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Conformément au règlement (CEE, Euratom) n° 354/83 du Conseil du 1er février 1983 concernant l'ouverture au public des archives historiques de la Communauté économique européenne et de la Communauté européenne de l'énergie atomique (JO L 43 du 15.2.1983, p. 1), tel que modifié par le règlement (CE, Euratom) n° 1700/2003 du 22 septembre 2003 (JO L 243 du 27.9.2003, p. 1), ce dossier est ouvert au public. Le cas échéant, les documents classifiés présents dans ce dossier ont été déclassifiés conformément à l'article 5 dudit règlement.

In accordance with Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (OJ L 43, 15.2.1983, p. 1), as amended by Regulation (EC, Euratom) No 1700/2003 of 22 September 2003 (OJ L 243, 27.9.2003, p. 1), this file is open to the public. Where necessary, classified documents in this file have been declassified in conformity with Article 5 of the aforementioned regulation.

In Übereinstimmung mit der Verordnung (EWG, Euratom) Nr. 354/83 des Rates vom 1. Februar 1983 über die Freigabe der historischen Archive der Europäischen Wirtschaftsgemeinschaft und der Europäischen Atomgemeinschaft (ABl. L 43 vom 15.2.1983, S. 1), geändert durch die Verordnung (EG, Euratom) Nr. 1700/2003 vom 22. September 2003 (ABl. L 243 vom 27.9.2003, S. 1), ist diese Datei der Öffentlichkeit zugänglich. Soweit erforderlich, wurden die Verschlussachen in dieser Datei in Übereinstimmung mit Artikel 5 der genannten Verordnung freigegeben.

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(75) 455

Brussels, 10 September 1975

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

concerning a proposal for a Council regulation amending Council Regulation (EEC) No 1612/68 as regards the extension of trade unions' rights in favour of the workers who move within the
Community

(submitted to the Council by the Commission)

COM(75) 455

EXPLANATORY MEMORANDUM

At the time of the adoption of Council Regulation No 1612/68 on the freedom of movement for workers within the Community, some reservations were made with regard to the Commission's proposal to include within the heading of equality of treatment in the exercise of trade union rights the right to take part in the management and administration of a trade union, a proposal which was based on the Opinion of trade unions of the Member States.

With regard to the proposal of Article 8 of the said Regulation, the reason for these reservations stemmed from the national law of one Member State, which limited this right to nationals only.

The agreement reached within the Council provided that Member States would be permitted to exclude certain persons from eligibility for posts in the management and administration in a trade union, but that this problem would be subject to reexamination on the basis of a new proposal by the Commission.

Subsequently, because of the amendments in the national legislations, Community workers who are working in a Member State other than their own have become eligible for posts in management and administration in trade unions.

However, the Commission considers that despite the fact that Article 48 of the Treaty has been adjudged to be directly applicable, steps should be taken, in order to assure legal certainty for those persons affected, to consolidate at Community level what Member States have already acknowledged and to amend Article 8 of Regulation 1612/68 by putting an end to the ambiguous situation resulting from its present wording.

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Furthermore, this question of eligibility for posts in administration and management in a trade union must be distinguished from that of non national workers taking part in the management of bodies governed by public law and from holding an office governed by public law; in point of fact, this latter question is largely outside the scope of articles 48 and 49 of the Treaty of Rome relating to the freedom of movement for workers and a solution will have to be found within the framework of the implementation of the Action Programme in favour of migrant workers and their families which the Commission presented to the Council on the 19th December 1974 (1).

(1) Document COM(74) 2250 of 18 December 1974.

Draft Council Regulation (EEC)
amending Council Regulation (EEC) No 1612/68 as regards the extension
of trade union rights in favour of the workers who move within the
Community.

The Council of the European Communities,
Having regard to the Treaty establishing the European Economic
Community, and in particular Article 49 thereof;
Having regard to the proposal from the Commission;
Having regard to the Opinion of the European Parliament;
Having regard to the Opinion of the Economic and Social Committee;
Whereas the progressive integration of the labour market must be
accompanied by an increasing participation of those workers who are
nationals of Member States in the economic and social life of the
host country;
Whereas the provisions adopted pursuant to Articles 48 and 49 of the
Treaty establishing the EEC, and in particular Article 8 of Council
Regulation (EEC) No 1612/68⁽⁺⁾ of 15 October 1968 on freedom of movement
for workers within the Community, have enabled progress to be made
in this direction by introducing equality of treatment in the trade
union sector whereby workers can participate in the selection of trade
union leaders; whereas however Member States retained the right to
prohibit workers who are nationals of another Member State from partici-
pating in the administration or management of such organization;
Whereas Article 8 (2) of Regulation (EEC) No 1612/68 provides that
this Article should be reviewed by the Council on the basis of a proposal
from the Commission;
Whereas, since the adoption of the said Regulation, existing prohibitions
in this field have been abolished by amendments of national legislation
and whereas in consequence it is no longer strictly necessary to adopt
community provisions, also taking into account that Article 48 of the
Treaty is directly applicable;

(+) O.J. No L 257 - 19.10.1968, p. 2

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Whereas, however, in order to ensure legal certainty for those persons affected, Article 8 should be amended;

Whereas, however, the holding of an office within a trade union, whether executive or not, should be distinguished from the taking part in the management of bodies governed by public law and the holding of an office governed by public law; and whereas the fact that a Member State reserves to its own nationals the holding of such offices and the taking part in the management of such organizations cannot preclude workers who are nationals of another Member State from being eligible for executive office within a trade union;

HAS ADOPTED THIS REGULATION :

Sole Article :

Article 8 of Council Regulation (EEC) No 1612/68 shall be amended as follows:

" A worker who is a national of a Member State and who is employed in the territory of another Member State shall enjoy equality of treatment as regard membership of trade unions and the exercise of rights attaching thereto, including the right to vote and to be eligible for the administration or management of a trade union. Furthermore, he shall have the right of eligibility for workers' representative bodies in the undertaking.

" The exercise of trade union rights under the same conditions as those of national workers does not however automatically entitle him to take part in the management of a body governed by public law or to hold an office governed by public law.

" The provisions of this Article shall not affect laws or regulations in certain Member States which grant more extensive rights to workers coming from the other Member States".

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