

Proposal for a European Parliament and Council Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States

(2001/C 270 E/23)

(Text with EEA relevance)

COM(2001) 257 final — 2001/0111(COD)

(Submitted by the Commission on 29 June 2001)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 12, 18, 40, 44 and 52 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the Economic and Social Committee,

Having regard to the Opinion of the Committee of the Regions,

Acting in accordance with the procedures laid down in Article 251 of the Treaty,

Whereas:

- (1) The common provisions contained in Title I of the Treaty on European Union state that one of the objectives of the Union is to 'strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union'.
- (2) The free movement of persons constitutes one of the fundamental rights of the internal market which is, under Article 14(2) of the EC Treaty, an area without internal borders, within which freedom is assured in accordance with the provisions of the Treaty.
- (3) The introduction of citizenship of the Union under Articles 17 and 18 of the Treaty confers on each citizen of the Union a primary, individual right to move and reside freely within the territory of the Member States.
- (4) The development of the mobility of students, researchers, those undertaking training, volunteers, teachers and trainers is recognised as a political priority of the European Union.
- (5) In this context, the sector-by-sector, piecemeal approach to the right of free movement and residence, as provided for by Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community⁽¹⁾, Council Directive 68/360/EEC of

15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families⁽²⁾, Council Directive 73/148/EEC of 21 May 1973 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⁽³⁾, Council Directive 90/364/EEC of 28 June 1990 on the right of residence⁽⁴⁾, Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity⁽⁵⁾ and Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students⁽⁶⁾, needs to be reviewed in order to facilitate the exercise of this right, in accordance with Article 18(2) of the Treaty.

- (6) The right of each citizen of the Union to move and reside freely within the territory of the Member States must, if it is to be exercised under objective conditions of freedom and dignity, be granted to their family members, irrespective of nationality. The definition of family member must be widened and standardised for all persons entitled to the right of residence.
- (7) There is a need for the formalities connected with the free movement of Union citizens within the territory of the Member States to be clearly defined. There is also a need to facilitate the free movement of family members who are not nationals of a Member State and would be subject to visa requirements within the meaning of Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement⁽⁷⁾, namely by treating residence documents as equivalent to short-stay visas.
- (8) In keeping with new developments in mobility, working arrangements and lifestyles less tied to a single place, stays not exceeding six months by Union citizens should not be subject to any formalities other than the requirement to hold a valid identity card or passport.

⁽¹⁾ OJ L 257, 19.10.1968, p. 2; Regulation as last amended by Regulation (EEC) No 2434/92 (OJ L 245, 26.8.1992, p. 1).

⁽²⁾ OJ L 257, 19.10.1968, p. 13; Directive as last amended by the Act of Accession of Austria, Finland and Sweden.

⁽³⁾ OJ L 172, 28.6.1973, p. 14.

⁽⁴⁾ OJ L 180, 13.7.1990, p. 26.

⁽⁵⁾ OJ L 180, 13.7.1990, p. 28.

⁽⁶⁾ OJ L 317, 18.12.1993, p. 59.

⁽⁷⁾ OJ L 81, 21.3.2001, p. 1.

