



COMMISSION OF THE EUROPEAN COMMUNITIES

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Amended proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on the right of citizens of the Union and their family members to move and reside freely
within the territory of the Member States**

(presented by the Commission pursuant to Article 250 (2)
of the EC-Treaty)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

1. On 23 May 2001 the Commission adopted a 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 (COM(2001) 257 final).

This proposal was designed to replace and supplement the various legislative instruments in force on freedom of movement for Union citizens. It was drawn up in the context of the new legal and political environment resulting from the introduction of the concept of Union citizenship and set out detailed arrangements for the exercise of the basic right to free movement and residence, a right which is conferred directly by the Treaty on every Union citizen and which has been incorporated as such in the Charter of Fundamental Rights of the Union.

In this respect the proposal represented a significant step forward in defining the key importance of Union citizenship as demonstrated by the basic concept underlying the proposal whereby Union citizens should, *mutatis mutandis*, be able to move between and reside in Member States in similar conditions to nationals of a Member State moving around or changing their place of residence in their own country.

The main purpose of the proposal was to facilitate the exercise of the right to free movement and residence by reducing administrative formalities to an absolute minimum, by providing as clear a definition as possible of the status of family members, by creating a permanent right of residence acquired after a continuous period of four years of legal residence in a Member State and by restricting the possibility for Member States to refuse or terminate right of residence on the grounds of public policy.

2. The proposal was sent to Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on 29 June 2001. The Committee of the Regions gave its opinion on 13 March 2002¹ and the European Economic and Social Committee on 24 April 2002.²

Parliament referred the proposal to its Committee on Citizens' Freedoms and Rights, Justice and Home Affairs for examination. The Committee on Legal Affairs and the Internal Market, the Committee on Culture, the Commission on Women's Rights and Equal Opportunities, and the Committee on Petitions were also consulted.

After examining the opinions of the other Committees consulted, the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs adopted its report on 23 January 2003.

¹ OJ C 192, 12.8.2002, p.17.

² OJ C 149, 21.6.2002, p. 46.

At its sitting on 11 February 2003 Parliament adopted a legislative resolution endorsing the Commission proposal subject to a number of amendments and called on the Commission to amend its proposal accordingly pursuant to Article 250(2) of the EC Treaty.

2. LEGAL BASIS AND PROCEDURE

This amended proposal for a Directive is based on Articles 12, 18(2), 40, 44 and 52 of the EC Treaty. Entry into force of the Treaty of Nice on 1 February 2003 does not require a change in the legal basis.

But the procedure for adopting the proposal has now changed and the Council must act by qualified majority in accordance with the new wording of Article 18(2).

3. AMENDED PROPOSAL

1. Parliament endorses the general approach and the main principles underlying the Commission proposal, notably in respect of the major items, such as abolition of the residence card and its replacement by optional registration, introduction of a statement instead of a requirement to prove compliance with the conditions for residence, establishment of the right of unconditional permanent residence and absolute protection against expulsion for minors and persons having acquired a right of permanent residence.

It adopted 82 amendments. The Commission is able to accept all or part of most of these amendments as they comply fully with its approach and constitute valuable additions, expanding on and clarifying the Commission text.

However, it is not possible to incorporate some of the amendments in the amended proposal.

These include firstly the amendments to Article 2 on the definition of family members, in particular the concept of spouse and partner. Parliament's amendments would recognise as family members the spouse of the same sex in the same way as the spouse of a different sex, the registered partner in accordance with the legislation of the Member State of origin, and non-married partners in accordance with the legislation or practice of the host or home Member State.

On this point the Commission feels that harmonisation of the conditions of residence for Union citizens in Member States of which they are not nationals must not result in the imposition on certain Member States of amendments to family law legislation, an area which does not fall within the Community's legislative jurisdiction.

The Commission feels that the amended proposal represents an equitable solution to these issues: firstly, it complies with the principle of non-discrimination in as much as it requires Member States to treat couples from other Member States in the same way as its own nationals; and, secondly, it allows for a possible change in interpretation in the light of developments in family law in the Member States.

2. The second category of amendment which cannot be accepted comprises those which are designed to alter substantially the structure of the Directive or which undermine the approach proposed by the Commission, which Parliament has nonetheless endorsed.

3. And finally, the Commission has not incorporated the amendments the content of which was not coherent with the text of the proposal.

3.1. Amendments accepted in whole or in part or introduced in the interests of consistency

The amendments to the initial proposal for a Directive appear in bold. To make comparison with the original text easier, the original numbering of articles and recitals has been retained.

3.1.1. Recitals

Recital 4 (amendment 2): the recital has been amended to reflect the fact that the mobility of employed and self-employed workers is also one of the Union's policy priorities.

Recital 5 (amendment 3): the amendment to this recital is slightly different from the text proposed by Parliament; this is to make it clear that the sector-by-sector approach to the right of free movement needs to be remedied, by presenting a single legislative text replacing the existing legislative instruments, and at the same time re-examining their provisions.

Recital 7 (amendment 5): this amendment is designed to make it clear that the provisions of the Directive on entry and residence formalities do not affect the existing provisions on border controls. This is important in view of the fact that in this area procedures applicable to border controls can vary depending on the legislation applicable.

Recital 7a (amendment 6): the text of the recital has been clarified and is now consistent with the new text of Article 6(2).

Recital 8 (amendment 7): the amendment makes it quite clear that stays not exceeding six months are not subject to any conditions.

