

ANNEX K

Free movement of persons (Chapter VIII)

I. BASIC PROVISIONS

ARTICLE 1

Objectives

The objectives of this Annex, for the benefit of nationals of the Member States, are:

- (a) to accord a right of entry, residence, access to work as employed persons, establishment on a self-employed basis and the right to stay in the territory of the Member States;
- (b) to facilitate the provision of services in the territory of the Member States, and in particular to liberalise the provision of services of brief duration;
- (c) to accord a right of entry into, and residence in, the territory of the Member States to persons without an economic activity in the host State;
- (d) to accord the same living, employment and working conditions as those accorded to nationals of the host State.

ARTICLE 2

Non-discrimination

Nationals of one Member State who are lawfully resident in the territory of another Member State shall not, in application of and in accordance with the provisions of Appendices 1, 2 and 3 to this Annex, be the subject of any discrimination on grounds of nationality.

ARTICLE 3

Right of entry

The right of entry of nationals of one Member State into the territory of another Member State shall be guaranteed in accordance with the provisions laid down in Appendix 1.

ARTICLE 4

Right of residence and access to an economic activity

The right of residence and access to an economic activity shall be guaranteed unless otherwise provided in Article 10 and in accordance with the provisions of Appendix 1.

ARTICLE 5

Persons providing services

1. Without prejudice to other specific agreements between the Member States specifically concerning the provision of services (including the Government Procurement Agreement in so far as it covers the provision of services), persons providing services, including companies in accordance with the provisions of Appendix 1, shall have the right to provide a service in the territory of another Member State for a period not exceeding 90 days' of actual work in a calendar year.

2. Providers of services shall have the right of entry into, and residence in, the territory of the other Member State:

- (a) where they have the right to provide a service under paragraph 1 or by virtue of the provisions of an agreement mentioned in paragraph 1; or
- (b) if the conditions specified in (a) are not fulfilled, where they have received authorisation to provide a service from the competent authorities of the Member State concerned.

3. Nationals of a Member State entering the territory of another Member State solely to receive services shall have the right of entry and residence.

4. The rights referred to in this Article shall be guaranteed in accordance with the provisions laid down in Appendices 1, 2 and 3. The quantitative limits of Article 10 may not be relied upon as against persons referred to in this Article.

ARTICLE 6

Right of residence for persons not pursuing an economic activity

The right of residence in the territory of a Member State shall be guaranteed to persons not pursuing an economic activity in accordance with the provisions of Appendix 1 relating to non-active people.

ARTICLE 7

Other rights

The Member States shall make provision, in accordance with Appendix 1, for the following rights in relation to the free movement of persons:

- (a) the right to equal treatment with nationals in respect of access to, and the pursuit of, an economic activity, and living, employment and working conditions;
- (b) the right to occupational and geographical mobility which enables nationals of the other Member States to move freely within the territory of the host State and to pursue the occupation of their choice;
- (c) the right to stay in the territory of a Member State after the end of an economic activity;
- (d) the right of residence for members of the family, irrespective of their nationality;
- (e) the right of family members to pursue an economic activity, irrespective of their nationality;
- (f) the right to acquire immovable property in so far as this is linked to the exercise of rights conferred by this Annex;
- (g) during the transitional period, the right, after the end of an economic activity or period of residence in the territory of a Member State, to return there for the purposes of pursuing an economic activity and the right to have a temporary residence permit converted into a permanent one.

ARTICLE 8

Coordination of social security systems

The Member States shall make provision, in accordance with Appendix 2, for the coordination of social security systems with the aim in particular of:

- (a) securing equality of treatment;
- (b) determining the legislation applicable;
- (c) aggregating, for the purpose of acquiring and retaining the right to benefits, and of calculating such benefits, all periods taken into consideration by the national legislation of the States concerned;
- (d) paying benefits to persons residing in the territory of the Member States;
- (e) fostering mutual administrative assistance and co-operation between authorities and institutions.

ARTICLE 9

Mutual recognition of professional qualifications (diplomas, certificates and other evidence of formal qualifications)

In order to make it easier for nationals of the Member States to gain access to and pursue activities as employed and self-employed persons and to provide services, the Member States shall take the necessary measures, in accordance with Appendix 3, concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications, and with the coordination of the laws, regulations and administrative provisions of the Member States on access to and pursuit of activities as employed and self-employed persons and the provision of services.

II. GENERAL AND FINAL PROVISIONS

ARTICLE 10

Transitional provisions and development of this Annex

1. For 5¹ years after the entry into force of the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation of the other, on the free movement of persons (hereinafter the “Swiss-EC Agreement on the free movement of persons”), Switzerland may maintain quantitative limits in respect of access to an economic activity for the following two categories of residence: residence for a period of more than four months and less than one year and residence for a period equal to, or exceeding, one year. There shall be no restriction on residence for less than four months.

