

COMMISSION OF THE EUROPEAN COMMUNITIES

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Report on the implementation of measures of derogation
as regards the freedom of movement of workers between
Spain and Portugal and the other Member States

Proposal for a
COUNCIL REGULATION (EEC)
on the transitional period for the freedom of
movement of workers between Spain and Portugal
and the other Member States

(presented by the Commission)

**Report on the implementation of measures of derogation as regards
the freedom of movement of workers between Spain
and Portugal and the other Member States**

Introduction

1. Articles 55 (for Spain) and 215 (for Portugal) of the Act of Accession state that in relation to the freedom of movement of workers between Spain and Portugal on the one hand and the other Member States on the other Article 48 of the EEC Treaty shall apply subject only to the transitional provisions laid down in the Act.
2. Under Articles 56 and 216 of the Act, therefore, the freedom of movement of Spanish and Portuguese workers in the Community of the Ten shall apply in Spain and Portugal with regard to nationals of the other Member States and in the other Member States with regard to Spanish and Portuguese nationals only as from 1 January 1993 and with regard to the Grand Duchy of Luxembourg nationals with effect from 1 January 1996. Each Member State may retain these provisions for its own purposes and may require immigrants entering the country to take up paid employment to obtain an entry and/or work permit.
3. Nonetheless, Article 56(2) and Article 216(2) provide that with effect from January 1991 the Council, acting on the basis of a report from the Commission, will examine the results of the application of the measures of derogation and, acting unanimously on a proposal from the Commission, may adopt provisions intended to adjust the said measures.
4. In order to draw up its report the Commission has conducted a survey, essentially statistical, throughout the Community.

Reasons for the Commission proposal

5. The purpose of the legal disposition establishing the transitional arrangements set out in Articles 56 and 216 of the Act was to prevent a dramatic deterioration of the situation on the labour market which would have resulted from a major migration of labour in the wake of accession.
6. Now, five years after accession, there is evidence in the form of statistical data provided by the Member States (although a number did not reply to the questionnaire sent to them), that the proportion of work permits issued for Portuguese and Spanish workers has not risen significantly.

Similarly, few refusals, both in absolute and relative terms depending on the case, have been recorded (see tables Annexed).

7. Furthermore, the employment situation in Spain and Portugal has improved considerably over the past five years. Unemployment in Spain has fallen sharply from 21% in 1986 to 15.8% in 1990 and in Portugal from 8.2% in 1986 to 4.4% in 1990.

The rate of new jobs, which has outstripped the Community average (+4% in 1989 for Spain and +2% for Portugal) looks set to remain sustainable in the years to come.

Spain and Portugal thus appear to be poles of dynamic activity within Europe capable of attracting investors and offering good prospects to their people in terms of jobs and income.

Some figures

	Spain	Portugal	EU
Employment/total population 1988	30.3	43.5	40.3
-14 years/total population	19.8	19.5	17.1
Unemployment rate (89)	17.1	5.0	8.9
Unemployment rate -25 years (89)	34.0	11.4	17.3
New Jobs created 1988/1987	+391.000	+104.000	+2 304 000
1989/1988	+479 000 (+4%)	+ 96 000 (+2%)	+2 169 000

It should also be added that over the past few years there has been a growing number of Portuguese workers returning to Portugal from their countries of emigration.

Although accurate figures are not available, those returning have been estimated at 26 000 per year. This trend is explained in particular by temporary emigration replacing permanent immigration.

8. It should also be stressed that over the past few months an albeit modest trend has become evident as regards changes in the free movement of persons.

These changes are related to the three Council Directives on the right of a residence for students, employees and self-employed persons who have ceased their occupational activity and the nationals of Member States who do not enjoy this right under other provisions of Community law which will come into force in all the Member States on 1 July 1992 at the latest.

This new stance adopted by the Community is also putting the case for an amendment of the measures of derogation currently in force with regard to the free movement of Spanish and Portuguese workers so as to prevent a situation arising in which Portuguese and Spanish nationals falling within the scope of one of the three Directives referred to above will be entitled to reside on the territory of any Member State while this right is not enjoyed by workers.

