Chapter II  Freedom of Movement of Workers

II.1  Freedom of movement of workers under the ECSC Treaty and under the transitional regime. Outline

Article 69 of the ECSC Treaty\(^1\) provided for the removal of all restrictions based on nationality upon the employment of workers in the Member States. In accordance with the strict sectoral scope of the ECSC provisions, however, that freedom was limited, in functional terms, to workers in the coal and steel industries. Moreover, the prohibition of discrimination laid down in Article 69 related only to workers in possession of a recognised qualification in a coalmining or steelmaking occupation.\(^2\) The prohibition of discrimination in access to employment set out in Article 69 was accompanied by a prohibition of all forms of discrimination based on nationality in relation to remuneration and working conditions. However, the provisions adopted by the Member States to give effect to Article 69 were expressly repealed following the entry into force of the Community rules implementing the EEC Treaty, whose general character made them applicable also to workers in the coal and steel sector.\(^3\) In the EC Treaty, Title III of part three, which deals with Community policies, addresses


\(^2\) The recognised professional qualifications were to be determined by common accord between the Member States (see Article 69[2]).

\(^3\) See the Decision of 28 February 1972 of the representatives of the Governments of the Member States of the European Coal and Steel Community, meeting within the Council, repealing Acts passed under Article 69 of the Treaty establishing the European Coal and Steel Community (OJ L 269, 4/10/1974, 25.)
the “free movement of persons, services and capital”. Chapter I of Title III concerns workers, while the second and third chapters deal respectively with the right of establishment and the freedom to provide services. The rules giving effect to those three freedoms were supposed to have been issued by the Community institutions before the end of a transitional period. However, at the end of that period only the provisions implementing the free movement of workers had been adopted.

The regulation and directive adopted in 1961 gave effect to the freedom of movement of workers, albeit allowing the Member States to attach significant conditions. In particular, to the principle of equal treatment of national workers and workers who are citizens of other Member States as regards the conditions of employment, there was added the rule of the priority of the national market. This meant that the freedom of migrant workers to take up a job was made conditional on the absence of candidates for the position holding citizenship of the Member State in question. Furthermore, significant limitations were imposed on the rights of entry and residence of members of the worker’s family.

The second phase of the transitional period began with the adoption of Regulation (EEC) No 38/64 and Directive 64/240/EEC, which replaced the 1961 regulation and directive. Whilst the rules thus introduced abolished the principle of the priority of the national market, the Member States were reassured by the provision of a safeguard clause which allowed them to suspend the freedom of movement of workers in the event of serious imbalances caused, in certain geographical regions or in certain professions, by labour flows.

In that it called for “the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment” the principle of freedom of movement of workers within the Community demanded the adoption, before the end of the transitional period, of secondary laws broader in scope and more trenchant. On 15 October 1968, the Council adopted Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community and Directive 68/360/EEC on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families. The 1968 regulation and directive replaced the two 1964 acts and constituted for nearly forty years, in secondary Community law, the main source of rules on equal access to work and conditions of employment. In addition to those

4 OJ 57, 26/8/1961, 1073, OJ 80, 13/12/1961, 1513. (No official English version.)
5 Both of 25 March 1964, OJ 62, 17/4/1964, 965 and 981. (No English version of the regulation.)
6 Cf. Article 39(2) of the EC Treaty.