From the beginning of the 6th year, all quantitative limits applicable to nationals of the other Member States shall be abolished.

2. For a maximum period of 2 years after the entry into force of the Swiss-EC Agreement on the free movement of persons, the Member States may maintain the controls on the priority of workers integrated into the regular labour market and wage and working conditions applicable to nationals of other Member States, including the persons providing services referred to in Article 5. Before the end of the first year, the Committee referred to in Article 14 (hereinafter the “Committee”) shall consider whether these restrictions need to be maintained. The Council may curtail the maximum period. The controls on the priority of workers integrated into the regular labour market shall not apply to providers of services liberalised under Annexes P, Q and R in so far as it covers the provision of services.

3. Upon entry into force of the Swiss-EC Agreement on the free movement of persons, and until the end of the 5th year, each year Switzerland shall reserve, within its overall quotas, for employed and self-employed persons of the other Member States, at

¹ The transitional period should expire at the same time as the corresponding period in the bilateral agreement between Switzerland and the European Community.

least 300 new residence permits valid for a period equal to, or exceeding, one year and 200 valid for more than four months and less than one year. If the agreed quota should not suffice, arrangements will be made by the Council.

4. The number of new residence permits issued by Switzerland to employed and self-employed persons of the other Member States may not be limited to fewer than 300 per year valid for a period equal to, or exceeding, one year and 200 per year valid for more than four months and less than one year.

5. The transitional provisions of paragraphs 1 to 4, and in particular those of paragraph 2 concerning the priority of workers integrated into the regular labour market and controls on wage and working conditions, shall not apply to employed and self-employed persons who, at the time of the entry into force of the Swiss-EC Agreement on the free movement of persons, are authorised to pursue an economic activity in the territory of the Member States. Such persons shall in particular enjoy occupational and geographical mobility. The holders of residence permits valid for less than one year shall be entitled to have their permits renewed; the exhaustion of quantitative limits may not be invoked against them. The holders of residence permits valid for a period equal to, or exceeding, one year shall automatically be entitled to have their permits extended. Such employed and self-employed persons shall therefore enjoy the rights to free movement accorded to established persons in the basic provisions of this Annex, and in particular Article 7 thereof, from its entry into force.

6. Switzerland shall regularly and promptly forward to the Council any useful statistics and information, including measures implementing paragraph 2. A Member State may request a review of the situation.

7. No quantitative limits may be applied to frontier workers.

8. The transitional provisions on social security and the retrocession of unemployment insurance contributions are laid down in Protocols 1, 2 and 3 to Appendix 2.

ARTICLE 11

Processing of appeals

1. The persons covered by this Annex shall have a right of appeal to the competent authorities of the Member State concerned in respect of the application of the provisions of this Annex.

2. Appeals must be processed within a reasonable period of time.

3. Persons covered by this Annex shall have the opportunity to appeal to the competent national judicial body in respect of decisions on appeals, or the absence of a decision within a reasonable period of time.

ARTICLE 12

More favourable provisions

This Annex shall not preclude any more favourable national provisions which may exist for both nationals of the Member States and their family members.

ARTICLE 13

Standstill

The Member States undertake not to adopt any further restrictive measures vis-à-vis each other's nationals in fields covered by this Annex.

ARTICLE 14

Committee on the movement of persons

1. The Council shall establish a Committee on the movement of persons, which shall be responsible for the management and proper application of the Annex. To that end it shall issue recommendations. It may set up working groups on the coordination of social security systems and on the mutual recognition of professional qualifications.
2. For the purposes of proper implementation of this Annex, the Member States shall regularly exchange information and, at the request of one Member State, shall hold consultations within the Committee.
3. The Council may decide to modify the Appendices 2 and 3 of this Annex.

ARTICLE 15

Safeguard measures

In the event of serious economic or social difficulties, the Committee shall meet, at the request of one Member State, to examine appropriate measures to remedy the situation. The Council may decide what measures to take within 60 days of the date of the request. This period may be extended by the Council. The scope and duration of such measures shall not exceed that which is strictly necessary to remedy the situation. Preference shall be given to measures that least disrupt the working of this Annex.

ARTICLE 16

Reference to Community law

1. In order to attain the objectives pursued by this Annex, the Member States shall take all measures necessary to ensure that rights and obligations equivalent to those contained in the legal acts of the European Community to which reference is made, as

incorporated in the EEA Agreement and in the Swiss – EC Agreement on the free movement of persons, are applied in relations between them.