The same is true of Community nationals in Spain and Portugal.

9. Finally, at the time that the measures required in the wake of German unification were adopted by the "General Affairs" Council on 22 October 1990, the Council and the Commission undertook to examine at the earliest opportunity the problem of the measures of derogation pursuant to the relevant provisions of the Act of Accession⁽¹⁾
10. There is thus clear evidence that emigration from Spain and Portugal towards the rest of the Community has not risen significantly and that, moreover, the employment situation in Spain and Portugal has considerably improved since accession and that this improvement is set to continue in the years to come.

(1) Declaration included in the minutes of the "General Affairs" Council of 22.10.90 - Doc. 9405/90.

There are also signs that workers who emigrated are returning and that the duration of emigration is changing.

Furthermore, attention was focused on the situation of Portuguese and Spanish workers particularly at the time of German unification.

11. Consequently, the Commission considers that the measures of derogation currently in force with regard to the free movement of Spanish and Portuguese workers should be amended.
12. This change should, however, take into account the particular situation of the Grand Duchy of Luxembourg in the Treaty of Accession. The Grand Duchy reserved the right to maintain the measures of derogation for a period of ten years (paragraph 2 of this report).

This exceptional measure is justified in view of the proportion of foreign nationals residing (30%) and working under employment contracts (40%) in that country.

This situation has not changed so that the special arrangements for relations between Luxembourg and Spain and Portugal continue to be justified.

For the above reasons the Commission proposes to the Council that the following decision should be adopted.

ANNEX TO THE REPORT

Number of work permits issued or renewed for Spanish nationals in the other Member States.

	Belgium	Denmark	Germany ***	Greece	France	Ireland	Italy	Luxembourg	Netherlands	United Kingdom
1986	NA	NA	0	1	NN	44	NN	132	NN	409
1987	NA	NA	0	7	NN	35	NN	148	168	302
1988	NA	NA	0	0	NN	83	NN	141	192	459
1989	NA	NA	0	0	NN	63	119	126	143	542
1990*	NA	NA	NA	0	NN	60	61	79	109	NN

* Incomplete data:
 Ireland : up to 30 October
 Italy : up to 27 October
 Luxembourg : up to 31 October
 Netherlands : up to 30 September

** Denmark:
 Number of Spanish nationals on 1 January 1986: 898
 Number of Spanish nationals on 1 January 1990: 808

*** Germany:
 The data supplied merely indicate that there has been an overall drop in the number of Spanish workers employed in Germany since 1985.

NN = Not notified by the Member State concerned
 NA = Data not available

Number of work permits issued or renewed for Portuguese nationals in the other Member States.

	Belgium	Denmark	Germany	Greece	France	Ireland	Italy	Luxembourg	Netherlands	United Kingdom
1986	NN	NA	NN	NN	NN	5	NN	3096	NN	164
1987	NN	NA	NN	NN	NN	6	NN	3700	126	126
1988	NN	NA	NN	NN	NN	6	NN	6204	153	205
1989	NN	NA	NN	NN	NN	6	161	5957	194	275
1990*	NN	NA**	NN	NN	NN	4	75	6197	66	NN

* incomplete data:
 Ireland : up to 30 October
 Italy : up to 27 October
 Luxembourg : up to 31 October
 Netherlands : up to 30 September

** Denmark:
 Number of Portuguese nationals on 1 January 1986: 258
 Number of Portuguese nationals on 1 January 1990: 303

Number of work permits issued/renewed for Community nationals in Spain

	Belgium Luxembourg	Denmark	Germany	Greece	France	Ireland	Italy	Netherlands	United Kingdom
1986	943	578	4260	53	2222	NN	1374	1458	7381
1987	686	541	3748	53	2147	335	1222	1113	6567
1988	545	472	2786	28	1556	329	829	995	5651
1989*	657	462	3036	41	1853	432	1056	1147	6550
1990	NA	NA	NA	NA	NA	NA	NA	NA	NA

