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COMMISSION OF THE EUROPEAN COMMUNITIES

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EEC - TURKEY

Implementation of Article 12 of the EEC - Turkey Association Agreement concerning Freedom of Movement for Workers.

(Commission Communication to the Council)

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Introduction

In this Communication the Commission has set forth the guidelines according to which the provisions of the Ankara Agreement concerning freedom of movement for workers might be implemented.

These guidelines are based in part on the obligation which Article 12 of the Agreement entails for the Community, in particular by its reference to Articles 48 and 49 of the Treaty of Rome, and on the experience gained by the Community while progressively bringing about freedom of movement for workers within the Community, and, on the other hand, on the vital need to control immigration and achieve at the end of the ten-year period a system of freedom of movement compatible with the fundamental principles laid down in Articles 48 and 49 of the Treaty of Rome, but which enables avoidance of unregulated and ill-planned labour movements.

2. The Commission is in favour of a pragmatic approach - on the pattern of the freedom of movement of workers which has taken place within the Community - enabling progress to be made in successive stages and the objectives of the future stages to be fixed in the light of the results obtained in the preceding stage.

3. Accordingly, in view of the present employment situation and forecasts as to how it will develop, and given the size of the Turkish workforce and the large number of Turkish families living in certain Community countries, the Commission considers that the measures to be taken in the first stage should consist of:

consolidation at Association level of the advantages provided for by national laws and by bilateral agreements with Turkey.

measures for progressively liberalizing the conditions governing access to employment (for Turkish workers and members of their families already in the Community); and as an indispensable corollary adaptation of these measures with provisions and regulation or administrative actions on employment and residence .

the abolition of discrimination which would still exist in the field of conditions and of work and employment and, in accordance with the Resolution adopted by the Council on 9 February 1976, on an

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Action programme for migrant workers and their families presented by the Commission on 18 December 1974 , the adoption of measures for a progressive achievement of equality of treatment as regards living conditions;

the institution of cooperation between the employment services.

Moreover, the Commission proposes that the first stage should not exceed three years.

4. The Commission hopes that the Council will examine the guidelines proposed in this Communication and adopt the Community position in such time as will enable the Association Council, in accordance with Article 36 of the Additional Protocol, to decide in good time on the detailed rules for applying these guidelines and that the first measures will enter into force on 1 December 1976.

II. The Association Agreement and Freedom of Movement for Workers

5. Under Article 12 of the Ankara Agreement the Contracting Parties agreed to be guided by Articles 48, 49 and 50 of the Treaty of Rome in order to bring about by progressive stages freedom of movement for workers between Turkey and the Community.

Article 36 of the Additional Protocol requires freedom of movement to be brought about gradually in accordance with the principles stated in Article 12 of the Agreement, between the end of the twelfth and twenty-second year after the entry into force of the Agreement, in other words between 1 December 1976 and 30 November 1986. It is for the Association Council to decide the procedures necessary for this purpose.

6. By virtue of the above provisions, freedom of movement between the Community and Turkey is to be guided by the principle of abolition of discrimination based on nationality between Community and Turkish workers in matters of employment, remuneration and other conditions of work and employment (Article 48(2)).

This involves the right, subject to limitations justified on grounds of public policy, public security or public health:

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to accept offers of employment actually made (Article 48 (3(a));

to move freely for this purpose and to stay within the territory of the Contracting Parties for the purpose of paid employment under the same conditions as the national workers (Article 48(3(b)) and (c));

to remain in the country, subject to certain conditions which have to be determined, after having been employed there (Article 48 (3(d)).

7. Moreover, national rules and procedures relating to the movement of persons, residence and employment may not be retained where they constitute an obstacle to the liberalization of the movement of workers as explained under point 6 above (Article 49(b) and (c)).

8. Cooperation should also be established between the employment services and appropriate machinery set up (Article 49(a) and (d)) in order to facilitate the exercise of the above-mentioned rights under the best conditions for the workers and the achievement of a balance between supply and demand "in such a way as to avoid serious threats to the standard of living and level of employment in the various regions and industries".

9. The Commisssion considers that in view of the progressive stages in which freedom of movement between the EEC and Turkey is to be achieved there is no obligation to define immediately the number of stages envisaged or the measures which each stage will comprise for the whole of the period referred to in Article 36 of the Additional Protocol, in order to attain the objective of the Ankara Agreement in this field, a pragmatic, more flexible approach would appear most desirable, which following the pattern of the process of liberalization of the movement of workers applied between the Member States, should consist of three stages; the first of which would be for three years (1 December 1976 to 30 November 1979). Experience gained would enable preparations to be made, during the third year, for the measures to be taken for the following stage.