Recital 9 (amendment 8): the amendment is designed to make it clear that vocational training is included in the general concept of study. A reference to sickness insurance has been added to the recital to make it consistent with the amendment to point (c) of Article 7(1).

Recital 10 (amendment 9): the change here makes it clear that the right to freedom of movement for Union citizens stems directly from the Treaty.

Recital 17 (amendment 10): the amendment makes it clear that there must be equal treatment in the areas covered by the Treaty; this is in line with the wording of Article 12 of the Treaty.

Recital 19 (amendment 11): this amendment, which was not proposed by Parliament, is nonetheless necessary to ensure consistency between the recital and the new text of Article 21(2).

Recital 22 (amendment 12): this amendment makes the text more explicit by listing a number of points to be taken into account before the removal decision. The

Commission has amended Parliament's text slightly, though remaining faithful to the underlying idea, to make the recital consistent with Article 26.

Recital 27 (amendment 13): this amendment adds a reference to the fundamental freedoms.

3.1.2. *The articles*

Article 3(2) (amendment 20): this amendment is designed to facilitate entry and residence for family members not covered by Article 2 where there are serious health or humanitarian grounds for doing so. In the Commission's view this is justifiable for family members who, for compelling reasons, need to be near the Union citizen.

Article 4 (amendment 21): this amendment makes the prohibition on discrimination more specific by adding gender identity to the definition.

Article 6(2) (amendment 24): the first amendment, which adds a reference to national legislation, is relevant because it covers the situation of Member States which do not apply Regulation No 539/2001. The second amendment is designed to make the text more accurate from a legal point of view; its purpose is to exempt family members who are not nationals of a Member State and are already in possession of a residence permit from the requirement to obtain a visa, not to acknowledge equivalence between residence permit and entry visa. The amendment to the second subparagraph spells out the deadline for issuing the visa: Parliament proposed one week which, in the Commission's view, corresponds to five working days. This should be more than long enough for the Member States as the applicants are family members of a Union citizen for whom the issuing of a visa does not need to be preceded by prior consultations.

Article 6(4) (amendment 25): the amendment makes it clear that the time within which the person concerned must provide the relevant documents has to be reasonable; the period allowed is not specified but must be geared to individual circumstances.

Article 6(5) (amendment 8): the aim here is to make it clear that a period of residence of up to six months is not subject to any condition or formality other than possession of identity papers. This amendment was not proposed by Parliament but it is necessary to bring the Article into line with recital (9).

Article 7(1), point (a) (amendment 27): the amended text includes a direct reference to recipients of services, thereby avoiding confusion and a gap in the Directive, as the original text did not make it clear which provision covered this category of person.

Article 7(1), point (c) (amendment 28): the new wording is clearer and in line with the text of Directive 93/96 on the right of residence for students; it avoids the concept of student, which can be restrictive, and introduces enrolment at an accredited establishment and sickness insurance cover as requirements for residence for students. This amendment is also in line with the request from the European Economic and Social Committee.

Article 7(2a) (amendment 30): this does not involve any amendment to the text but simply a relocation of Article 8(7); it is in fact a provision on worker status and not an administrative formality and it is therefore preferable to include it in Article 7.

Article 8(1) (amendment 32): the Commission has not taken over the first part of Parliament's proposed amendment as it does not think it is possible to compare the administrative formalities provided for by a Member State for its own nationals with those for nationals from other Member States; it therefore prefers to give Member States the option to require citizens to register even if this requirement does not apply to its own nationals. But the Commission does think that Union citizens should be able to apply to register if they so wish, even in States where this is not compulsory.

Article 8(2) (amendment 33): the change here makes it clear that the certificate of registration does not establish right of residence but is simply an administrative formality; this is in line with Court of Justice case-law. It is also made clear that the penalties are administrative (this precision has been added to all the articles on penalties).

Article 8(4) (amendment 34): this amendment is designed to make it clear that vocational training is included in the more general concept of study.

Article 8(6), point (b) (amendment 35): as the people concerned are family members who are themselves citizens of the Union, replacing the document by a simple statement attesting to the existence of a family relationship is in line with the philosophy underlying the proposal and the wording of the preceding paragraphs.

Article 8(6), point (e) (amendment 20): this amendment was not requested by Parliament but is a logical consequence of the new wording of Article 3.

Article 9(2a) (amendment 38): this amendment reflects the points made by the Court of Justice in its ruling of 25 July 2002 in (Case C-459/99) *MRAX*. Parliament had asked that family members should not be refused a residence card solely on the grounds that their visa had expired but the Commission has added the absence of a visa, thereby bringing the amendment completely into line with the above court ruling.

Article 10(1) (amendment 39): the deadline of six months seems more realistic if Member States are to be able to carry out the necessary checks and issue the residence card. The qualification in the certificate of proof that the application for the residence card has been made by a family member is also added as it is not possible to establish this status without a prior check of the documents in question.

Article 10(2): (amendment 40): this amendment lists the documents which can be required from family members who are not nationals of a Member State. This is necessary because the amendment to Article 8(6) means that a simple statement attesting to the existence of a family relationship by family members who are not nationals of a Member State is not acceptable.

Article 11(1a) (amendment 41): this amendment makes the text clearer and fair by imposing a time limit on absences.