- (9) Persons exercising the right to free movement should not, however, become an unreasonable burden on the public finances of the host Member State during an initial period of residence; it is therefore planned to retain the system whereby the exercise of the right of residence for Union citizens for periods in excess of six months remains subject to the requirement that such citizens be engaged in a gainful activity or, in the case of those not engaged in gainful activity, that they have sufficient resources and comprehensive sickness insurance in the host Member State for themselves and their family members, or that they be students undergoing vocational training in the host Member State, or be family members of a Union citizen who does satisfy one of these requirements.
- (10) The fundamental and personal right of Union citizens to reside in another Member State is not dependent upon their having been issued a residence card; the residence card requirement should therefore be restricted to cases where it is genuinely justified, in particular for members of the Union citizen's family who are not nationals of a Member State and for stays of longer than six months.
- (11) For stays of longer than six months, registration by Union citizens with the competent authorities in the place of residence, attested by a certificate to that effect, in combination with the possession of a valid identity card from the Member State of origin, or a passport, is sufficient and proportionate and adequate for the host Member State's purpose of keeping a record of the movement of people on its territory.
- (12) The supporting documents required by the administrative authorities for the issuance of a certificate of residence or a residence card must be comprehensively specified in order to avoid divergent administrative practices or interpretations constituting an undue obstacle to the exercise of the right of residence by Union citizens and their family members.
- (13) Family members should be legally safeguarded in the event of the death of the Union citizen or of marriage dissolution; with due regard to family life and human dignity and on certain conditions to guard against abuses of the system, measures should be taken to ensure that persons in such circumstances retain their right of residence.
- (14) Guaranteed permanent residence for Union citizens who have chosen to settle long-term in another Member State strengthens the feeling of holding a common citizenship and is a key element in promoting social cohesion, which is one of the fundamental objectives of the Community; a right of permanent residence should, therefore, be laid down for all Union citizens after four years of uninterrupted residence.
- (15) Certain advantages specific to Union citizens who are in paid employment or who are self-employed should, however, be maintained, as these constitute acquired rights, conferred by Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State ⁽¹⁾ and Council Directive 75/34/EEC of 17 December 1974 concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity ⁽²⁾.
- (16) Where Union citizens exercise their right of permanent residence, it should also be extended to their family members. Where an employed or self-employed Union citizen dies during his working life, but before having acquired the right of permanent residence, the family members should also be able to acquire the right of permanent residence and should be subject to special conditions.
- (17) In order to be a genuine vehicle for integration into the society of the host Member State where the Union citizen resides, the right of permanent residence should not be subject to conditions, but should confer complete equality of treatment with nationals, as well as maximum protection against expulsion.
- (18) Consequently, the acquisition of the right of permanent residence provides Union citizens and their family members with additional rights and increased protection; this right should, therefore, be evidenced by the issuance of a residence card having unlimited duration.
- (19) In accordance with the principle of non-discrimination, all Union citizens and their family members should enjoy equal treatment with nationals in areas covered by the Treaty. However, prior to acquisition of the right of permanent residence, it is a matter for the host Member State to decide whether it will extend social assistance provision or sickness insurance coverage to persons not engaged in gainful activity, or maintenance grants to Union citizens coming to study on its territory.
- (20) Articles 39(3), 46(1) and 55 of the Treaty allow limits to be placed on the right of free movement on grounds of public policy, public security and public health. Council Directive 64/221/EEC ⁽³⁾ provided for the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health.
- (21) In view of the case-law of the Court of Justice of the European Communities and the fundamental right of freedom of movement, there is a need for a tighter definition of the circumstances and procedural guarantees subject to which Union citizens and their family members may be denied leave to enter, or may be expelled.

⁽¹⁾ OJ L 142, 30.6.1970, p. 24.

⁽²⁾ OJ L 14, 20.1.1975, p. 10.

⁽³⁾ OJ 56, 4.4.1964, p. 850. Directive as last amended by Directive 75/35/EEC (OJ L 14, 20.1.1975, p. 14).

- (22) Expulsion of Union citizens and members of their families on grounds of public policy or public security is a drastic measure that can seriously harm persons who, having availed themselves of the rights and freedoms conferred on them by the Treaty, have become genuinely integrated into the host Member State. The scope for such measures should therefore be limited to take account of the degree of integration of the person concerned and to prohibit expulsion of Union citizens or members of their families who have a permanent right of residence or of family members who are minors.
- (23) The administrative rules of procedure should also be specified in detail in order to ensure a high level of protection of the rights of Union citizens and their family members in the event of their being refused leave to enter or reside in another Member State, as well as to uphold the principle that any action taken by the authorities must be properly justified.
- (24) In all events, judicial redress procedures should be available to Union citizens and members of their families who have been refused leave to enter or reside in another Member State, and on the same terms as those available to nationals as regards both the conditions for lodging an appeal and the conduct of the proceedings.
- (25) In line with the case-law of the Court of Justice, the right of Union citizens or members of their families who have been expelled to submit a fresh application after a reasonable period and no later than after two years should be confirmed.
- (26) Owing to the new conditions laid down by this Directive for the exercise of the right of free movement, provisions of existing legislation that are contrary to this Directive should be deleted or amended, while allowing national provisions that are more favourable to be applied.
- (27) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union as general principles of Community law,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject

This Directive lays down:

- (a) the conditions governing the exercise of the right to move and reside freely within the Member States by Union citizens and their family members;

- (b) the right of permanent residence in the Member States for Union citizens and their family members;
- (c) the limits placed on these rights on grounds of public policy, public security and public health.