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III. Provision for the First Stage

10. Besides the consolidation, at association level, of the current rules resulting from internal laws and from bilateral agreements which Turkey has concluded with most Member States, the first stage must comprise certain liberalization measures, particularly with regard to:

admission into a Community country of Turkish workers coming from Turkey or another Member State as well as the extension or change of employment in respect of workers already admitted into a Community country;

the uniting of families and access to employment for members of the family authorized to take up residence in the country with the worker;

the conditions under which a worker and the members of his family should enjoy the right to remain after having been employed;

provisions governing movement and residence;

equality of treatment in matters of employment, remuneration and other conditions of work and employment, and in the field of living conditions;

cooperation between the employment services.

A. Employment

11. Where it is recognized, in accordance with existing Community procedures, that a job actually offered, that is to say registered by the employment services of a Member State, cannot be taken up by a Community national, a Turkish worker who accepts that job will be admitted to the territory of the Member State in question. The employment services of that State will be responsible for implementing these provisions.

This rule would cover the entry of Turkish workers from Turkey or from a Community country other than that in which the offer was registered. The worker thus admitted would take up the employment which was the subject of the offer, that is with a specified employer.

Besides, the availability of Turkish workers should first be considered, in accordance with the same Community procedures, when recourse is had to the employment of workers from third countries.

12. The objection that Community workers were available could not be raised against a Turkish worker who after one year's legal employment wished to continue to work in a country either with the same employer or with another employer in the same branch of activity. He would have the right to reply, on the same footing as Community workers, to any offer of employment in that branch of activity registered by the employment services.

13. After four years' legal employment in a country, the Turkish worker will enjoy free access in that country to any paid employment of his choice, under the same conditions as Community workers, that is without the intervention of the employment services, except where such intervention was also required for Community workers.

14. The Commission considers that, from the first stage onwards, those Turkish workers who reside legally in a country of the Community should have the right to accept a vacancy from another Member State offered to a named worker wherever such a vacancy complied with certain well-defined criteria.

15. The spouse and the other members of the family legally residing with the worker in the country of employment will enjoy free access to employment at the latest when the worker himself acquires that right. If he has not yet acquired that right, the first employment of the spouse and other members of the family will be the subject of an offer of employment actually made within the meaning of paragraph 11 above and would thus be subject to application of the rule concerning priority in the Community labour market, and after one year's employment they would come under the provisions concerning the extension or change of employment set out in paragraphs 12 and 13.

16. For the application of the liberalization measures set out above, annual holidays and short periods of absence because of sickness, maternity or an accident at work will be treated in the same way as periods of legal employment. In addition, periods of involuntary unemployment duly recorded by the competent authorities and absences because of long periods of illness or for the purpose of military service, while not being treated as periods of legal employment, will not prejudice the rights acquired by virtue of the previous period of employment; they would merely interrupt that period provided that the worker takes up his work again as soon as appropriate employment is offered to him in the case of unemployment or within a reasonable time after the end of the period of sickness or the completion of military service.

17. Finally, the worker who enjoys free access to employment should not leave the country of employment for a period in excess of three months, for example, without losing his rights, except where this is for reasons of a long illness or military service.

18. The authorizations or work permits required by national laws and regulations must be adapted to allow Turkish workers and the members of their families to assert their rights vis-à-vis the employers, employment services and any other relevant authority in the country of employment.

B. The Reuniting of Families

19. On the one hand, in view of the large number of Turkish families residing legally in the Member States and, on the other hand, the inadequate social infrastructure with which these countries are faced, the Member States will be prohibited from creating new restrictions or reinforcing the current restrictions imposed by their national legislation on the reuniting of foreign workers' families, and in particular, to refuse to allow a Turkish worker who has been legally employed for one year or more to be joined by members of his family, provided that he has normal accommodation.

C. Movement and Residence

20. The issue of the authorizations and papers needed for travel purposes by a worker who wishes to enter into employment by replying to an actual offer of employment made in a Member State, will be granted as a right. This refers both to the papers needed to leave Turkey or a Community country and to those needed for entry into the country of employment.

The same provisions must apply in respect of the members of a worker's family who are authorized to take up residence with him.

21. Although under the national legislation of most countries, foreigners cannot claim a right to a residence permit, the issue of such permits being considered an act of which the desirability is left to the sovereign assessment of the authorities of the host country, the introduction of a system of free movement on the basis of Articles 48 and 49 of the Treaty gives Turkish workers and the members of their families a right of residence in so far as they fulfil the necessary conditions to benefit from the provisions established for this initial stage.

As a result they may not be refused residence permits except for reasons of public policy, public security or public health; furthermore the permits must take into account the rights acquired in respect of employment and, as regards the workers and the members of their families who are eligible for free access to employment. They may not involve any geographical limitations. For the latter category of beneficiaries, the permits should have a period of validity of at least five years and be automatically renewable.