Article 12(3) (amendment 99): this amendment brings the text of this paragraph into line with the Court of Justice ruling of 17 September 2002 in C-413/99 *Baumbast and R*, which entitles the parent who has custody of the children to right of residence in the host Member State. This amendment is also in line with the request from the European Economic and Social Committee.

Article 13(1) and (2), points (a) and (b) (amendments 47, 49, 50 and 51): these amendments, which add a reference to the termination of partnerships covered by point (b) of Article 2(2) are a logical reflection of the situation. Moreover, in point (a) the prior duration of the marriage or partnership has been shortened to two years.

Article 13(2), point (c) (amendment 52): the purpose here is to give details of a number of difficult situations which would justify continued entitlement to the right of residence after divorce, annulment of marriage or termination of partnership. This will have a positive impact on the situation of women who are not nationals of a Member State and might be exposed to threats of violence through fear of losing their right of residence if they were to apply for divorce or separation. This amendment is also in line with the request from the European Economic and Social Committee.

Article 13a (amendment 54): this new Article takes over the text of the former Article 24 (which has been deleted); it is more logical to locate it at the end of Chapter III as removal is not possible once the person concerned has acquired permanent right of residence. A first paragraph has also been added to make it clear that the right of residence is retained as long as the conditions for residence are complied with.

Article 14 (amendment 55): the new paragraph 1a takes over and expands on the text of the second sentence of Article 18, which has been deleted. It is more logical to locate this text in the Article on the rules for acquiring permanent right of residence.

Article 15(2) (amendment 59): in what is a logical consequence of Article 2(2)(b) a reference to partner has been added.

Article 16 (amendment 61): the text of this Article has been aligned on the wording of Article 14.

Article 17(1) (amendment 62): the fact that the residence card was to be valid indefinitely and also renewable every ten years seemed contradictory. The amendment consequently deletes the final sentence of the paragraph on renewal.

Article 17(3) (amendment 64): this new text makes it clear that breaks in residence must last more than four years at a time if they are to affect the duration of the card.

Article 18(1) (amendment 55): the second sentence has been deleted and moved to Article 14.

Article 21(2) (amendment 108): the aim here is to eliminate exclusion from welfare assistance for persons not engaged in gainful activity before they acquire permanent right of residence. This restriction is not contained in the Directives concerning right of residence for those not in gainful activity. It could be interpreted as retrogressive

in relation to the current *acquis*, notably in the light of the case-law of the Court of Justice. In its ruling of 20 September 2001 in Case C-184/99 *Grzelczyk*³ the Court reaffirmed that Union citizens can rely on the principle of non-discrimination set out in Article 12 of the EC Treaty in all situations which fall within the scope *ratione materiae* of Community law, including those involving the exercise of the right to move and reside freely in another Member State. It affirmed that economically inactive Union citizens who are legally resident in another Member State are entitled, by virtue of their status as Union citizens, to equal treatment with nationals.

Article 22 (amendment 68): this amendment makes the text clearer and specifies that the person concerned may prove entitlement to the rights stemming from the Directive by any other means.

Article 25(1) (amendment 71): this amendment makes a more general reference to all types of decision restricting freedom of movement. The new wording is preferable as it covers all types of measure - removal, refusal of leave to enter the territory and refusal to leave.

Article 25(2) (amendment 72): the first amendment includes a specific reference to the principle of proportionality, a general principle of Community law which must always be complied with when measures restricting freedom of movement are adopted. The second amendment adds a reference to the genuine threat to the requirements of public policy, which is in line with the ruling given by the Court of Justice on 27 October 1977 in Case 30/77 *Bouchereau*⁴.

Article 25(4) (amendment 74): the addition of a reference to a period of six months is to cover the situation of Member States who do not introduce the requirement to register.

Article 25(5a) (amendment 76): this new paragraph imposes a requirement on Member States to notify the Commission of an decisions to remove Union citizens or their family members. As all such decisions are exceptional, this is a reasonable requirement.

Article 27(1) (amendment 77): a number of amendments have been made to this paragraph. Removal of the reference to disabilities is logical as only diseases may justify a measure restricting freedom of movement. The standstill clause in the last sentence has been deleted as it was not relevant. And the last amendment is a logical consequence of the new wording of Article 25(1).

Article 27(2) (amendment 78): reference to a six-month period instead of to the date of registration or the date of issue of the residence card is more in keeping with the structure of the Directive and will also encompass the situation of the Member States who do not introduce the registration requirement. Reference to refusal of the permanent residence card has been removed as it cannot be refused for reasons of public health.

³ [2001] ECR I-6193.

⁴ [1977] ECR 1999, paragraph 35.

Article 27(3) (amendment 79): reference to a six-month period is designed to restrict the period during which Member States may require persons to undergo a medical examination; this is consistent with the text of the previous paragraph.

Article 28(1) and (2) (amendment 80): the phrase "in writing" has been removed from paragraph 2 and inserted in paragraph 1 to make it clear that notification must always be in writing and that it is the precise grounds for the decision which do not have to be notified to the person concerned if state security were likely to be put at risk as a result.

Article 28(3) (amendment 82): there is now a single time limit for leaving the territory - thirty days from the date of notification.

Article 29(1) (amendment 83): the amendment is designed to make it clear that there must always be judicial redress and that administrative redress is also possible if it is provided for by the host Member State (for example before judicial redress).

Article 29(2) (amendment 84): deletion of the first phrase is to ensure that all decisions are subject to prior checks by an independent authority, not only where there is provision for administrative appeal.