Article 2

Definitions

For the purposes of this Directive:

1. 'Union citizen' means any person having the nationality of a Member State;
2. 'Family member' means:
 - (a) the spouse;
 - (b) the unmarried partner, if the legislation of the host Member State treats unmarried couples as equivalent to married couples and in accordance with the conditions laid down in any such legislation;
 - (c) the direct descendants and those of the spouse or unmarried partner as defined in point (b);
 - (d) the direct relatives in the ascending line and those of the spouse or unmarried partner as defined in point (b);
3. 'Host Member State' means the Member State to which a Union citizen goes in order to exercise his right of free movement and residence.

Article 3

Persons entitled

1. This Directive shall apply to all Union citizens who move to and reside in a Member State of the Union other than that of which they are a national and to their family members as defined in point 2 of Article 2 who accompany or join them.
2. Member States shall facilitate entry and residence for any other family members not within the definition in point 2 of Article 2 who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, notwithstanding any right to free movement and residence the persons concerned may have in their own right.

Article 4

Non-discrimination clause

Member States shall give effect to the provisions of this Directive without discrimination on grounds of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinion, membership of an ethnic minority, property, birth, disability, age or sexual orientation.

CHAPTER II

RIGHT TO MOVE AND TO RESIDE FOR UP TO SIX MONTHS*Article 5***Right of exit**

1. All Union citizens shall have the right to leave their territory to travel to another Member State with a valid identity card or passport.

For family members who are not nationals of a Member State, this right shall be the same as for the Union citizen whom they accompany or join.

2. No exit visa or equivalent formality may be imposed on the persons to whom paragraph 1 applies.

3. Member States shall issue to their own nationals, and renew, an identity card or passport stating their nationality.

4. The passport shall be valid at least for all Member States and for countries through which the holder must pass when travelling between Member States. Where the legislation of a Member State does not provide for identity cards to be issued, the period of validity of any passport on being issued or renewed shall be not less than five years.

*Article 6***Right of entry and residence for up to six months**

1. Member States shall grant Union citizens and their family members, irrespective of nationality, leave to enter their territory with a valid identity card or passport.

No entry visa or equivalent formality may be imposed on Union citizens.

2. Family members who are not nationals of a Member State or who hold a residence card issued by a Member State may only be required to have a short-stay visa in accordance with Council Regulation (EC) No 539/2001. A current residence document issued by a Member State shall be equivalent to a visa.

Member States shall accord such persons every facility to obtain the necessary visas; such visas shall be free of charge.

3. The host Member State shall not place an entry or exit stamp in the passport of family members who are not nationals of a Member State provided they are in possession of a residence card.

4. Where a Union citizen or family member does not have the necessary travel documents or, if required, the necessary visas, the Member State concerned shall, before turning them back, give such persons every opportunity to obtain the necessary documents or have them brought to them or to corroborate or prove by other means that they are covered by the right to freedom of movement.

5. The right of Union citizens to enter the territory of a Member State shall include the right to reside there for a period of no more than six months with a valid identity card or passport. The Member State may only require the person concerned to report their presence on its territory within a time limit, which may not be less than fifteen days. Failure to comply with this requirement may make the person liable to penalties, which shall be proportionate and non-discriminatory.

6. The provisions of paragraph 5 shall also apply to family members who are third-country nationals accompanying or joining the Union citizen. However, if such family members are required to have a visa, they must apply for a residence card in accordance with Article 9 before their visa expires.