22/23. The periods of non-activity treated in the same way as periods of legal employment (annual holidays, maternity, short periods of sickness) may not prejudice the validity of the residence permit.

A similar situation would apply to a worker who has been employed for at least three months in respect of periods of unemployment or long periods of sickness, except where the interruption of employment exceeded twelve months or where the worker did not comply with the unemployment legislation of the country of employment.

Finally, the worker who ceases work as the result of a permanent incapacity resulting from an accident at work or an occupational disease shall have the right to remain in the country of employment and there shall be no conditions governing residence.

24. Finally, to comply with the spirit of Article 49 of the Treaty of Rome, the procedures and formalities connected with the issue of passports, visas and residence permits will be simplified as far as possible.

D. Equality of Treatment

25. Article 37 of the Additional Protocol stipulates that "as regards conditions of work and remuneration, the rules which each Member State applies to workers of Turkish nationality employed in the Community shall

not discriminate on grounds of nationality between such workers and workers who are nationals of other Member States of the Community".

In the Commission's view, this provision should be taken up again in the measures adopted for the first stage in order to establish a body of coherent and homogeneous measures. Furthermore its implications should be spelled out and it should be stipulated that Turkish workers shall enjoy the same protection and same treatment for all conditions of employment and work, particularly as regards remuneration and dismissal, membership of trade-unions, the exercise of trade-union rights and the right to vote in and be a member of the workers' representative bodies within the undertaking.

26. In addition, Turkish workers legally resident in a Community country will be entitled, on the same footing as Community workers, to assistance from the employment services.

The medical and occupational criteria for recruitment may not discriminate between Turkish and Community workers.

27. In addition, during this first stage, first measures should be taken in order to realize equal treatment in the field of living conditions. Therefore, the Commission proposes to grant Turkish children who are residing legally with their parents in a country of the Community, access to general schooling, vocational training and apprenticeship under the same conditions as the children of Member States' nationals. This would be in implementation of the Council Resolution of 9 February 1976 on an action programme for migrant workers and members of their families[1].

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[1] The Commission recalls that, in its Resolution of 9 February 1976 on an action programme for migrant workers and members of their families, the Council stressed the need to encourage the achievement of equality for workers who are nationals of third countries, and members of their families, who are legally resident in the Member States, with regard to living and working conditions, wages and economic rights.

E. Cooperation between the Employment Services

28. Control of movements of labour between Turkey and the Community and effective vacancy clearance calls for close cooperation between the relevant services.

To this end, the Commission proposes that an ad hoc Committee under the Council of Association should set in motion and coordinate this cooperation. This Committee could draw up the procedures to be followed in the clearance of vacancies and could monitor the implementation of the provisions adopted for this stage.

Each year it would put before the Association Committee a report with a survey of the situation of Turkish workers in the Community and the employment forecasts in order to enable the Association Committee to take steps to guide the Turkish and Community employment services towards the clearance of vacancies between the Community and Turkey as a matter of priority.

Lastly, the close involvement of this ad hoc Committee in the implementation of the measures adopted would enable it to prepare proposals for a second stage.

IV. Further Considerations

29. For obvious reasons - the movement of labour being one way into the

standpoint, that is to say considering free movement in relation to Turkey in the light of such movements of labour.

The measures porposed will of course also apply to nationals of the Member States going to work in Turkey. It is for the Turkish authorities to state any reservations they might have as to the application in Turkey of the rules set out.

30. The Commission also draws attention to the special situation existing in the Grand Duchy of Luxembourg as regards freedom of movement. A Protocol annexed to the Treaty of Rome stipulates that account should be taken of the special demographic situation in that country when regulations are dramed concerning the right of workers to remain after having been employed there (indeed the Commission took this into account when adopting Regulation 1251/70 of 21 June 1970).

31. It is understood that where the provisions of national laws or bilateral agreements between certain Member States and Turkey are more favourable, they should continue to apply; this would mean that the Contracting Parties would no longer be able to introduce in the areas specified in Articles 36, 37 and 38 of the Additional Protocol any new restrictions or discriminatory procedures, or strengthen those which are not abolished by the provisions which will govern the first stage.

32. Lastly, this Communication makes no reference to Article 50 of the Treaty establishing the European Economic Community, which should also be taken into account as required by Article 12 of the Ankara Agreement.

According to Article 40 of the Additional Protocol, the Council of Association may "make recommendations to Member States and Turkey for encouraging the exchange of young workers; the Council of Association shall be guided in the matter by the measures adopted by the Member States in implementation of Article 50 of the Treaty establishing the Community".

The Commission is of the opinion that the Community could now be ready to examine the suggestions that Turkey would like to formulate in this respect.

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