degrees
- Creation of a common emigrational policy.

## **2. General Concepts, useful information**

The European Union citizenship confers rights that are not always known. As an example, one may mention the possibility of studying, working or getting a pension in another member state of the Union, while enjoying the same rights as the nationals of such member state.

The breadth and variety of those rights are so extended that their summary presentation can, in no case, reflect the whole of isolated cases they cover. Therefore, regarding any special issue, one must consult the appropriate information guide (the European Union publishes a series of information guides that describe in summary the rights of the European citizens, the conditions to exert those rights and the means to utilize them) or for more information, one may refer to the information services mentioned on the last page of those guides.

### **RIGHT OF RESIDENCE AND EMPLOYMENT<sup>3,4</sup>**

As a citizen of one of the member states of the European Union, one has the right to reside in the territory of those states, regardless of one's professional or socioeconomic status. A fundamental principle is also the right to employment and equal treatment with national of the respective states, regardless of the place of residence within the member states.

The basic principle of equal treatment at work, and the ban on discrimination based on nationality is valid both with regard to employment in the private and in the public sector, i.e. employment in public enterprises, trading companies, telecommunications companies, public transport companies, universities, research institutes, hospitals, etc. However, there are some conditions and limitations to this right. Member states are permitted to reserve certain positions solely for their own nationals with regard to activities in the civil service, which are connected with the exercising of sovereign powers, or positions belonging to local authorities. The breadth of the discretion of member states to reserve positions for their own nationals has been reduced over the years and is still reducing. The right to free movement and the associated right to exercise your profession are also associated to other restrictions. Some member states may not require a work permit but they require a residence permit to exercise a profession (and this is valid in most of the member states).

Job seekers have the right to live in another EU country for a "reasonable period" of time in order to look for a job. In the absence of a community provision defining this period, most member states are now operating a six-month period, though some are still operating a three-month period. One is advised to check the exact situation with the national authorities in the country in which one is looking for work. However, no matter how long one has to look for a job, he or she cannot be asked to leave the country if he or she can prove they are still seriously looking for a job and have a real chance of finding one. In certain circumstances, if one is receiving unemployment benefit in one EU country, he or she may continue to receive this benefit for up to three months in another EU country. To do so, he or she must apply to the authorities, which pay the unemployment benefit. They will give the necessary information regarding the required practical formalities.

The formalities depend on how long one plans to spend in a country.

- If one intends to stay no more than three months in another EU country (e.g. if one is on holiday, following or giving a training course, undergoing treatment, doing a temporary job or taking part in a transnational youth or

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<sup>3</sup> <http://citizens.eu.int>

<sup>4</sup> <http://www.eurocadres.org/mobilnet/English/rights-en.htm>

voluntary activity), there is no need for any special visa or residence permit. As long as one has a valid identity card or passport. The only formality that may be imposed in some countries is to notify one's presence. This notification is often automatic, e.g. when checking into a hotel or filling in a tenant's form when renting.

- If one stays between three months and one year in a temporary job, or is temporarily offering services as self-employed person, one will qualify for a residence permit for the period in question.
- In all other cases, one may apply for a residence permit, to which one is entitled as an EU national.

## **RESIDENCE PERMIT<sup>5,6</sup>**

An EU national's residence permit is a special permit. It is usually different from any permit issued to non-EU nationals.

In order to obtain a residence permit, one must submit the relevant application to the administrative authorities (for example the Prefecture or the Police department) that have to answer within a maximum of six-month period from the date of submission of the application if there is need to conduct controls for public order reasons.

It should be noted that one is entitled to work as an employee or as a self-employed person without waiting for the residence permit to be issued. This document is merely a means of proof and not a condition of the entitlement to live in the country.

When applying for a residence permit, one must produce a valid passport or identity card.

According to the circumstances, one may also be requested to provide the relevant documents:

- For employees, a signed statement from the employer.
- For self-employed, the proof of self-employed status by any appropriate means.
- For students, the latter must be registered with an approved educational establishment, prove that they have adequate sickness insurance and sufficient financial resources. These documents as well as the statement must also cover the members of the family who accompany the interested party.
- For retired or out of work, they must prove that the interested persons and their families have adequate sickness insurance as defined in each country. Retirement benefits are payable wherever the retired person lives. If the retirement scheme under which the person is insured, covers the medical expenses, the retired persons have also the right to retirement in the host country. A prerequisite for the above is, before moving to another EU state, to declare the departure at the retirement fund (asking for Form E121,

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<sup>5</sup> <http://citizens.eu.int>

<sup>6</sup> <http://www.eurocadres.org/mobilnet/English/rights-en.htm>

that the interested person shall hand to the relevant authorities in the host country.