Article 29(3) (amendment 113): the Commission has incorporated part of the amendment proposed by Parliament making judicial redress procedures automatically suspensory; this is in line with the general principle of Community law relating to effective remedy as provided for in Article 47 of the Charter of Fundamental Rights of the European Union. However, the Commission has expanded on the amendment by making provision for automatic suspension of enforcement until such time as the judge has pronounced. This amendment has a number of advantages. It requires Member States to empower their courts to accede to requests for suspension of the removal order: an application for interim measures must therefore be possible. Member States will have to organise such a procedure efficiently and rapidly as, pending the court decision on the request for suspension, enforcement of the order to leave the territory is suspended. However, this formula does not force Member States to guarantee the suspensive effect of the redress procedure until such time as a decision is taken on the legality of the removal order. It does not therefore impose disproportionate obligations on the Member States, and thus conforms fully to the requirements imposed by Article 13 of the European Convention on Human Rights in respect of removal.

Article 29(4) (amendment 85): this minor amendment serves to stress that the elements listed in Article 26 simply constitute a reference for checking that the decision is not disproportionate.

Article 30(2) (amendment 86): the amendments to the first subparagraph make the text clearer. The six-month deadline which replaces the three-month deadline in the second subparagraph is more realistic.

Article 31a (amendment 88): this new Article takes over the content of the old Article 31(2). It is in fact more logical for this text to constitute a separate article.

Article 32 (amendment 89): the amendment spells out how the information should be disseminated.

Article 33 (amendment 90): this amendment makes the principles of effectiveness and proportionality the only reference points for the penalties; this would seem fair.

Articles 35, 36 and 37 (amendments 91, 92 and 93): the amendments here are to the date of entry into force of the Directive. Parliament proposed July 2004 but in view of the status of the negotiations this does not seem realistic. The Commission is of the opinion that the new Directive will be adopted during the first half of 2004 and is therefore proposing transposal by July 2005.

3.2. Amendments which cannot be accepted

Amendment 4

For the reasons spelled out below in respect of amendments 14, 15 and 16, the Commission is unable to accept the proposed amendment to recital (6). This relates to the amendments proposed to Article 2 and involves the mutual recognition of and respect for the diversity of family relations, whether they involve marriage, registered partnership or partnership outside marriage, on the basis of equality and the fundamental right to family life.

Amendment 11

The Commission cannot accept the amendment proposed to recital (19). In combination with Article 21(2) it aims to exclude the economically inactive from entitlement to welfare assistance during the first six months of residence. This is not consistent with the amendment proposed by Parliament to Article 21(2) and accepted by the Commission.

Amendments 14, 15 and 16

These proposed amendments are designed to recognise as family members the spouse and registered partner, irrespective of sex, on the basis of the relevant national legislation, and the unmarried partner, irrespective of sex, with whom the Union citizen has a durable relationship, if the legislation or practice of the host and/home Member States treats unmarried couples and married couples in a corresponding manner and in accordance with the conditions laid down in any such legislation. These amendments cannot be accepted.

With regard to marriage, the Commission is reluctant to opt for a definition of the term spouse which makes a specific reference to spouse of the same sex. For the moment only two Member States make legislative provision for marriage between partners of the same sex. Moreover, in its case-law⁵ the Court of Justice has made it clear that, according to the definition generally accepted by the Member States, the term marriage means a union between two persons of the opposite sex. The Court has also ruled that an interpretation of legal terms on the basis of social developments that has effects in all the Member States must take into account the situation in the

⁵ Ruling of 31 May 2001 in Joint Cases C-122/99 and C-125/99 *D and Kingdom of Sweden v Conseil*, [2001] I-4319, paragraph 34.

whole Community.⁶ The Commission therefore prefers to restrict the proposal to the concept of spouse as meaning in principle spouse of a different sex, unless there are subsequent developments.

With regard to partners, whether they be registered partners or unmarried partners, the Commission is also of the opinion that recognition of such situations must be based exclusively on the legislation of the host Member State. Recognition for purposes of residence of non-married couples in accordance with the legislation of other Member States could pose problems for the host Member State if its family law does not recognise this possibility. To confer rights which are not recognised in the case of its own nationals on couples from other Member States could in fact create reverse discrimination, which the Commission would prefer to avoid.

However, the Commission has gone along with Parliament's wish to make specific references to registered partners in its amended point (b) of Article 2(2).

Amendments 17 and 18

These proposed amendments, which would insert a specific reference in points (c) and (d) of Article 2(2) to relatives in the ascending and descending lines of registered partners in line with amendment 15, which proposes a separate reference to the registered partner in a new point (a) of Article 2(2), cannot be accepted. However, the Commission has modified the new wording of point (b) of Article 2(2) to introduce a specific reference to the registered partner and the concept of durable relationship.

Amendment 19

This proposed amendment would incorporate in Article 2(3) a definition of the home Member State and the criteria to be used for determining what constitutes a durable relationship. This reference to the legislation of the home Member State is not acceptable for the purpose of defining spouse or partner. Moreover, the definition of durable relationship is not necessary as it is the legislation of the host Member State that determines the factors that have to be taken into account.

Amendments 26, 32 (in part), 42, 43 and 44

These amendments cannot be accepted as they would substantially alter the structure of the Directive or undermine the approach proposed by the Commission.

Amendments 22, 23, 31, 45, 53, 56, 57, 58, 60, 63, 66 and 69

These amendments cannot be accepted as they are not consistent with the Commission proposal.