2. Insofar as the application of this Annex involves common concepts of the legal instruments referred to in paragraph 1, account shall be taken of relevant case-law prior to 21 June 1999. In order to ensure the good functioning of this Annex, the Council shall, at the request of any Member State, determine the implications of case-law after 21 June 1999.

ARTICLE 17

Development of law

1. As soon as one Member State initiates the process of adopting a draft amendment to its domestic legislation, or as soon as there is a change in the case-law of authorities against whose decisions there is no judicial remedy under domestic law in a field governed by this Annex, it shall inform the other Member States through the Committee.

2. The Committee shall hold an exchange of views on the implications of such an amendment for the proper functioning of this Annex.

ARTICLE 18

Relationship to bilateral social security agreements

Unless otherwise provided for under Appendix 2, bilateral social security agreements between the Member States shall be suspended upon entry into force of this Annex, in so far as the latter covers the same subject matter.

ARTICLE 19

Relationship to bilateral agreements on double taxation

1. The provisions of bilateral agreements between the Member States on double taxation shall be unaffected by the provisions of this Annex. In particular, the provisions of this Annex shall not affect the double taxation agreements' definition of 'frontier workers'.

2. No provision of this Annex may be interpreted in such a way as to prevent the Member States from distinguishing, when applying the relevant provisions of their fiscal legislation, between taxpayers whose situations are not comparable, especially as regards their place of residence.

3. No provision of this Annex shall prevent the Member States from adopting or applying measures to ensure the imposition, payment and effective recovery of taxes or to forestall tax evasion under their national fiscal legislation or agreements aimed at preventing double taxation between the Member States, or any other tax arrangements.

ARTICLE 20

Relationship to bilateral agreements on matters other than social security and double taxation

1. Notwithstanding the provisions of Articles 18 and 19, this Annex shall not affect bilateral agreements between Member States, such as those concerning private individuals, economic operators, cross-border co-operation or local frontier traffic, in so far as they are compatible with this Annex.
2. In the event of incompatibilities between such agreements and this Annex, the latter shall prevail.

ARTICLE 21

Acquired rights

In the event of termination or non-renewal, rights acquired by private individuals shall not be affected. The Member States shall settle by mutual agreement what action is to be taken in respect of rights in the process of being acquired.

APPENDIX 1

Movement of persons (Art. 20)

I. GENERAL PROVISIONS

ARTICLE 1

Entry and exit

1. The Member States shall allow nationals of the other Member States and members of their family within the meaning of Article 3 of this Appendix and posted persons within the meaning of Article 16 of this Appendix to enter their territory simply upon production of a valid identity card or passport.

No entry visa or equivalent requirement may be demanded save in respect of members of the family and posted workers within the meaning of Article 16 of this Appendix who do not have the nationality of a Member State. The Member State concerned shall grant these persons every facility for obtaining any necessary visas.

2. The Member States shall grant nationals of the Member States, and members of their family within the meaning of Article 3 of this Appendix and posted workers within the meaning of Article 16 of this Appendix, the right to leave their territory simply upon production of a valid identity card or passport. The Member States may not demand any exit visa or equivalent requirement from nationals of the other Member States.

The Member States, acting in accordance with their laws, shall issue to such nationals, or renew, an identity card or passport, which shall state in particular the holder's nationality.

The passport must be valid at least for all the Member States and for the countries through which the holder must pass when traveling between them. Where the passport is the only document on which the holder may lawfully leave the country, its period of validity may not be less than five years.

ARTICLE 2

Residence and economic activity

1. Without prejudice to the provisions for the transitional period, which are laid down in Article 10 of the Annex and Chapter VII of this Appendix, nationals of a Member State shall have the right to reside and pursue an economic activity in the territory of the other Member State under the procedures laid down in Chapters II to IV. That right shall be substantiated through the issue of a residence permit or, for persons from frontier zones, by means of a special permit.

Nationals of a Member State shall also have the right to visit another Member State or to remain there after a period of employment of less than one year in order to seek employment and to reside there for a reasonable amount of time, which may be up to six months, to allow them to find out about the employment opportunities corresponding to their professional qualifications and, if necessary, take the appropriate steps to take up employment. Those seeking employment shall have the right, in the territory of the Member State concerned, to receive the same assistance as employment agencies in that State grant to its own nationals. They may be excluded from social security schemes for the duration of such residence.

2. Nationals of the Member States not pursuing any economic activity in the host State who do not have a right of residence pursuant to other provisions of the Annex shall, provided they fulfill the preconditions laid down in Chapter V, have a right of residence. That right shall be substantiated through the issue of a residence permit.