To obtain a residence permit for the members of the family, proof of kinship with them is usually required.

The residence permit for a national of an EU country is:

- valid throughout the territory of the country of residence for at least five years and is automatically renewable. A student's permit is valid for one year but is renewable.
- still valid even if you are absent from the country of residence for up to six months or if you are doing military service in your country of origin.
- issued free of charge or on payment of a fee no higher than that payable by a national of the country of residence for an identity card.

Members of the family who are not nationals of an EU country will not be issued with an EU national's residence permit. Instead, they are entitled to a different residence permit, which is equally valid.

## **EXCEPTIONS TO THE RIGHT OF RESIDENCE<sup>7,8</sup>**

An EU country is entitled to refuse to issue or renew a residence permit, or to require a person to leave its territory, if the person's actions constitute a serious threat to public order or public security. However, having a criminal record is not, in itself, sufficient grounds to justify such a measure automatically.

The national authorities are also entitled to refuse to issue a residence permit on public health grounds, but only in strictly limited cases involving certain diseases. The person may therefore be required to undergo a medical examination before a first residence permit is issued.

If an EU country takes any decision in relation to the residence of a person on grounds of public order, public security or public health, the person must be told the reasons for the decision. The person must also be given sufficient time to prepare a defence.

For more information, see the index on "Right of residence" and, depending on your circumstances, the guides, "Working in another country of the European Union of the European Union" or "Studying, training and doing research in another country of the European Union".

## **RIGHTS WHEN TAKING UP RESIDENCE IN ANOTHER EU COUNTRY<sup>9,10</sup>**

### **Personal property**

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<sup>7</sup> <http://citizens.eu.int>

<sup>8</sup> <http://www.eurocadres.org/mobilnet/English/rights-en.htm>

<sup>9</sup> <http://citizens.eu.int>

<sup>10</sup> <http://www.eurocadres.org/mobilnet/English/rights-en.htm>



If moving to another EU country, one may move one's personal property there without any restrictions and without paying customs duties or taxes. However, EU countries can require payment of vehicle registration taxes, or impose restrictions on certain goods, such as arms and ammunition.

### **Motor vehicles**

#### *Introduction to another country*

The rights and obligations may vary depending on the type and age of the vehicle.

### **Registration and taxes**

#### *General rule*

In general, in order to use a vehicle in the country in which you establish your main residence you have to register that vehicle under the normal number plates of that country.

For each purchase of a new vehicle (i.e. of a vehicle less than six-month age or having run less than 6,000 km) VAT will be charged in the country in which registration took place. On the contrary, when purchasing involves a used vehicle (older than six months or with more than 6,000 km), VAT will be charged in the country in which the vehicle has been purchased.

Most EU member states also impose plate dues, the structure and coefficients of which vary significantly whereas exemption may be granted in cases of change of residence. Such an exemption usually depends on the period during which one was the owner of the vehicle and especially before and after its transfer.

Transferring your vehicle subsequently to another Member State, for whatever reason or period of time, does not alter the VAT situation.

If you transfer the vehicle at the same time as changing your main residence, you are no longer liable to payment of the abovementioned vehicle registration taxes in the Member State in which you have taken up residence.

Similarly, a student may use his or her vehicle – with plates of the country of usual residence – in the territory of the country in which he or she is studying, without paying taxes.

#### *Temporary use*

You are exempt from taxes if you use your vehicle temporarily — that is to say for a period of 6 months (continuous or otherwise) out of any 12 months.

This exemption covers private and business use, but not the carriage of passengers or goods by way of trade. When a vehicle is temporarily used in another country, it cannot be sold, hired or borrowed (all countries are free to apply less strict rules).

### **Driving license**

Until 1<sup>st</sup> of July 1996, if you moved to a different EU country, you were obliged to exchange your driving licence for an equivalent licence issued by that country. This requirement has been abolished since the 1<sup>st</sup> of July 1996, and you can now drive on your original licence, as long as it is still valid.