CHAPTER III

RIGHT OF RESIDENCE FOR MORE THAN SIX MONTHS*Article 7***Conditions governing right of residence**

1. All Union citizens shall have the right to reside on the territory of another Member State for a period of longer than six months if they:

- (a) are engaged in gainful activity in an employed or self-employed capacity; or
- (b) have sufficient resources for themselves and for their family members to avoid becoming a burden on the social assistance system of the host Member State during their stay and that they have sickness insurance covering all risks in the host Member State; or
- (c) are students admitted to a course of vocational training; or
- (d) are a family member of a Union citizen who satisfies conditions (a), (b) or (c).

2. The right of residence shall extend to family members who are not nationals of a Member State, where they accompany or join the Union citizen in the host Member State, provided that such Union citizen satisfies the conditions referred to in paragraph 1(a) or (b) or (c).

*Article 8***Administrative formalities for Union citizens**

1. For stays of longer than six months, the host Member State may require Union citizens to register with the relevant authorities.

2. The deadline for registration may not be less than six months from the date of arrival. The right of residence shall be evidenced by a certificate of registration, issued on the spot, stating the name and address of the person registering and the date of the registration. Failure to comply with the registration requirement may make the person liable to proportionate and non-discriminatory penalties.

3. For the certificate of registration to be issued, Member States may require only that Union citizens to whom Article 7(1)(a) or (b) applies present a valid identity card or passport and assure the relevant authority, by means of a declaration or by such alternative means as they may choose, that they satisfy the conditions laid down therein.

4. For the certificate of registration to be issued, Member States may require only that Union citizens to whom Article 7(1)(c) applies present a valid identity card or passport and evidence of enrolment at an accredited establishment to follow a course of vocational training and assure the relevant authority, by means of a declaration or by such alternative means as they may choose, that they have sufficient resources for themselves and for their family members to avoid becoming a burden on the social assistance system of the host Member State during their stay and that they have sickness insurance covering all risks in the host Member State.

5. Member States may not lay down an amount which they regard as sufficient resources.

6. For the certificate of registration to be issued to family members of Union citizens, Member States may require the following documents to be presented:

- (a) a valid identity card or passport;
- (b) a document proving the family relationship;
- (c) where relevant, the registration certificate of the Union citizen whom they accompany or join;
- (d) in cases falling under Article 2(2)(b), proof that the conditions laid down therein are met;

(e) in cases falling under Article 3(2), a document issued by the relevant authority in the country of origin or country from which they are arriving, certifying that they are dependants of the Union citizen or members of his/her household.

7. The certificate of registration may not be refused to a worker who is no longer engaged in an employed or self-employed activity, in the following circumstances:

- (a) he/she is temporarily unable to work as the result of an illness or accident;
- (b) he/she is in duly recorded involuntary unemployment and has registered as a jobseeker with the relevant employment office;
- (c) he/she is in involuntary unemployment after completing a fixed-term employment contract of less than a year and have registered as a jobseeker with the relevant employment office. In such cases, he/she shall retain worker status for a period which may not be less than six months; where the person concerned has acquired entitlement to unemployment benefits, worker status shall be retained for as long as such entitlement runs;
- (d) he/she embarks on vocational training. Unless the person concerned is involuntarily unemployed, retaining worker status shall require the training to be related to their previous occupation.

*Article 9***Administrative formalities for family members who are not nationals of a Member State**

1. Member States shall issue a residence card to family members of a Union citizen who are not nationals of a Member State, where the planned stay is for more than six months.

2. The deadline for submitting the residence card application may not be less than six months from the date of arrival. However, family members required to have a visa must apply before their visa expires.

3. Failure to comply with the requirement to apply for a residence card may make the person liable to proportionate and non-discriminatory penalties.

*Article 10***Issuing of residence cards**

1. The right of residence of family members of a Union citizen who are not nationals of a Member State shall be evidenced by the issue of a document bearing the words 'residence card of a family member of an EU citizen' no later than three months from the date on which they submit the application. A certificate of proof of application shall be issued on the spot. This document shall also record that the person concerned is a family member of a Union citizen.

2. For the residence card to be issued, Member States shall require presentation of the same documents as those referred to in Article 8(6).