3. The residence or special permit granted to nationals of the Member States shall be issued and renewed free of charge or on payment of a sum not exceeding the charges or taxes which nationals are required to pay for the issue of identity cards. The Member States shall take the necessary measures to simplify the formalities and procedures for obtaining those documents as far as possible.

4. The Member States may require nationals of the other Member States to report their presence in the territory.

ARTICLE 3

Members of the family

1. A person who has the right of residence and is a national of a Member State is entitled to be joined by the members of his family. An employed person must possess housing for his family which is regarded as of normal standard for national employed persons in the region where he is employed, but this provision may not lead to discrimination between national employed persons and employed persons from the other Member State.

2. The following shall be regarded as members of the family, whatever their nationality:

- (a) his spouse and their relatives in the descending line who are under the age of 21 or are dependent;
- (b) his relatives in the ascending line and those of his spouse who are dependent on him;
- (c) in the case of a student, his spouse and their dependent children.

The Member States shall facilitate the admission of any member of the family not covered by the provisions of this paragraph under (a), (b) and (c), if that person is a dependant or lives in the household of the national of a Member State in the country of provenance.

3. When issuing a residence permit to members of the family of a national of a Member State, the Member States may require only the documents listed below:

- (a) the document by virtue of which they entered the territory;
- (b) a document issued by the competent authority of the State of origin or provenance proving their relationship;
- (c) for dependants, a document issued by the competent authority of the State of origin or provenance certifying that they are dependants of the person referred to in paragraph 1 or that they live in his household in that State.

4. The period of validity of a residence permit issued to a member of the family shall be the same as that of the permit issued to the person on whom he is dependent.

5. The spouse and the dependent children or children aged under 21 of a person having a right of residence shall have the right to take up an economic activity whatever their nationality.

6. The children of a national of a Member State, whether or not he is pursuing or has pursued an economic activity in the territory of the other Member State, shall be admitted to general education, apprenticeships and vocational training courses on the same basis as nationals of the host State, if those children are living in its territory. The Member States shall promote initiatives to enable such children to follow the abovementioned courses under the best conditions.

ARTICLE 4

Right to stay

1. Nationals of a Member State and members of their family shall have the right to stay in the territory of another Member State after their economic activity has finished.

2. In accordance with Article 16 of the Annex, reference is made to Regulation (EEC) No 1251/70 (OJ L 142, 1970, p. 24) and Directive 75/34/EEC (OJ L 14, 1975, p. 10), as incorporated in the EEA Agreement and in the Swiss – EC Agreement on free movement of persons and as in force on 21 June 1999.

ARTICLE 5

Public order

1. The rights granted under the provisions of the Annex may be restricted only by means of measures which are justified on grounds of public order, public security or public health.
2. In accordance with Article 16 of the Annex, reference is made to Directives 64/221/EEC (OJ L 56, 1964, p. 850), 72/194/EEC (OJ L 121, 1972, p. 32) and 75/35/EEC (OJ L 14, 1975, p. 10), as incorporated in the EEA Agreement and in the Swiss – EC Agreement on free movement of persons and as in force on 21 June 1999.

II. EMPLOYED PERSONS

ARTICLE 6

Rules regarding residence

1. An employed person who is a national of a Member State (hereinafter referred to as “employed person”) and is employed for a period of one year or more by an employer in the host State shall receive a residence permit which is valid for at least five years from its date of issue. It shall be extended automatically for a period of at least five years. When renewed for the first time, its period of validity may be limited, but not to less than one year, where its holder has been involuntarily unemployed for more than 12 consecutive months.
2. An employed person who is employed for a period of more than three months but less than one year by an employer in the host State shall receive a residence permit for the same duration as his contract. An employed person who is employed for a period of up to three months does not require a residence permit.
3. When issuing residence permits, the Member States may not require an employed person to produce more than the following documents:
 - (a) the document by virtue of which he entered their territory;
 - (b) a contractual statement from the employer or a written confirmation of engagement.
4. A residence permit shall be valid throughout the territory of the issuing State.
5. Breaks in residence of less than six consecutive months and absences for the purposes of fulfilling military service obligations shall not affect the validity of the residence permit.

6. A valid residence permit may not be withdrawn from an employed person merely on the grounds that he is no longer working, either because he has become temporarily unable to work owing to an accident or illness, or because he is involuntarily unemployed as certified by the competent employment office.

7. Completion of the formalities for obtaining a residence permit shall not prevent an applicant immediately taking up employment under the contract he has concluded.

ARTICLE 7

Employed frontier workers

1. An employed frontier worker is a national of a Member State who has his residence in the territory of a Member State and who pursues an activity as an employed person in the territory of the other Member State, returning to his place of residence as a rule every day, or at least once a week.