However, the host country will apply its own national rules as regards the period of licence validity, medical checks and tax rules, and may make any necessary endorsements. (For more information, see the index, 'Driving licence').

## **TAXES**<sup>11,12</sup>

Whilst there is no harmonization of tax matters, there are taxation agreements between individual member states and there are some underlying principles, which have to be respected by the public authorities in such a way as to avoid harm to or discrimination against other member states and their nationals. On the other hand, the member states may, for taxation purposes, provide for a distinction between the nationals of other member states who are permanent residents and the ones who are not permanent residents.

It is important to establish whether, if you move to another EU country to live, you become 'resident for tax purposes' there.

The definition of "resident for tax purposes" is not the same in all EU countries. The legislation of the country where the person moves to, applies.

A person "resident for tax purposes" in one country must normally declare all his or her income there. In the country of residence for tax purposes, the person may also be subject to other taxes such as inheritance tax and wealth tax.

One should therefore find out about one's tax position from the tax authorities or competent advisers both in the country that one is planning to move to and in one's home country. One can explain the details of one's individual and family circumstances to them so that these can be taken into consideration. One must also check whether any formalities have to be completed before the departure.

The rules on income tax and other taxes such as inheritance tax and wealth tax are not harmonised by the EU. Accordingly, rules and rates can vary considerably from one country to another.

However, it should be noted that EU countries have concluded tax conventions with one another aimed at preventing double taxation of income.

## **Social security**

The community provisions on the co-ordination of social security regimes are contained in the regulation number 1408/71 and in its implementing regulation number 574/72. Rather than harmonizing the national security systems, the community provisions on social security provide for simple co-ordination of these systems. In other words the regulations 1408/71 and 574/72 define the principles for the protection of rights of the individuals moving within the community, but do not affect the freedom of each member state to define who falls under their social security legislation, which are the benefits and under which conditions.

These rules apply to employees and self-employees, to the persons entitled to retirement (who are nationals of a member state) and to their family members who move within the Community.

The co-ordination of the social security systems is based on four fundamental principles:

The *principle of equal treatment* entitles you to have the same rights and obligations as nationals of the country in which you have moved. This rule applies not only to forms of direct discrimination but also to all forms of hidden discrimination, based on other criteria and leading to the same result;

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<sup>11</sup> <http://citizens.eu.int>

<sup>12</sup> <http://www.eurocadres.org/mobilnet/English/rights-en.htm>

The *single membership scheme* ensures that the person is subject to the legislation of a single member state at any one time. In general, an employed or self-employed worker is insured in the country where the occupational activity is carried out.

However, there are some exceptions to this principle, especially for workers temporarily seconded to another member state where they remain subject to the legislation of the country of origin;

The *aggregation rule* ensuring that periods of insurance or employment under the legislation of different member states are aggregated as long as they do not overlap;

The *exporting of benefits principle* in all member states. Entitlement to a benefit is not affected by the fact that the person concerned may be resident or staying in another member state.

There is EU legislation on the following: sickness and maternity (benefits and care); accidents at work and occupational diseases; invalidity benefits, old age pensions and death grants, unemployment benefits and family benefits.

The social security benefits, the pension status per profession and the early retirement status are not covered by EU legislation.

Community rules provide for various rights and guarantees, the most important of which are the following:

The unemployed retains the right to receive unemployment benefits, under some conditions, for a maximum period of three months during which he or she is looking for a job in another member state. In such case, the interested person must submit some documents (including the Form E303 on the preservation of the right to unemployment benefits), provided by the social security organization to which the person belongs and the competent authorities in the country where the person is looking for a job;

Being entitled to medical treatment, the person has the same rights in the case emergencies during a short stay abroad (for example, provided the person has a social security certificate (Form E111 certifying the right to benefits in kind during the stay in another member state).

For information on the provisions related to social security issues valid for students, one must consult the guide "Education, training, research in another member state of the European Union".

The E-forms give the possibility to exercise one's rights immediately, in terms of entitlement to social security benefits during the stay abroad. These forms are standardized throughout the European Union and may be obtained from the social security funds in the country of origin. The most important forms are the series E100 for posted workers and for entitlement to sickness and maternity benefit, the series E200 for the calculation and payment of pensions, the series E300 for entitlement to unemployment benefits and the series E400 for entitlement to family benefits.