*Article 11***Validity of the residence card**

1. The residence card provided for by Article 10(1) shall be valid for at least five years from the date of issue.

2. The validity of the residence card shall not be affected by breaks in residence not exceeding six months at a time or by absences of a longer duration for important reasons such as compulsory military service, serious illness, pregnancy and childbirth, study or vocational training, or a work assignment in another Member State or third country.

*Article 12***Retention of the right of residence by family members in the event of death**

1. Without prejudice to the second subparagraph, the Union citizen's death or departure from the host Member State shall not affect the right of residence of the family members of a Union citizen who are nationals of a Member State.

Before acquiring the right of permanent residence, the persons concerned must themselves meet the requirements laid down in Article 7(1)(a), (b), (c) or (d).

2. Without prejudice to the second subparagraph, the Union citizen's death or departure from the host Member State shall not entail loss of the right of residence of the family members of a Union citizen who are not nationals of a Member State.

Before acquiring the right of permanent residence, the family members' right of residence shall, nonetheless, be subject to the condition that they engage in gainful activity in an employed or self-employed capacity or that they have sufficient resources to support themselves and their family members to avoid becoming a burden on the social assistance system of the host Member State for the duration of their stay and that they have sickness insurance covering all risks in the host Member State, or be a member of the family, already

constituted in the host Member State, of an applicant satisfying these conditions.

Those resources shall be deemed sufficient where they are at, or above, the threshold below which the host Member State may grant social assistance to its nationals. Where this criterion is not applicable, the applicant's resources shall be deemed sufficient where they are no less than the amount of the minimum social security pension paid by the host Member State.

3. The Union citizen's departure from the host Member State shall not entail the loss of the right of residence of his/her children who are not nationals of a Member State if they reside in the host Member State and are enrolled at an educational establishment, at a secondary or post-secondary level, for the purpose of studying there, until the completion of their studies.

*Article 13***Retention of the right of residence of family members in the event of divorce or annulment of marriage**

1. Without prejudice to the second subparagraph, divorce or annulment of marriage shall not affect the right of residence of an EU citizen's family members who are nationals of a Member State.

Before acquiring the right of permanent residence, the persons concerned must meet the conditions provided for in Article 7(1)(a), (b), (c) or (d).

2. Without prejudice to the second subparagraph, divorce or annulment of marriage shall not entail the loss of the right of residence of an EU citizen's family members who are not nationals of a Member State where:

(a) prior to the initiation of the divorce or annulment proceedings, the marriage has lasted at least five years, including one year in the host Member State; or

(b) by agreement between the spouses or by court order, the spouse, not being an EU national, has custody of the EU citizen's children; or

(c) this is warranted by particularly difficult circumstances.

Before acquiring the right of permanent residence, the right of residence of the non-EU national shall, nonetheless, be subject to the condition that they engage in gainful activity in an employed or self-employed capacity or that they have sufficient resources to support themselves and their family members to avoid becoming a burden on the social assistance system of the host Member State for the duration of their stay and covering all risks in the host Member State, or be a member of the family, already constituted in the host Member State, of an applicant satisfying these conditions.

The 'sufficient resources' referred to in the second subparagraph shall be as defined in the third subparagraph of Article 12(2).

CHAPTER IV

RIGHT OF PERMANENT RESIDENCE

Section I

Eligibility

Article 14

General rule for EU citizens and their family members

1. A Union citizen who has resided legally and continuously for four years in the host Member State shall have the right of permanent residence there. Thereafter the right shall not be subject to the conditions provided for in Chapter III.

2. Paragraph 1 shall apply also to family members who are not nationals of a Member State and who have resided with the Union citizen in the host Member State for four years.

3. Once acquired, the right of permanent residence shall be lost only through absence from the host Member State for a period exceeding four consecutive years.

Article 15

Exemptions for persons no longer working in the host Member State and their family members

1. By way of derogation from Article 14, the right of permanent residence on the territory of the host Member State shall be enjoyed before completion of four years of continuous residence, by:

(a) employed or self-employed workers who, at the time of termination of their activity, have reached the age laid down by the law of that Member State for entitlement to an old-age pension or who cease paid employment to take early retirement, provided they have been working in that State for at least the preceding twelve months and have resided there continuously for at least three years.