⁶ Ruling of 17 April 1986 in Case C-59/85 *Reed*, [1986] 1283, paragraph 13.

Amended 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

(Text with EEA relevance)

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 Commission⁷,

Having regard to the Opinion of the European Economic and Social Committee⁸,

Having regard to the Opinion of the Committee of the Regions⁹,

Acting in accordance with the procedure 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 freedoms of the internal market, which under Article 14(2) of the EC Treaty comprises an area without internal frontiers in which freedom is ensured in accordance with the provisions of the Treaty.
- (3) Articles 17 and 18 of the EC Treaty establish citizenship of the Union and confer on every citizen of the Union a primary and individual right to move and reside freely within the territory of the Member States.
- (4) Promoting the mobility of **employed or self-employed workers**, students, researchers, those undertaking training, volunteers, teachers and trainers is recognised as a policy priority of the European Union.

⁷ OJ C 270, 25.9.2001, p. 150.

⁸ OJ C 149, 21.6.2002, p. 46.

⁹ OJ C 192, 12.8.2002, p. 17.

- (5) In this context, **with a view to remedying** the sector-by-sector, piecemeal approach to the right of free movement and residence **and facilitating the exercise of this right in accordance with Article 18(2) of the Treaty, there needs to be a single legislative act to replace and complement the following legislative texts:** ~~as provided for by~~ Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community¹⁰, 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 families¹¹, 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 services¹², Council Directive 90/364/EEC of 28 June 1990 on the right of residence¹³, 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 activity¹⁴ and Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students¹⁵, ~~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 **without prejudice to the provisions applicable to border controls.**
- (7a)** ~~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~~**With a view to facilitating the free movement of family members who are not nationals of a Member State, those who have already obtained a residence document should be exempted from the requirement to obtain an entry visa within the meaning of Council Regulation (EC) No 539/2001¹⁶ or, where appropriate, of the applicable national legislation.**

¹⁰ 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).

¹¹ OJ L 257, 19.10.1968, p. 13. Directive as last amended by the Act of Accession of Austria, Finland and Sweden.

¹² OJ L 172, 28.6.1973, p. 14.

¹³ OJ L 180, 13.7.1990, p. 26.

¹⁴ OJ L 180, 13.7.1990, p. 28.

¹⁵ OJ L 317, 18.12.1993, p. 59.

¹⁶ 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, OJ L 81, 21.3.2001, p. 1.

- (8) In keeping with new developments in **geographical** mobility **and** working arrangements ~~and lifestyles less tied to a single place~~, stays by Union citizens not exceeding six months should not be subject to any **conditions or any** formalities other than the requirement to hold a valid identity card or passport.
- (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 exercise of the right of residence for Union citizens for periods in excess of six months remains subject to the requirement that such citizens are engaged in gainful activity or, in the case of those not engaged in gainful activity, that they have sufficient resources **or that they are enrolled at an accredited establishment for the purpose of following a course of study, including vocational training, and have** comprehensive sickness insurance cover 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 that they are family members of a Union citizen who satisfies one of these requirements.
- (10) The fundamental and personal right ~~of Union citizens~~ to reside in another Member State **is conferred directly on Union citizens by the Treaty and** is not dependent upon their having been issued a residence permit. The residence permit requirement should therefore be restricted to cases where it is genuinely warranted, in particular for family members of Union citizens 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 valid passport, is sufficient and proportionate and adequate for the host Member State's purpose of keeping a record of the movement of people within its territory.
- (12) The supporting documents required by the administrative authorities for the issuing of a registration certificate or 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 marriage dissolution~~ **or termination of partnership**. With due regard for family life and human dignity and in certain conditions to guard against abuse, measures should therefore be taken to ensure that in such circumstances the right of residence is retained.
- (14) Guaranteed permanent residence for Union citizens who have chosen to settle long term in another Member State strengthens the feeling of 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 a continuous period of four years of residence.

- (15) Certain advantages specific to Union citizens who are in paid employment or are self-employed should, however, be maintained, as these constitute acquired rights conferred by Commission Regulation (EEC) No 1251/70 of 29 June 1970¹⁷ and Council Directive 75/34/EEC of 17 December 1974¹⁸, which concern the right to reside within the territory of a Member State after having worked there in an employed or self-employed capacity.
- (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 while still working but before having acquired the right of permanent residence, 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 in which the Union citizen resides, the right of permanent residence should not be subject to conditions but should confer complete equality of treatment with nationals **in areas covered by the Treaty**, as well as maximum protection against removal.
- (18) Consequently, 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 issuing 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 security provision or sickness insurance coverage to persons not engaged in gainful activity, or award maintenance grants to Union citizens coming to study within its territory.~~
- (20) Articles 39(3), 46(1) and 55 of the EC Treaty allow restrictions to be placed on the right of free movement on grounds of public policy, public security or public health. Council Directive 64/221/EEC¹⁹ provides 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 and the basic 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 be removed.
- (22) Removal of Union citizens and their family members 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

¹⁷ OJ L 142, 30.6.1970, p. 24.

¹⁸ OJ L 14, 20.1.1975, p. 10.