2. Frontier workers shall not require a residence permit.

The competent authorities of the State of employment may nevertheless issue the frontier worker with a special permit for a period of at least five years or for the duration of his employment where this is longer than three months and less than one year. It shall be extended for at least five years provided that the frontier worker furnishes proof that he is actually pursuing an economic activity.

3. Special permits shall be valid throughout the territory of the issuing State.

ARTICLE 8

Occupational and geographical mobility

1. Employed persons shall have the right to occupational and geographical mobility throughout the territory of the host State.

2. Occupational mobility shall include changes of employer, employment or occupation and changing from employed to self-employed status. Geographical mobility shall include changes in the place of work and residence.

ARTICLE 9

Equal treatment

1. An employed person who is a national of a Member State may not, by reason of his nationality, be treated differently in the territory of the other Member State from national employed persons as regards conditions of employment and working conditions, especially as regards pay, dismissal, or reinstatement or re-employment if he becomes unemployed.

2. An employed person and the members of his family referred to in Article 3 of this Appendix shall enjoy the same tax concessions and welfare benefits as national employed persons and members of their family.

3. He shall also be entitled on the same basis and on the same terms as national employed persons to education in vocational training establishments and in vocational retraining and occupational rehabilitation centres.

4. Any clause in a collective or individual agreement or in any other collective arrangements concerning access to employment, employment, pay and other terms of employment and dismissal, shall be automatically void insofar as it provides for or authorizes discriminatory conditions with respect to foreign employed persons who are nationals of the Member States.

5. An employed person who is a national of a Member State and is employed in the territory of the another Member State shall enjoy equal treatment in terms of membership of trade union organisations and exercise of union rights, including the right to vote and right of access to executive or managerial positions within a trade union organisation; he may be precluded from involvement in the management of public law bodies and from holding an office governed by public law. He shall, moreover, have the right to be eligible for election to bodies representing employees in an undertaking.

These provisions shall be without prejudice to laws or regulations in the host State which confer more extensive rights on employed persons from another Member State.

6. Without prejudice to the provisions of Article 25 of this Appendix, an employed person who is a national of a Member State and employed in the territory of another Member State shall enjoy all the rights and all the advantages accorded to national employed persons in terms of housing, including ownership of the housing he needs. Such a worker shall have the same right as nationals to register on the housing lists in the region in which he is employed, where such lists exist; he shall enjoy the resultant benefits and priorities. If his family has remained in his State of provenance, it shall be considered for this purpose as residing in the said region, where national workers benefit from a similar presumption.

ARTICLE 10

Public service employment

A national of a Member State pursuing an activity as an employed person may be refused the right to take up employment in the public service which involves the exercise of public power and is intended to protect the general interests of the State or other public bodies.

III. SELF-EMPLOYED PERSONS

ARTICLE 11

Rules regarding residence

1. A national of a Member State wishing to become established in the territory of another Member State in order to pursue a self-employed activity (hereinafter referred to as a self-employed person) shall receive a residence permit valid for a period of at least five years from its date of issue, provided that he produces evidence to the competent national authorities that he is established or wishes to become so.
2. The residence permit shall be extended automatically for a period of at least five years, provided that the self-employed person produces evidence to the competent national authorities that he is pursuing a self-employed economic activity.
3. When issuing residence permits, the Member States may not require self-employed persons to produce more than the following:
 - (a) the document by virtue of which he entered their territory;
 - (b) the evidence referred to in paragraphs 1 and 2.
4. A residence permit shall be valid throughout the territory of the issuing State.
5. Breaks in residence of less than six consecutive months and absences for the purposes of fulfilling military service obligations shall not affect the validity of the residence permit.
6. Valid residence permits may not be withdrawn from persons referred to in paragraph 1 merely because they are no longer working owing to temporary incapacity as a result of illness or accident.

ARTICLE 12

Self-employed frontier workers

1. A self-employed frontier worker is a national of a Member State who is resident in the territory of a Member State and who pursues a self-employed activity in the territory of another Member State, returning to his place of residence as a rule every day or at least once a week.
2. Self-employed frontier workers shall not require a residence permit.

The relevant authorities of the State concerned may nevertheless issue a self-employed frontier worker with a special permit valid for at least five years provided that he produces evidence to the competent national authorities that he is pursuing or wishes to pursue a self-employed activity. The permit shall be extended for at least five years, provided that the frontier worker produces evidence that he is pursuing a self-employed activity.