If the legislation of the Member State does not accord the right to an old-age pension to certain categories of self-employed persons, the age condition shall be deemed to have been met, where the person has reached the age of 60;

(b) employed or self-employed workers who have resided continuously within the territory of the Member State for more than two years and who cease to work there as a result of permanent incapacity to work.

If such incapacity is the result of an accident at work or an occupational disease entitling the person to a pension for which an institution in that Member State is entirely or partially responsible, no condition shall be imposed as to length of residence;

(c) employed or self-employed workers who, after three years of continuous employment and residence in the Member State, work in an employed or self-employed capacity in another Member State, while retaining their place of residence in the first Member State, to which they return, as a rule, each day or at least once a week.

Periods of employment completed in this way in the territory of the other Member State shall, for the purposes of entitlement to the rights referred to in subparagraphs (a) and (b), be considered as having been completed in the territory of the Member State of residence.

Periods of involuntary unemployment duly recorded by the relevant employment office, periods not worked for reasons not of the person's own making and absences from work or cessation of work due to illness or accident shall be regarded as periods of employment.

2. The conditions as to length of residence and employment laid down in paragraph 1(a) and the condition as to length of residence laid down in paragraph 1(b) shall not apply if the worker's spouse is a national of the Member State concerned or has lost the nationality of that State by marriage to that worker.

3. The family members of an employed or self-employed worker who has acquired the right of permanent residence on the basis of paragraph 1 shall, irrespective of their nationality, have the right of permanent residence in the host Member State.

4. The family members of employed or self-employed workers who die during their working life but before acquiring permanent residence status on the basis of paragraph 1 in the host Member State in question shall have the right of permanent residence there, on condition that:

(a) the employed or self-employed worker had, at the time of his/her decease, resided continuously within the territory of that Member State for one year; or

(b) the death resulted from an accident at work or an occupational disease; or

(c) the surviving spouse lost the nationality of that State following marriage to the worker.

Article 16

Acquisition of the right of permanent residence by certain family members who are not nationals of a Member State

Without prejudice to Article 15, the family members of a Union citizen to whom Articles 12(2) and 13(2) apply and who satisfy the conditions laid down by those provisions shall acquire the right of permanent residence after four years of continuous residence calculated from their arrival in the host Member State.

Section II

Administrative formalities

Article 17

Permanent residence card

1. Member States shall issue persons entitled to permanent residence with a permanent residence card within three months of the submission of the application. The permanent residence card shall be valid indefinitely. It shall be renewable automatically every ten years.

2. The time limit within which the person entitled must apply for the permanent residence card may not be shorter than two years running from the date on which they became entitled. However, family members who are not EU nationals must submit the application before their existing residence card expires.

Failure to comply with the duty to apply for a residence card shall render the person concerned liable to proportionate and non-discriminatory penalties.

3. Breaks in residence not exceeding four years shall not affect the validity of the permanent residence card.

Article 18

Continuity of residence

1. Continuity of residence may be attested by any means of proof in use in the Member State of residence. It shall not be affected by temporary absences not exceeding a total of six months per year or by longer absences for important reasons such as compulsory military service, serious illness, pregnancy and childbirth, study or vocational training, or a work assignment in another Member State or third country.

2. Continuity of residence is broken by any expulsion decision duly taken against the person concerned, except where enforcement of the decision is deferred.

CHAPTER V

PROVISIONS COMMON TO THE RIGHT OF RESIDENCE AND THE RIGHT OF PERMANENT RESIDENCE

Article 19

Territorial scope

The right of residence and the right of permanent residence shall cover the whole territory of the Member State. Member States may impose territorial restrictions on the right of residence and right of permanent residence only where the same restrictions apply to their own nationals.

Article 20

Related rights

Irrespective of nationality, family members of an EU citizen who have the right of residence or the right of permanent residence in a Member State shall be entitled to engage in gainful activity there, in either an employed or a self-employed capacity.

Article 21

Equal treatment

1. All EU citizens residing on the territory of the host Member State shall enjoy equal treatment with the nationals of that country within the scope of the Treaty.

The benefit of this right shall be extended to family members who are not nationals of a Member State who enjoy the right of residence or permanent residence.