¹⁹ OJ 56, 4.4.1964, p. 850. Directive as last amended by Directive 75/35/EEC (OJ L 14, 20.1.1975, p. 14).

should therefore be limited **in accordance with the proportionality principle** to take account of the degree of integration of the persons concerned, **the length of their stay in the host Member State, their age, state of health, and family and economic situation, and the links with their country of origin** and to prohibit removal of Union citizens or their family members who have 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 their family members who have been refused leave to enter or reside in another Member State, on the same terms as those available to nationals as regards the conditions for the lodging of 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 their family members who have been ~~removed~~ **excluded from the territory of a Member State** to submit a fresh application after a reasonable period and **in any event** ~~no later than~~ after a two-year period **from notification of the final exclusion order** should be confirmed.
- (26) In view of the new conditions laid down by this Directive for the exercise of the right of free movement, the provisions of existing legislation that are contrary to this Directive should be repealed or deleted, while allowing national provisions that are more favourable to be applied.
- (27) This Directive respects the fundamental rights **and freedoms** and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union,

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 or 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 partner **to whom the Union citizen is linked by registered partnership or with whom he/she has a duly attested durable relationship**, if the legislation of the host Member State **recognises the situation of** unmarried couples, ~~as equivalent to married couples~~ 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/her right of free movement and residence.

Article 3
Persons entitled

1. This Directive shall apply to all Union citizens who move to or 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. **Notwithstanding any right to free movement and residence the persons concerned may have in their own right**, 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~~ **or where there are serious health or humanitarian grounds for doing so**.

Article 4
Non-discrimination

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

Chapter II
Right of movement and right of residence for up to six months

Article 5
Right of exit

1. Union citizens shall have the right to leave the territory of a Member State 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 are accompanying or joining.

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 the Member States of the Union 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 may only be required to have an entry visa in accordance with Council Regulation (EC) No 539/2001 **or, where appropriate, with national legislation. For the purposes of this Directive, possession of** a valid residence permit issued by a Member State shall ~~be equivalent to~~ **exempt the holder from the requirement to obtain** a visa.

Member States shall accord such persons every facility to obtain the necessary visas. Such visas shall be **issued no later than one week after submission of the application and 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 that they are in possession of a residence permit.
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 **within a reasonable period of time** 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 up to six months **without any conditions or any formalities other than the requirement to hold** with a valid identity card or passport. The Member State may only require the person concerned to report his/her presence within its territory within a time limit, which may not be less than fifteen days. Failure to comply with this requirement may make the person concerned liable to **administrative** 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 within 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 are recipients of services**; or
 - (b) have sufficient resources for themselves and their family members not to become a burden on welfare assistance in the host Member State during their stay and have comprehensive sickness insurance cover in the host Member State; or
 - (c) ~~are students admitted to a course of~~ **enrolled at an accredited establishment for the principal purpose of following a course of study, including vocational training, and have comprehensive sickness insurance cover in the host Member State**; or
 - (d) are family members 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 set out in point (a) or (b) or (c) of paragraph 1.
- (2a) For the purposes of point (a) of paragraph 1, Union citizens who are no longer engaged in gainful activity in an employed or self-employed capacity shall retain their employed or self-employed status in the following circumstances:**
- (a) they are temporarily unable to work as the result of an illness or accident;**
 - (b) they are in duly recorded involuntary unemployment and have registered as a jobseeker with the relevant employment office;**
 - (c) they are 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, they 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) they embark 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 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. **In all cases the Member State shall allow any Union citizens applying to do so to register.**
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~~ A registration certificate shall be 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 **administrative** penalties.
3. For the registration certificate to be issued, Member States may require only that Union citizens to whom point (a) or (b) of Article 7(1) applies present a valid identity card or passport and assure the relevant authority, by means of a declaration or by such equivalent means as they may choose, that they satisfy the conditions laid down therein.
4. For the registration certificate to be issued, Member States may require only that Union citizens to whom point (c) of Article 7(1) applies present a valid identity card or passport and evidence of enrolment at an accredited establishment for the principal purpose of following a course **of study, including** vocational training, and assure the relevant authority, by means of a declaration or by such equivalent means as they may choose, that they have sufficient resources for themselves and their family members not to become a burden on welfare assistance in the host

Member State during their stay and that they have comprehensive sickness insurance cover in the host Member State.

5. Member States may not lay down an amount which they regard as sufficient resources.
6. For the registration certificate 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 **statement attesting to the existence of a** family relationship;
 - (c) ~~where relevant,~~ the registration certificate of the Union citizen whom they are accompanying or joining;
 - (d) in cases falling under point (b) of Article 2(2), proof that the requirements 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 their household, **or proof of the existence of serious health or humanitarian grounds.**
- ~~7. The registration certificate 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.

(2a) Family members may not be refused a residence card solely on the grounds that they have no visa or that their visa has expired prior to submission of the application for a residence card.

3. Failure to comply with the requirement to apply for a residence card may make the person concerned liable to proportionate and non-discriminatory **administrative** 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 issuing of a document bearing the words “residence card of a family member of a Union citizen” no later than ~~three~~ **six** months from the date on which they submit the application. A certificate of proof of application **for a residence card of a family member of a Union citizen** 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 **following** documents as those referred to in Article 8(6):

(a) a valid identity card or passport;

(b) a document proving the family relationship;

(c) the registration certificate of the Union citizen whom they are accompanying or joining;

(d) in cases falling under point (b) of Article 2(2), proof that the requirements 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 their household, or proof of the existence of serious health or humanitarian grounds.

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.

