

## COUNCIL DIRECTIVE

of 25 February 1964

on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health

(64/221/EEC)

THE COUNCIL OF THE EUROPEAN ECONOMIC COMMUNITY,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 56 (2) thereof;

Having regard to Council Regulation No 15 of 16 August 1961<sup>1</sup> on initial measures to bring about free movement of workers within the Community, and in particular Article 47 thereof;

Having regard to Council Directive of 16 August 1961<sup>2</sup> on administrative procedures and practices governing the entry into and employment and residence in a Member State of workers and their families from other Member States of the Community;

Having regard to the General Programmes<sup>3</sup> for the abolition of restrictions on freedom of establishment and on freedom to provide services, and in particular Title II of each such programme;

Having regard to the Council Directive of 25 February 1964<sup>4</sup> on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament<sup>5</sup>;

Having regard to the Opinion of the Economic and Social Committee<sup>6</sup>;

Whereas co-ordination of provisions laid down by law, regulation or administrative action which provide for special treatment for foreign nationals on grounds of public policy, public security or public health should in the first place deal with the conditions for entry and residence of nationals of Member States moving within the Community either in order to pursue activities as employed or self-employed persons, or as recipients of services;

Whereas such co-ordination presupposes in particular an approximation of the procedures followed in each Member State when invoking grounds of public policy, public security or public health in matters connected with the movement or residence of foreign nationals;

Whereas, in each Member State, nationals of other Member States should have adequate legal remedies available to them in respect of the decisions of the administration in such matters;

Whereas it would be of little practical use to compile a list of diseases and disabilities which might endanger public health, public policy or public security and it would be difficult to make such a list exhaustive; whereas it is sufficient to classify such diseases and disabilities in groups;

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

1. The provisions of this Directive shall apply to any national of a Member State who resides in or travels to another Member State of the Community, either in order to pursue an activity as an employed or self-employed person, or as a recipient of services.

2. These provisions shall apply also to the spouse and to members of the family who come within the

<sup>1</sup> OJ No 57, 26.8.1961, p. 1073/61.

<sup>2</sup> OJ No 80, 13.12.1961, p. 1513/61.

<sup>3</sup> OJ No 2, 15.1.1962, pp. 32/62 and 36/62.

<sup>4</sup> OJ No 56, 4.4.1964, p. 845/64.

<sup>5</sup> OJ No 134, 14.12.1962, p. 2861/62.

<sup>6</sup> OJ No 56, 4.4.1964, p. 856/64.

provisions of the regulations and directives adopted in this field in pursuance of the Treaty.

#### *Article 2*

1. This Directive relates to all measures concerning entry into their territory, issue or renewal of residence permits, or expulsion from their territory, taken by Member States on grounds of public policy, public security or public health.

2. Such grounds shall not be invoked to service economic ends.

#### *Article 3*

1. Measures taken on grounds of public policy or of public security shall be based exclusively on the personal conduct of the individual concerned.

2. Previous criminal convictions shall not in themselves constitute grounds for the taking of such measures.

3. Expiry of the identity card or passport used by the person concerned to enter the host country and to obtain a residence permit shall not justify expulsion from the territory.

4. The State which issued the identity card or passport shall allow the holder of such document to re-enter its territory without any formality even if the document is no longer valid or the nationality of the holder is in dispute.

#### *Article 4*

1. The only diseases or disabilities justifying refusal of entry into a territory or refusal to issue a first residence permit shall be those listed in the Annex to this Directive.

2. Diseases or disabilities occurring after a first residence permit has been issued shall not justify refusal to renew the residence permit or expulsion from the territory.

3. Member States shall not introduce new provisions or practices which are more restrictive than those in force at the date of notification of this Directive.

#### *Article 5*

1. A decision to grant or to refuse a first residence permit shall be taken as soon as possible and in any

event not later than six months from the date of application for the permit.

The person concerned shall be allowed to remain temporarily in the territory pending a decision either to grant or to refuse a residence permit.

2. The host country may, in cases where this is considered essential, request the Member State of origin of the applicant, and if need be other Member States, to provide information concerning any previous police record. Such enquiries shall not be made as a matter of routine. The Member State consulted shall give its reply within two months.

#### *Article 6*

The person concerned shall be informed of the grounds of public policy, public security, or public health upon which the decision taken in his case is based, unless this is contrary to the interests of the security of the State involved.

#### *Article 7*

The person concerned shall be officially notified of any decision to refuse the issue or renewal of a residence permit or to expel him from the territory. The period allowed for leaving the territory shall be stated in this notification. Save in cases of urgency, this period shall be not less than fifteen days if the person concerned has not yet been granted a residence permit and not less than one month in all other cases.

#### *Article 8*

The person concerned shall have the same legal remedies in respect of any decision concerning entry, or refusing the issue or renewal of a residence permit, or ordering expulsion from the territory, as are available to nationals of the State concerned in respect of acts of the administration.

#### *Article 9*

1. Where there is no right of appeal to a court of law, or where such appeal may be only in respect of the legal validity of the decision, or where the appeal cannot have suspensory effect, a decision refusing renewal of a residence permit or ordering the expulsion of the holder of a residence permit from the territory shall not be taken by the administrative authority, save in cases of urgency, until an opinion has been obtained from a competent authority of the host country before which the person concerned enjoys

such rights of defence and of assistance or representation as the domestic law of that country provides for.

This authority shall not be the same as that empowered to take the decision refusing renewal of the residence permit or ordering expulsion.

2. Any decision refusing the issue of a first residence permit or ordering expulsion of the person concerned before the issue of the permit shall, where that person so requests, be referred for consideration to the authority whose prior opinion is required under paragraph I. The person concerned shall then be entitled to submit his defence in person, except where this would be contrary to the interests of national security.

#### *Article 10*

1. Member States shall within six months of notification of this Directive put into force the measures

necessary to comply with its provisions and shall forthwith inform the Commission thereof.

2. Member States shall ensure that the texts of the main provisions of national law which they adopt in the field governed by this Directive are communicated to the Commission.

#### *Article 11*

This Directive is addressed to the Member States.

Done at Brussels, 25 February 1964.

*For the Council*

*The President*

H. FAYAT

#### *ANNEX*

##### *A. Diseases which might endanger public health:*

1. Diseases subject to quarantine listed in International Health Regulation No 2 of the World Health Organisation of 25 May 1951;
2. Tuberculosis of the respiratory system in an active state or showing a tendency to develop;
3. Syphilis;
4. Other infectious diseases or contagious parasitic diseases if they are the subject of provisions for the protection of nationals of the host country.

##### *B. Diseases and disabilities which might threaten public policy or public security:*

1. Drug addiction;
2. Profound mental disturbance; manifest conditions of psychotic disturbance with agitation, delirium, hallucinations or confusion.