Upon arrival to another country, one must submit the appropriate forms to the social security fund so as for the application for benefits to be examined the soonest possible. It is also useful, for identity check, to have a valid passport or identity card, a copy of the birth certificate as well as copies of the other necessary documents such as marriage certificate or child birth certificate.

## **CROSS-BORDER OR FRONTIER WORKERS**

Free movement of workers within the European Union also applies to frontier workers, i.e. to the persons who work in one member state different from the one in which they reside. However, the definition of the frontier worker may vary depending on the fields (e.g. taxation law, right of residence, welfare benefits).

### ***Permit for the frontier workers***

The concept of frontier worker is not clearly defined as regards the right of residence. The frontier worker is the person who has its residence in one member state to which he or she returns daily or at least once per week and who works in another member state.

Due to the special situation of frontier workers who, by definition, are occupied in a country different from the one of their residence, the community law does not require the issuing of residence permits in the country of occupation. However, the competent authorities may issue a special permit. Three member states (Belgium, Spain and Italy) have used this possibility so far.

### ***Social security***

Community rules on social security include specific provisions for the frontier workers. The community definition of the frontier worker (used in the community legislation for the co-ordination of the social security systems) refers that these are employed or self-employed persons who exercise some business activity in a member state different from the one of their residence where they return at least once per week.

Being a frontier worker, one is covered by the European legislation on social security in the same manner as the other categories of persons mentioned in such provisions. However, special rules are valid for the sickness benefits or the unemployment benefits. The workers of this category retain the right to sickness benefits in kind either in the country of residence or in the country of occupation. If one has been registered as unemployed, one may ask for unemployment benefit only in the country of residence.

### ***Taxation***

The income tax is not harmonised at a community level. It is still subject to the separate national legislations and to numerous bilateral agreements, aiming to avoid double taxation. Even though there is no harmonisation, this legislation or the agreements must comply with the basic principles of the community law, particularly with the principle of free movement of workers within the European Union and with the principle of equal treatment.

As a result of the taxation agreements entered into by member states, the income obtained by the frontier workers may be taxed in one or in both examined countries. In the second case, the tax paid in one country is taken in account to define the taxes owed in the second country (to avoid double taxation of the same income). The definition of frontier worker is particularly limitative in the specific matter and, depending on the details of the taxation agreement in force, it frequently depends on the fact of being a resident and/or employed in a border region and how frequently the person returns to the country of residence.

When the workers who do not reside permanently in the country of occupation (this category may be broader than the that the one of frontier workers) are taxed in such country, the community law principle of non-discrimination obliges the said country, in some very specific cases, to handle these workers in the same way as the permanent residents. This happens when the status of a worker who is not a permanent resident is comparable to that of a permanent resident especially if such worker obtains the whole or almost the whole of his or her income in the country of occupation and has no sufficient income subject to taxation in the country of residence. The personal and the family status are also taken in account. Provided the above conditions are met, the country of origin has to provide the workers who are not permanent residents the same taxation reductions as provided to the permanent residents, due to their family status.

### 3 Recognition of the degrees of engineers

The profession of engineer is included in the field of application of the general system of recognition of degrees. The general system of recognition of degrees is valid for persons who have the required qualifications so as to exercise a profession in some member state and wish to exercise the same profession in another member state (the host state) and who must, to the extent the profession is subject to specific rules in the host state, obtain the recognition of their qualifications in such state.

***Mechanism of recognition:*** the recognition concerns the degree or the certificate or the title or the total of titles evidencing the full professional education, i.e. that allow the practising of the said profession in the member state of origin. In principle, the degree, certificate or education title must be recognised as such. In any case, the general system is not a system of automatic recognition. An application for recognition must be submitted to the competent authority of the host state. This authority must examine each case separately. It shall examine if the profession that one wishes to exercise in the host state and is subject to rules, is the same as the one for which the applicant has all the required qualifications in the member state of origin and that the duration and the content of the education do not differ substantially from the ones required in the host state. If the professions are the same and the education is globally similar, the competent authority must recognise the education titles. On the contrary, if it evidenced that there are substantial differences between the professions or the duration or the content of the education, compensatory measures may be imposed or recognition may be rejected.

