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.