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23 January 2003

**\*\*\*I**  
**REPORT**

on the 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 – C5-0336/2001 – 2001/0111(COD))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Giacomo Santini

***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## PROCEDURAL PAGE

By letter of 29 June 2001 the Commission submitted to Parliament, pursuant to Article 251(2) and Articles 12, 18, 40, 44 and 52 of the EC Treaty, the 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 – 2001/0111 (COD)).

At the sitting of 3 September 2001 the President of Parliament announced that she had referred this proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Legal Affairs and the Internal Market, the Committee on Employment and Social Affairs, the Committee on Culture, Youth, Education, the Media and Sport and the Committee on Women's Rights and Equal Opportunities for their opinions (C5-0336/2001).

At the sitting of 4 October 2001 the President of Parliament announced that she had also referred the proposal to the Committee on Petitions for its opinion.

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Ana Palacio Vallelersundi rapporteur at its meeting of September 2001. The committee appointed Giacomo Santini rapporteur at its meeting of 11 September 2002.

It considered the Commission proposal and draft report at its meetings of 20 February, 19 March, 18 June, 12 September, 11 November and 10 December 2002 and 21 January 2003.

At the last meeting it adopted the draft legislative resolution by 23 votes to 16, with 1 abstention.

The following were present for the vote: Jorge Salvador Hernández Mollar, chairman; Robert J.E. Evans, vice-chairman; Giacomo Santini, vice-chairman and rapporteur; Niall Andrews, Elspeth Attwooll (for Lousewies van der Laan, pursuant to Rule 153(2)), Alima Boumediene-Thiery, Giuseppe Brienza, Kathalijne Maria Buitenweg (for Heide Rühle), Mogens N.J. Camre (for José Ribeiro e Castro), Marco Cappato (for Mario Borghezio), Michael Cashman, Carmen Cerdeira Morterero, Ozan Ceyhun, Carlos Coelho, Gérard M.J. Deprez, Francesco Fiori (for Marcello Dell'Utri, pursuant to Rule 153(2)), Ewa Hedkvist Petersen (for Adeline Hazan), Roger Helmer (for Thierry Cornillet, pursuant to Rule 153(2)), Marie-Thérèse Hermange (for Charlotte Cederschiöld), Sylvia-Yvonne Kaufmann (for Giuseppe Di Lello Finuoli), Margot Keßler, Eva Klamt, Alain Krivine (for Ilka Schröder), Jean Lambert (for Pierre Jonckheer), Baroness Sarah Ludford, Lucio Manisco (for Fodé Sylla), Eryl Margaret McNally (for Martine Roure, pursuant to Rule 153(2)), Hartmut Nassauer, Elena Ornella Paciotti, Paolo Pastorelli (for Timothy Kirkhope), Hubert Pirker, Olle Schmidt (for Lousewies van der Laan), Ole Sørensen (for Francesco Rutelli), Patsy Sørensen, Sérgio Sousa Pinto, The Earl of Stockton (for The Lord Bethell), Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco and Rainer Wieland (for Marcelino Oreja Arburúa, pursuant to Rule 153(2)).

The opinions of the Committee on Legal Affairs and the Internal Market, the Committee on Culture, Youth, Education, the Media and Sport, the Committee on Petitions and the Committee on Women's Rights and Equal Opportunities are attached; the Committee on Employment and Social Affairs decided on 12 September 2001 not to deliver an opinion.

The report was tabled on 23 January 2003.

## DRAFT LEGISLATIVE RESOLUTION

### European Parliament legislative resolution on the 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) 0257 – C5-0336/2001 – 2001/0111(COD))

#### (Codecision procedure: first reading)

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2001) 257<sup>1</sup>),
  - having regard to Article 251(2) and Articles 12, 18, 40, 44 and 52 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0336/2001),
  - having regard to Rule 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinions of the Committee on Legal Affairs and the Internal Market, the Committee on Culture, Youth, Education, the Media and Sport, the Committee on Petitions and the Committee on Women's Rights and Equal Opportunities (A5-0009/2003),
1. Approves the Commission proposal as amended;
  2. Asks to be consulted again should the Commission intend to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

#### Amendment 1 Recital 3

(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.

(3) The introduction of citizenship of the Union under Articles 17 and 18 of the *EC* Treaty confers on each citizen of the Union a primary, individual right to move and reside freely within the territory of the Member States.

<sup>1</sup> OJ C 270 E, 25.9.2001, p. 150.