3. Special permits shall be valid throughout the territory of the issuing State.

ARTICLE 13

Occupational and geographical mobility

1. Self-employed persons shall have the right to occupational and geographical mobility throughout the territory of the host State.
2. Occupational mobility shall include change of occupation and changing from self-employed to employed status. Geographical mobility shall include changes in the place of work and residence.

ARTICLE 14

Equal treatment

1. As regards access to a self-employed activity and the pursuit thereof, a self-employed worker shall be afforded no less favourable treatment in the host State than that accorded to its own nationals.
2. The provisions of Article 9 of this Appendix shall apply mutatis mutandis to the self-employed persons referred to in this Chapter.

ARTICLE 15

Exercise of public authority

A self-employed person may be denied the right to pursue an activity involving, even on an occasional basis, the exercise of public authority.

IV. PROVISION OF SERVICES

Persons providing services

ARTICLE 16

With regard to the provision of services, the following shall be prohibited under Article 5 of the Annex:

- (a) any restriction on the cross-frontier provision of services in the territory of a Member State not exceeding 90 days of actual work per calendar year;
- (b) any restriction on the right of entry and residence in the cases covered by paragraph 2 of Article 5 of the Annex concerning:
 - (i) persons providing services who are nationals of a Member State and are established in the territory of a Member State other than that of the person receiving services;
 - (ii) employees, irrespective of their nationality, of persons providing services, who are integrated into one Member State's regular labour market and posted for the provision of a service in the territory of another Member State without prejudice to Article 1.

ARTICLE 17

The provisions of Article 16 of this Appendix shall apply to companies formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business in the territory of a Member State.

ARTICLE 18

A person providing services who has the right or has been authorised to provide a service may, for the purposes of its provision, temporarily pursue his activity in the State in which the service is provided on the same terms as those imposed by that State on its own nationals, in accordance with the provisions of this Appendix and Appendices 2 and 3 to the Annex.

ARTICLE 19

1. Persons referred to in Article 16(b) of this Appendix who have the right to provide a service shall not require a residence permit for periods of residence of 90 days or less. Such residence shall be covered by the documents referred to in Article 1, by virtue of which they entered the territory.

2. Persons referred to in Article 16(b) of this Appendix who have the right or have been authorised to provide a service for a period exceeding 90 days shall receive, to substantiate that right, a residence permit for a period equal to that of the provision of services.

3. The right of residence shall apply throughout the territory of the Member States.

4. For the purposes of issuing residence permits, the Member States may not require of the persons referred to in Article 16(b) of this Appendix more than:

- (a) the document by virtue of which they entered the territory;
- (b) evidence that they are providing or wish to provide a service.

ARTICLE 20

1. The total duration of provision of services under Article 16(a) of this Appendix, whether continuous or consisting of successive periods of provision, may not exceed 90 days of actual work per calendar year.

2. The provisions of paragraph 1 shall be without prejudice to the discharge by the person providing a service of his legal obligations under the guarantee given to the person receiving the service or to cases of force majeure.

ARTICLE 21

1. The provisions of Articles 16 and 18 of this Appendix shall not apply to activities involving, even on an occasional basis, the exercise of public authority in the Member State concerned.

2. The provisions of Articles 16 and 18 of this Appendix and measures adopted by virtue thereof shall not preclude the applicability of laws, regulations and administrative provisions providing for the application of working and employment conditions to employed persons posted for the purposes of providing a service. In accordance with Article 16 of the Annex reference is made to Directive 96/71/EC of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 1997, p.1), as incorporated in the EEA Agreement and in the Swiss – EC Agreement on free movement of persons and as in force on 21 June 1999.

3. The provisions of Articles 16(a) and 18 of this Appendix shall be without prejudice to the applicability of the laws, regulations and administrative provisions prevailing in all Member States at the time of the entry into force of the Annex in respect of:

- (a) the activities of temporary and interim employment agencies;
- (b) financial services where provision is subject to prior authorisation in the territory of a Member State and the provider is subject to prudential supervision by that Member State's authorities.

4. The provisions of Articles 16(a) and 18 of this Appendix shall be without prejudice to the applicability of the Member States' respective laws, regulations and administrative provisions concerning the provision of services of 90 days of actual work or less required by imperative requirements in the public interest.

Persons receiving services

ARTICLE 22

1. A person receiving services within the meaning of paragraph 3 of Article 5 of the Annex shall not require a residence permit for a period of residence of three months or less. For a period exceeding three months, a person receiving services shall be issued with a residence permit equal in duration to the service. He may be excluded from social security schemes during his period of residence.