***Compensatory measures:*** in the case of differences of at least 1 year as to the duration of education, the competent authority may require the existence of professional experience (the duration of which may vary from 1 to 4 years). In the case of substantial differences between the professions or the content of the education, a time period of practice or examinations may be imposed (at the choice of the interested engineer). In any case, only one compensatory measure can be imposed. Besides, any professional experience acquired by the engineer in the country of origin or in any other member state must be taken in account. This experience may reduce or cancel the compensatory measure.

***Particular cases:***

- 1) If the profession for which the person is requesting recognition of the degrees is not subject to rules in the member state of origin, the competent authority may require the certification of a professional experience of 2 years.
- 2) If the degree was obtained in a country that is not a member state of the European Union, then if such degree has been recognized in a member state or if in such member state the said profession has been practised, for 2 or 3 years depending on the case, the degree may be also recognized in the host state.

The competent authority has 4 months to examine the application for recognition and to decide accordingly: either recognizing the education titles or connecting their recognition to a compensatory measure or rejecting the application.

The decision (rejection or imposition of a compensatory measure) must be substantiated and is subject to judicial recourse. In the absence of a decision within the 4-month period, one may have recourse according to the valid procedure in the host state, due to non observance of the time limit (of 4 months) provided in article 8 of directive 89/48 or in article 12 of directive 92/51.

The community institutional bodies do not have the possibility to abrogate an administrative decision that has been taken by national authorities. Only the competent national authorities may cancel the decision rejecting the application. The decisions of the European Court are based on the establishment of the violation of a state, due to bad implementation of the community law or to the existence of a national legislation that is incompatible with the community law. It is to the authorities of the said state to amend the individual decisions they have taken, according to practices or legislations that have been judged by the European Court.

After a decision of recognition of an education title, the interested person may apply for the position of engineer, same as the holders of national degrees and with the same rights and obligations.

**Reference texts:** directive 89/48/EC of 21.12.1988, directive 92/51/EC of 18.06.1992, directive 94/38 of 25.07.1994 and directive 95/43 of 20.07.1995. Furthermore, see the "Guide for the user of the general system of recognition of professional titles".

## **ARCHITECTS**

The profession of architect and architecture are covered by the Council directive 85/384/EC, of the 10<sup>th</sup> of June 1985. In order for the typical qualifications to be recognized according to this directive, they must be provided in article 11 therein or in the announcement stipulated in article 7.

However, the said directive does not include a full harmonization of architects' education. There might be different education systems for architects that are not compatible with this directive although absolutely according to the letter of the law. The degrees that relate to those systems may be recognized according to article 52 of the EC Treaty as interpreted by the European Courts in its resolution dated May 7, 1991 in the case C-340/89 «Vlassopoulou». According to this jurisprudence, the host member state must take account of the degrees of the migrant who submits an application to exercise the profession as well as of any recognized education certificates or professional experience. If the typical qualifications are the same as the ones required by the national legislation of the host member state to exercise the profession of architect, then the migrant must enjoy the same occupational rights

deriving from this permit with the architect who is a national of the host country. If this is not the case, then the host country must provide all the possibilities to cover the lacks of education of the migrant. In general, any relevant administrative decision must be sufficiently substantiated and give the possibility to judicial recourse in order to check its compliance with the community law.

When the degrees have been obtained in a third country, their recognition is optional and falls under the competence of the member state. Degrees from third countries that have been recognized by a member state are not automatically recognized by another member state.

The legal definition of architecture as well as the legal status of the architect's profession including all rights, obligations, qualifications, incompatibility, are defined by the national legislation of the host member state. The fact that the migrant acquires exactly the same occupational rights and the same legal status as the national may result in not having some privileges that existed in the country of origin.

The main relevant community legislative acts are the following:

- Council Directive 85/384/EC of June 10, 1985 (EE L 223, August 21, 1985), as amended by the Council directives 85/614/EC, 86/17/EC and 90/658/EC, as well as by the act of accession of Austria, Finland and Sweden (EE L 1, 1.1.1995)
- Announcement 89/C 205/06 (EE C 205, 10.8.1989), as updated with announcements 94/C 350/06 and 95/C 65/03

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12. COM(2001)257 of 23.5.2001
13. COM(2001) 214 of 19.4.2001, Official Journal C 165/4 of 8.6.2001.
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