* Provisional Data

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Number of employment contracts recorded for Community nationals by the Ministry of Employment and Social Security in Portugal *

	Belgium	Denmark	Germany	Greece	France	Ireland	Italy	Luxembourg	Netherlands	United Kingdom
1986	18	9	100	0	70	13	32	1	321	608
1987	31	20	171	0	85	17	29	2	588	1005
1988	29	48	175	3	101	25	79	3	585	1126
1989	36	37	143	1	129	34	40	0	588	1119
1990	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

* Portugal does not operate the work permit system

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Number of work permits refused to Spanish nationals in the other Member States

	Belgium	Denmark	Germany	Greece	France	Ireland	Italy	Luxembourg	Netherlands	United Kingdom
1986	NN	NA	NN	NN	NN	NA	NA	7	NN	NA
1987	NN	NA	NN	NN	NN	NA	NA	6	15	NA
1988	NN	NA	NN	NN	NN	NA	NA	7	16	NA
1989	NN	NA	NN	NN	NN	NA	NA	5	24	NA
1990*	NN	NA	NN	NN	NN	NA	NA	4	14	NA

* Incomplete data: Luxembourg : up to 31 October 1990
 Netherlands: up to 30 September 1990

Number of work permits refused to Portuguese nationals in the other Member States

	Belgium	Denmark	Germany	Greece	France	Ireland	Italy	Luxembourg	Netherlands	United Kingdom
1986	NN	NA	NN	NN	NN	NA	NA	247	NN	NA
1987	NN	NA	NN	NN	NN	NA	NA	208	20	NA
1988	NN	NA	NN	NN	NN	NA	NA	225	18	NA
1989	NN	NA	NN	NN	NN	NA	NA	196	40	NA
1990*	NN	NA	NN	NN	NN	NA	NA	131	40	NA

* Incomplete data: Luxembourg : up to 30 October 1990
 Netherlands: up to 30 September 1990

Number of work permits refused to Community nationals in Spain

	Belgium Luxembourg	Denmark	Germany	Greece	France	Ireland	Italy	Netherlands	United Kingdom
1986	76	26	280	4	151	0	60	141	524
1987	119	58	501	5	316	87	165	206	917
1988	149	73	619	7	392	108	229	281	1008
1989*	129	59	456	3	354	92	187	264	810
1990	NA	NA	NA	NA	NA	NA	NA	NA	NA

* Provisional Data

Proposal for a

COUNCIL REGULATION (EEC)

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal, and in particular Articles 56(2) and 206(2) thereof,

Having regard to the proposal from the Commission,

Whereas Articles 56(1) and 216(1) of the Act of Accession provide for a period during which measures of derogation to the freedom of movement of workers could be maintained between Spain and Portugal and the other Member States; whereas this period was to end on 31 December 1992 with the exception of relations between Spain and Portugal and Luxembourg for the purposes of which and in accordance with the third subparagraph of paragraph 1 of the said Articles the period was to end on 31 December 1995;

Whereas in accordance with Articles 56(2) and 216(2) the Council has examined the report from the Commission on the results of the application of measures of derogation provided for under paragraph 1 of the said Articles;

Whereas this examination has shown that the free movement of workers between the Member States is not likely to cause a deterioration in the various national labour markets;

Whereas the measures of derogation provided for in the said Articles 56(1) and 216(1) should be adapted accordingly to take account of the new data;

Whereas the particular situation of the Luxembourg labour market should also be taken into account,

HAS ADOPTED THIS REGULATION:

Article 1

The measures of derogation referred to in Articles 56(1), first and second subparagraphs, and 216(1), first and second subparagraphs, of the Act of Accession of Spain and Portugal shall cease to apply after 31 December 1991.

The measures of derogation referred to in Articles 56(1), third subparagraph, and 216(1), third subparagraph, of the said Act shall cease to apply after 31 December 1992.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities.

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

Done at Brussels,

For the Council

The President

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