2. A residence permit shall be valid throughout the territory of the issuing State.

V. PERSONS NOT PURSUING AN ECONOMIC ACTIVITY

ARTICLE 23

Rules regarding residence

1. A person who is a national of a Member State not pursuing an economic activity in the State of residence and having no right of residence pursuant to other provisions of the Annex shall receive a residence permit valid for at least five years provided he proves to the competent national authorities that he possesses for himself and the members of his family:

- (a) sufficient financial means not to have to apply for social assistance benefits during their stay;
- (b) all-risks sickness insurance cover.²

The Member States may, if they consider it necessary, require the residence permit to be revalidated at the end of the first two years of residence.

² In Switzerland, sickness insurance for persons who do not elect to make it their domicile must include accident and maternity cover.

2. Financial means shall be considered sufficient if they exceed the amount below which nationals, having regard to their personal situation and, where appropriate, that of their family, can claim social security benefits. Where that condition cannot be applied, the applicant's financial means shall be regarded as sufficient if they are greater than the level of the minimum social security pension paid by the host State.

3. Persons who have been employed for less than one year in the territory of a Member State may reside there provided they comply with the conditions set out in paragraph 1 of this Article. The unemployment benefits to which they are entitled under national law which is, where appropriate, complemented by the provisions of Appendix 2 to the Annex, shall be considered to be financial means within the meaning of paragraphs 1(a) and 2 of this Article.

4. A student who does not have a right of residence in the territory of another Member State on the basis of any other provision of the Annex shall be issued with a residence permit for a period limited to that of the training or to one year, if the training lasts for more than one year, provided he satisfies the national authority concerned, by means of a statement or, if he chooses, by any other at least equivalent means, that he has sufficient financial means to ensure that neither he, his spouse nor his dependent children will make any claim for social security of the host State during their stay, and provided he is registered in an approved establishment for the purpose of following, as his principal activity, a vocational training course and has all-risks sickness insurance cover. The Annex does not regulate access to vocational training or maintenance assistance given to the students covered by this Article.

5. A residence permit shall automatically be extended for at least five years provided that the eligibility conditions are still met. Residence permits for students shall be extended annually for a duration equal to the remaining training period.

6. Breaks in residence of less than six consecutive months and absences for the purposes of fulfilling military service obligations shall not affect the validity of the residence permit.

7. A residence permit shall be valid throughout the territory of the issuing State.

8. The right of residence shall remain for as long as beneficiaries of that right fulfill the conditions laid down in paragraph 1.

VI. PURCHASE OF IMMOVABLE PROPERTY

ARTICLE 24

1. A national of a Member State who has a right of residence and his principal residence in the host State shall enjoy the same rights as a national as regards the purchase of immovable property. He may set up his principal residence in the host State at any time in accordance with the relevant national rules irrespective of the duration of his employment. Leaving the host State shall not entail any obligation to dispose of such property.

2. The national of a Member State who has a right of residence but does not have his principal residence in the host State shall enjoy the same rights as a national as regards the purchase of immovable property needed for his economic activity. Leaving the host State shall not entail any obligation to dispose of such property. He may also be authorised to purchase a second residence or holiday accommodation. The Annex shall not affect the rules applying to pure capital investment or business of unbuilt land and apartments.

3. A frontier worker shall enjoy the same rights as a national as regards the purchase of immovable property for his economic activity and as a secondary residence. Leaving the host State shall not entail any obligation to dispose of such property. He may also be authorised to purchase holiday accommodation. The Annex shall not affect the rules applying in the host State to pure capital investment or business of unbuilt land and apartments.

VII. TRANSITIONAL PROVISIONS AND DEVELOPMENT OF THE ANNEX

ARTICLE 25

General provisions

1. When the quantitative restrictions laid down in Article 10 of the Annex are applied, the provisions contained in this Chapter shall supplement or replace the other provisions of this Appendix, as the case may be.

2. When the quantitative restrictions laid down in Article 10 of the Annex are applied, the pursuit of an economic activity shall be subject to the issue of a residence and/or a work permit.

ARTICLE 26

Rules relating to the residence of employed persons

1. The residence permit of an employed person who has an employment contract for a period of less than one year shall be extended for up to a total of 12 months provided that the employed person furnishes proof to the competent national authorities that he is able to pursue an economic activity. A new residence permit shall be issued provided that the employed person furnishes proof that he is able to pursue an economic activity and that the quantitative limits laid down in Article 10 of the Annex have not been reached. There shall be no obligation to leave the country between two employment contracts in accordance with Article 23 of this Appendix.

2. During the period referred to in paragraph 2 of Article 10 of the Annex, a Member State may require that a written contract or draft contract be produced before issuing a first residence permit.