(1a) ~~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.~~ **The validity of the residence card shall not be affected by temporary absences not exceeding six months at a time, or by absences of a longer duration for compulsory military service or for pregnancy and childbirth, or by absences of a maximum of one year at a time for important reasons such as serious illness, study or vocational training, or a work assignment in another Member State or a third country.**

Article 12
Retention of the right of residence by family members in the event of death or departure of the Union citizen

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 his/her family members 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 points (a), (b), (c) or (d) of Article 7(1).

2. Without prejudice to the second subparagraph, the Union citizen's death shall not entail loss of the right of residence of family members dependent on him/her who are not nationals of a Member State.

Before acquiring the right of permanent residence, the right of residence of the persons concerned shall remain subject to the requirement that they are engaged in gainful activity in an employed or self-employed capacity or that they have sufficient resources for themselves and their family members not to become dependent on welfare assistance in the host Member State for the duration of their stay and have comprehensive sickness insurance cover in the host Member State, or that they are members of the family, already constituted in the host Member State, of an applicant satisfying these requirements.

Those resources shall be deemed sufficient where they are at least at the threshold below which nationals of the host Member State become eligible for welfare assistance. Where this criterion is not applicable, the applicant's resources shall be deemed sufficient where they are at least equivalent to 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 loss of the right of residence of his/her children **or of the parent who has actual custody of the children, irrespective of nationality,** ~~who are not nationals of a Member State if they~~ **the children** reside in the host Member State and are enrolled at an educational

establishment, at 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 or termination of partnership

1. Without prejudice to the second subparagraph, divorce, ~~or~~ annulment of marriage, **or termination of the partnership or relationship referred to in point 2(b) of Article 2** shall not affect the right of residence of a Union citizen's family members who are nationals of a Member State.

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

2. Without prejudice to the second subparagraph, divorce, ~~or~~ annulment of marriage, **or termination of the duly attested partnership or relationship referred to in point 2(b) of Article 2** shall not entail loss of the right of residence of a Union citizen's family members who are not nationals of a Member State where:
 - (a) prior to initiation of the divorce or annulment proceedings **or termination of the duly attested partnership or relationship referred to in point 2(b) of Article 2**, the marriage, partnership or the relationship has lasted at least ~~five~~ **two** years, including one year in the host Member State; or
 - (b) by agreement between the spouses **or partners referred to in point 2(b) of Article 2** or by court order, the spouse **or partner**, not being a national of a Member State, has custody of the citizen's children; or
 - (c) this is warranted by particularly difficult circumstances, **such as physical or mental abuse within the family, or on humanitarian grounds**.

Before acquiring the right of permanent residence, the right of residence of the persons concerned shall remain subject to the requirement that they are engaged in gainful activity in an employed or self-employed capacity or that they have sufficient resources for themselves and their family members not to become a burden on the host Member State for the duration of their stay and have comprehensive sickness insurance cover in the host Member State, or that they are members of the family, already constituted in the host Member State, of an applicant satisfying these requirements.

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

Article 13a

Procedural safeguards in the event of removal for administrative reasons

1. **The right of residence shall be retained for such time as the persons concerned satisfy the requirements laid down in Articles 7, 12 and 13.**

2. **The procedures provided for by Articles 28 and 29 shall apply by analogy to all removal decisions taken by the host Member State against Union citizens or their family members on grounds other than public policy, public security or public health.**
3. **The host Member State may not combine an exclusion order with the removal decision referred to in paragraph 2.**

Chapter IV

Right of permanent residence

Section I

Eligibility

Article 14

General rule for Union citizens and their family members

1. Union citizens who have resided legally for a continuous period of four years in the host Member State shall have the right of permanent residence there. This right shall not be subject to the conditions provided for in Chapter III.
- 1a. Continuity of residence shall not be affected by temporary absences not exceeding a total of six months a year or by longer absences not exceeding twelve months at a time 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 a third country.**
2. Paragraph 1 shall apply also to family members who are not nationals of a Member State and 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 years at a time.

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 in the host Member State shall be enjoyed before completion of a continuous period of four years of residence by:
 - (a) employed or self-employed persons who, at the time they stop working, 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 that they have been working in that State for at least the preceding twelve months and have resided there continuously for more than 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 once the person concerned has reached the age of 60;

- (b) employed or self-employed persons who have resided continuously in the Member State for more than two years and 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 concerned to a benefit payable in full or in part by an institution in that Member State, no condition shall be imposed as to length of residence;

- (c) employed or self-employed persons 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.

For the purposes of entitlement to the rights referred to in points (a) and (b), periods of employment spent in the other Member State shall be treated as having been spent in the host Member State.

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 point (a) of paragraph 1 and the condition as to length of residence laid down in point (b) of paragraph 1 shall not apply if the worker's spouse **or partner as referred to in point 2(b) of Article 2** is a national of the host Member State or has lost the nationality of that State by marriage to that worker.
3. Irrespective of nationality, 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 have the right of permanent residence in the host Member State.
4. The family members of employed or self-employed persons who die while still working but before acquiring permanent resident status in the host Member State on the basis of paragraph 1 shall have the right of permanent residence there, on condition that :
 - (a) the employed or self-employed person had, at the time of death, resided continuously on the territory of that Member State for one year; or
 - (b) the death resulted from an accident at work or 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 who satisfy the conditions laid down therein shall acquire the right of permanent residence after ~~four years of continuous residence calculated from their arrival~~ **residing legally for a continuous period of four years** 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 from the date on which entitlement commenced. However, family members who are not nationals of a Member State must submit the application before their first residence card expires.