2. By way of derogation from paragraph 1, until they have acquired the right of permanent residence, the host Member State shall not be obliged to confer entitlement to social assistance on persons other than those engaged in gainful activity in an employed or self-employed capacity or the members of their families, nor shall it be obliged to award maintenance grants to persons having the right of residence who have come to the country to study.

Article 22

General provisions concerning residence documents

1. Possession of a registration certificate, of a certificate attesting submission of an application for a residence card, of a family member residence card or of a permanent residence card may under no circumstances be made a precondition for the pursuit of a gainful activity or for the granting of a service or benefit or for any other administrative formality.

2. All documents mentioned in paragraph 1 shall be issued free of charge or for a charge not exceeding that imposed on nationals for the issuing of similar documents.

Article 23

Checks by the authorities

Member States may carry out checks on compliance with any obligation laid down in their national legislation requiring non-nationals always to carry their registration certificate or residence card, provided that the same requirement applies to the country's own nationals as regards their identity cards.

For failure to comply with this requirement, Member States may impose the same penalties as those they impose on their own nationals for failure to carry their identity card.

Article 24

Procedural safeguards

1. Without prejudice to Chapter VI, the procedures provided for by Articles 28 and 29 shall apply by analogy to all expulsion decisions taken by the host Member State against Union citizens and their family members on grounds other than public policy, public security or public health.

2. The host Member State may not impose a ban on entry in the context of an expulsion decision to which paragraph 1 applies.

CHAPTER VI

RESTRICTIONS ON THE RIGHT OF ENTRY AND RIGHT OF RESIDENCE ON GROUNDS OF PUBLIC POLICY, PUBLIC SECURITY OR PUBLIC HEALTH

Article 25

General principles

1. This Chapter shall apply to decisions whereby Union citizens and their family members, irrespective of nationality, are refused entry or expelled on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends.

2. Measures taken on grounds of public policy or public security shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for the taking of such measures.

The personal conduct of the individual concerned must represent a present and sufficiently serious threat, affecting one of the fundamental interests of society. Justifications that are removed from the particulars of the case or that rely on considerations of general prevention shall not be accepted.

Personal conduct shall not be considered a sufficiently serious threat unless the Member State concerned takes serious enforcement measures against the same conduct on the part of its own nationals.

3. Expiry of the identity card or passport on the basis of which the person concerned entered the host Member State and was issued with a registration certificate or residence card shall not constitute a ground for expulsion from the territory.

4. When issuing the registration certificate or initial residence card, 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 the EU citizen or family member may have. Such enquiries shall not be made as a matter of routine. The Member State consulted shall give its reply within two months.

5. The Member State which issued the identity card or passport shall allow the holder of the 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 26

Protection against expulsion

1. Before taking an expulsion decision on grounds of public policy or public security, the host Member State shall take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host country and the extent of his/her links with the country of origin.

2. A host Member State may not take an expulsion decision on grounds of public policy or public security against EU citizens or their family members, irrespective of nationality, who have the right of permanent residence on its territory or against family members who are minors.

Article 27

Public health

1. The only diseases or disabilities justifying refusal of leave to enter or leave to reside on the territory of a Member State shall be the diseases subject to quarantine listed in International Health Regulation No 2 of the World Health Organisation of 25 May 1951 and other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to nationals of the host country. 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.

2. Disease or disabilities occurring after registration with the authorities in the place of residence or after a first residence card has been issued shall not be grounds for refusal to issue the permanent residence card or for expulsion.

3. Where there are serious indications that it is necessary, Member States may require persons entitled to the right of residence to undergo, free of charge, a medical examination to certify that they are not suffering from any of the conditions referred to in paragraph 1. Such medical examinations may not be required as a matter of routine.

Article 28

Notification of decisions

1. The persons concerned shall be notified of any decision to refuse them leave to enter or to expel them, in such a way that they are able to comprehend the content of the decision and what it entails for them.

2. The persons concerned shall be informed, precisely and in full, of the public policy, public security, or public health grounds on which the decision taken in their case is based, unless this is contrary to the security interests of the State involved.