3. (a) Persons who have previously held temporary jobs in the territory of the host State for at least 30 months shall automatically have the right to take up employment for an unlimited duration.³ They may not be denied this right on the grounds that the number of residence permits guaranteed has been exhausted.
- (b) Persons who have previously held seasonal employment in the territory of the host State for a total of not less than 50 months during the last 15 years and do not meet the conditions of entitlement to a residence permit in accordance with the provisions of subparagraph (a) above shall automatically have the right to take up employment for an unlimited duration.

ARTICLE 27

Employed frontier workers

1. An employed frontier worker is a national of a Member State who has his normal place of residence in the frontier zones of Switzerland or neighbouring States and who pursues an activity as an employed person in the frontier zones of Switzerland and its neighbouring States returning as a rule to his principal residence every day, or at least once a week. For the purposes of the Annex, frontier zones shall mean the zones defined in the agreements concluded between Switzerland and its neighbouring States concerning movement in frontier zones.
2. The special permit shall be valid throughout the frontier zone of the issuing State.

ARTICLE 28

Employed persons' right to return

1. An employed person who, on the date the Annex entered into force, was holding a residence permit valid for at least one year and who has then left the host State shall be entitled to preferential access to the quota for a new residence permit within six years of his departure provided he proves that he is able to pursue an economic activity.
2. A frontier worker shall have the right to a new special permit within six years of the end of his previous employment over an uninterrupted period of three years, subject to verification of his pay and working conditions if he is employed for the two years following the entry into force of the Annex, provided he proves to the competent national authorities that he is able to pursue an economic activity.

³ They shall not be subject to the priority accorded to workers integrated into the regular labour market or monitoring of compliance with wage and employment conditions in a particular sector or place.

3. Young persons who have left the territory of a Member State before the age of 21, after residing there for at least five years, shall have the right for a period of four years after having left to return to that Member State and pursue an economic activity.

ARTICLE 29

Employed persons' occupational and geographical mobility

1. An employed person holding a residence permit valid for less than one year shall, for the twelve months following the commencement of his employment, have the right to occupational and geographical mobility. The right to change from employed to self-employed status shall also be allowed subject to compliance with Article 10 of the Annex.

2. Special permits issued to employed frontier workers shall confer the right to occupational and geographical mobility within all the frontier zones of Switzerland or its neighbouring States.

ARTICLE 30

Rules relating to the residence of self-employed persons

A national of a Member State wishing to become established in the territory of another Member State in order to pursue a self-employed activity (hereinafter referred to as a 'self-employed worker') shall receive a residence permit valid for a period of six months. He shall receive a residence permit valid for at least five years provided that he proves to the competent national authorities before the end of the six-month period that he is pursuing a self-employed activity. If necessary, the six-month period may be extended by a maximum of two months if there is a genuine likelihood that he will produce such proof.

ARTICLE 31

Self-employed frontier workers

1. A self-employed frontier worker is a national of a Member State who is ordinarily resident in the frontier zones of Switzerland or neighbouring States and who pursues a self-employed activity in the frontier zones of Switzerland or its neighbouring States returning as a rule to his principal residence in principle every day or at least once a week. For the purposes of the Annex, frontier zones shall mean the zones defined in the agreements concluded between Switzerland and its neighbouring States concerning movement in frontier zones.

2. A national of a Member State who wishes in his capacity as a frontier worker to pursue a self-employed activity in the frontier zones of Switzerland or its neighbouring States shall receive a preliminary six-month special permit in advance. He shall receive a special permit for a period of at least five years provided that he proves to the competent national authorities, before the end of that six-month period, that he is

pursuing a self-employed activity. If necessary, the six-month period may be extended by a maximum of two months if there is a genuine likelihood that he will produce such proof.

3. Special permits shall be valid throughout the frontier zone of the issuing State.

ARTICLE 32

Self-employed persons' right to return

1. A self-employed person who has held a residence permit valid for a period of at least five years and who has left the host State shall have the right to a new permit within six years of his departure provided he has already worked in the host State for an uninterrupted period of three years and proves to the competent national authorities that he is able to pursue an economic activity.

2. A self-employed frontier worker shall have the right to a new special permit within a period of six years of the termination of previous activity lasting for an uninterrupted period of four years provided he proves to the competent national authorities that he is able to pursue an economic activity.

3. Young persons who have left the territory of a Member State before the age of 21, after residing there for at least five years, shall have the right for a period of four years after having left to return to that Member State and pursue an economic activity.

ARTICLE 33

Self-employed persons' occupational and geographical mobility

Special permits issued to self-employed frontier workers shall confer the right to occupational and geographical mobility within the frontier zones of Switzerland or its neighbouring States. Preliminary six-month residence permits issued in advance (in the case of frontier workers, special permits) shall confer the right only to geographical mobility.