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

3. Breaks in residence not exceeding four years **at a time** 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 host Member State. ~~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 removal 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 the right of permanent residence only where the same restrictions apply to their own nationals.

Article 20 *Related rights*

Irrespective of nationality, the family members of a Union 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 an employed or self-employed capacity.

Article 21 *Equal treatment*

1. Union citizens residing within the territory of the host Member State shall enjoy equal treatment with the nationals of that State in areas covered by the Treaty.

The benefit of this right shall be extended to family members who are not nationals of a Member State but enjoy the right of residence or the right of 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 there 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 **the performance of** for any other administrative formality **may not be denied to the person concerned on the grounds of not possessing a registration certificate, a**

certificate attesting submission of an application for a residence card, a family member residence card or a permanent residence card, whichever is appropriate, if it can be proved by any other means that he/she is entitled to the rights deriving from this Directive.

2. The documents listed 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 requirement deriving from their national legislation for non-nationals always to carry their registration certificate or residence card, provided that the same requirement applies to their own nationals as regards their identity card.

In the event of failure to comply with this requirement, Member States may impose the same penalties as those imposed 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 removal 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 a removal decision to which paragraph 1 applies.~~

CHAPTER VI

Restrictions on the right of entry and the 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~~ **any decision restricting the freedom of movement of** 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 may not be invoked to serve economic ends.
2. Measures taken on grounds of public policy or public security shall **comply with the principle of proportionality and shall** be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.

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

Personal conduct may 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 passport or identity card 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 grounds for removal from the territory.
4. When issuing the registration certificate or residence card **and not later than six months from the date of arrival of the person concerned on its territory**, the host Member State may, should it consider this essential, request the Member State of origin and, if need be, other Member States to provide information concerning any previous police record the Union 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 passport or identity card 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.

5a. Member States shall notify the Commission of any decision to remove Union citizens or their family members.

Article 26

Protection against removal

1. Before taking a removal decision on grounds of public policy or public security, the host Member State shall take account of considerations such as how long the individuals concerned have resided within its territory, their age, state of health, family and economic situation, and social and cultural integration into the host Member State, and the extent of the links with their country of origin.
2. The host Member State may not take a removal decision on grounds of public policy or public security against Union citizens or family members, irrespective of nationality, who have the right of permanent residence within 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~~ **measures restricting freedom of movement** within 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 Member State. ~~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. ~~Diseases or disabilities occurring after registration with the authorities in the place of residence or after a first residence card has been issued~~ **a six-month period from the date of arrival** shall not constitute grounds for ~~refusal to issue the permanent residence card or for removal~~ **removal from the territory**.
3. Where there are serious indications that it is necessary, Member States may, **within six months of the date of arrival**, 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 writing of any decision taken under Article 25(1)**, such that they are able to comprehend ~~the~~ **its** content and the implications for them.
2. The persons concerned shall be informed, precisely and in full, ~~in writing~~ 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 interests of state security.
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, where applicable, the time allowed for the person to leave the territory of the Member State. 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~~ **thirty days from the date of notification**.

Article 29

Procedural safeguards

1. The persons concerned shall have access to ~~administrative and judicial~~ **and, where appropriate, administrative** 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 removal or refusing to issue them with the registration certificate, residence card or permanent residence card.~~
2. ~~Where there is provision for administrative appeal, the~~ **This** 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 Member State other than the authority qualified to take the ~~decisions listed~~ **decision referred to** in paragraph 1, before which the person concerned shall be allowed, should he/she so request, 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 by 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~~**Where the appeal against the removal decision is accompanied by an application to suspend enforcement, actual removal may not take place until such time as a decision has been taken on the appeal.**
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. It shall also check that the decision is not disproportionate, **in particular** 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. Persons ~~expelled~~**excluded** on grounds of public policy, public security or public health, may submit an ~~new~~ application for **lifting of the exclusion order** after a reasonable period, depending on the circumstances, and in any event after two years ~~have elapsed since the decision ordering their removal was validly adopted in accordance with Community law,~~ from **notification of the final exclusion order,** validly adopted in accordance with Community law, ~~to enter~~ by putting forward arguments to establish that there has been a material change in the circumstances which justified the decision ordering their ~~removal~~**exclusion**.
- The Member State concerned shall reach a decision on ~~the new~~ **this** application within ~~three~~**six** 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

Removal as a penalty or legal consequence

Removal 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 a removal 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 removal decision was taken~~

Article 31a
Check prior to expulsion

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

Chapter VII
Final provisions

Article 32
Publicity

Member States shall disseminate information concerning the rights and obligations of **Union citizens and their family members**, on the subjects covered by this Directive, **particularly by means of awareness-raising campaigns conducted through national and local media and means of communication.**

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 **and** 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

1. Articles 10 and 11 of Regulation (EEC) No 1612/68 are deleted with effect from 1 July ~~2003~~**2005**.
2. 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~~**2005**.

Article 36
Report

No later than 1 July ~~2006~~2008, the Commission shall submit a report on the application of this Directive to the European Parliament and the Council, together with any necessary proposals. The Member States shall provide the Commission with the information needed to produce the report.

Article 37
Transposal

1. Member States shall adopt and publish the provisions necessary to comply with this Directive by 1 July ~~2003~~2005. They shall forthwith inform the Commission thereof.

They shall apply those provisions from 1 July ~~2003~~2005.

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

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered 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 Union*.

Article 39
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President