3. The notification shall specify the court with which the person concerned may lodge an appeal, the time limit within which any action must be taken and the time allowed for the person to leave the country's territory. Save in duly substantiated cases of urgency, the time allowed shall be not less than fifteen days if the person concerned has not yet registered with the authorities in the place of residence or been granted a residence card, and not less than one month in other cases.

Article 29

Procedural safeguards

1. The persons concerned shall have access to administrative and judicial redress procedures in the host Member State to appeal against any decision taken against them on the grounds of public order, public safety or public health, or refusing them leave to enter, ordering their expulsion or refusing to issue them with the registration certificate, residence card or permanent residence card.

2. Where there is provision for administrative appeal, the decision shall not, save in cases of urgency, be taken by the administrative authority until the matter has been referred to a competent authority in the host country other than the authority qualified to take the decisions listed in paragraph 1, before which the person concerned shall be allowed to put their case in person, unless this is contrary to considerations

of State security, or to be assisted or represented in the proceedings in the manner provided for in national legislation.

3. Where judicial redress procedures do not have suspensory effect, the court dealing with the case shall have the option of issuing an interim order suspending enforcement of the contested decision, pending the final ruling.

4. The court dealing with the case shall review not only the legality of the decision, but also the facts and circumstances on which the proposed measure is based. The court shall also check that the decision is not disproportionate as to the requirements laid down in Article 26.

5. Member States may exclude the individual concerned from their territory pending the trial, but they may not prevent the individual from appearing in person at the trial.

Article 30

Duration of exclusion orders

1. Member States may not issue orders excluding persons covered by this Directive from their territory for life.

2. After a reasonable period, depending on the circumstances, and in any event once two years have elapsed since the decision ordering their expulsion was validly adopted in accordance with Community law, persons expelled on grounds of public policy, public security or public health, may submit a new application for leave to enter by putting forward arguments to establish that there has been a material change in the circumstances which justified the first decision ordering their expulsion.

The Member State concerned shall reach a decision on the new application within three months of its submission.

3. The persons referred to in paragraph 2 shall have no right of access to the territory of the Member State concerned while their new application is being considered.

Article 31

Expulsion as a penalty or legal consequence

1. Expulsion orders may not be issued by the host Member State as a penalty or legal consequence of a custodial penalty, unless they conform to the requirements of Articles 25, 26, 27 and 30(1).

2. Before enforcing an expulsion order, the Member State shall check that the individual concerned is currently and genuinely a threat to public policy and public security and shall assess whether there has been any change in the circumstances since the expulsion decision was taken.

CHAPTER VII

FINAL PROVISIONS

Article 32

Publicity

Member States shall disseminate information concerning the rights and obligations of Union citizens and members of their families, on the subjects covered in this Directive.

Article 33

Penalties

Member States shall lay down the penalties applicable to breaches of national rules adopted for the implementation of this Directive and shall take the measures required for their application. The penalties laid down shall be effective, proportionate and dissuasive and comparable to those that Member States apply to their own nationals for minor offences. Member States shall notify the Commission of these provisions not later than the date specified in Article 37 and as promptly as possible in the case of any subsequent changes.

Article 34

More favourable national provisions

The provisions of this Directive shall not affect any laws, regulations or administrative provisions laid down by a Member State which would be more favourable to the persons covered by this Directive.

Article 35

Repeals

- Articles 10 and 11 of Regulation (EEC) No 1612/68 are deleted with effect from 1 July 2003.
- Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC are repealed with effect from 1 July 2003.

Article 36

Reports

No later than 1 July 2006, the Commission shall submit a report on the application of this Directive to the European Parliament and the Council, together with any necessary recommendations. The Member States shall provide the Commission with the information needed to produce the report.

Article 37

Transposal

- Member States shall adopt and publish the provisions necessary to comply with this Directive by 1 July 2003 at the latest. They shall promptly inform the Commission thereof.

They shall apply such provisions from 1 July 2003.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

- Member States shall communicate to the Commission the text of the provisions of domestic law which they adopt in the field governed by this Directive.

Article 38

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Article 39

Addressees

This Directive is addressed to the Member States.