*Justification*

*To stipulate that it is the Treaty establishing the European Community that is being referred to.*

Amendment 2  
Recital 4

(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.

(4) The development of the mobility of ***employed or self-employed workers***, students, researchers, those undertaking training, volunteers, teachers and trainers is recognised as a political priority of the European Union.

*Justification*

*Having regard to the freedom of movements of workers as well as the need to ensure equality in the treatment of employed and self-employed persons, this category should be included explicitly in the recitals.*

Amendment 3  
Recital 5

(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, 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, 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, Council Directive 90/364/EEC of 28 June 1990 on the right of residence,

(5) In this context, ***with a view to remedying*** the sector-by-sector, piecemeal approach to the right of free movement and residence ***and to facilitating the exercise of this right, in accordance with Article 18(2) of the EC Treaty, the following Community legislative acts need to be reviewed:*** Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community, 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, Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of

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 and Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students, ***needs to be reviewed in order to facilitate the exercise of this right, in accordance with Article 18(2) of the Treaty.***

Member States with regard to establishment and the provision of services, Council Directive 90/364/EEC of 28 June 1990 on the right of residence, 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 and Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students.

### *Justification*

*Clearer wording.*

#### Amendment 4 Recital 6

(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.

(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 ***so that the diversity of family relationships that exist in today's society, whether in the form of marriage, registered partnerships or unmarried partnerships, is recognised and respected. On the basis of equality and fair treatment, the fundamental right to family life should not be made dependent on individuals choosing to enter into marriage.***

Or. en

### *Justification*

*The diversity of family relationships that exist in today's society, whether in the form of marriage, registered partnerships or unmarried partnerships, must be recognised and*



*respected. On the basis of equality and fair treatment, the fundamental right to family life should not be made dependent on individuals choosing to enter into marriage.*

Amendment 5  
Recital 7

(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, namely by treating residence documents as equivalent to short-stay visas.***

(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.***

*Justification*

*The provisions of this directive are without prejudice to existing legislation on border controls. It is important to draw attention to this in order to clarify the boundaries of the directive's scope.*

Amendment 6  
Recital 7 a (new)

***(7a) 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 a short-stay visa. Those who have not should remain subject to visa requirements within the meaning of Council Regulation (EC) No 539/2001<sup>1</sup> or, where appropriate, of the applicable national legislation.***

*Justification*

*The second part of recital 7 in the Commission proposal becomes a separate recital because it deals with a separate issue. The new wording clarifies the fact that it is not a question of treating residence documents as equivalent to visas, but of exempting family members who already have a residence document.*

Amendment 7  
Recital 8

(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.

(8) In keeping with new developments in **geographical** mobility **and** working arrangements, 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. **No other conditions should apply.**

*Justification*

*The first is a linguistic amendment, while the second makes it clear that stays not exceeding six months by Union citizens should be subject to no specific conditions.*

Amendment 8  
Recital 9

(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

(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.

the host Member State for themselves and their family members, or that they be students undergoing **a course of studies, including** vocational training, in the host Member State, or be family members of a Union citizen who does satisfy one of these requirements.

*Justification*

*Vocational training is a reductive term. The directive will refer consistently to both studies and vocational training.*

Amendment 9  
Recital 10

(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.

(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 **but derives directly from the EC Treaty**; 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.

*Justification*

*The right of residence is a right conferred directly on citizens by the EC Treaty. This has been confirmed on several occasions by the Court of Justice, inter alia in the judgment of 14 July 1977 in Case C-8/77 (Sagulo and others - ECR 1977, p. 1495) and, more recently, in the judgment of 17 September 2002 in Case C-413/99 (Baumbast and R).*

Amendment 10  
Recital 17

(17) In order to be a genuine vehicle for integration into the society of the host

(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.

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 *in areas covered by the Treaty*, as well as maximum protection against expulsion.

#### *Justification*

*Self-explanatory.*

#### Amendment 11 Recital 19

(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.

(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, *during the six-month period following the date of arrival*, 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. *Furthermore, prior to acquisition of the right of permanent residence, it is a matter for the host Member State to decide whether it will award* maintenance grants to Union citizens coming to study on its territory.

#### *Justification*

*During the first six months, access by Community citizens and members of their families to the territory of the host Member State is not subject to any conditions; the Member State may therefore decide whether or not to provide social assistance cover. In all other cases, equality of treatment with the Member State's own citizens applies, except in connection with maintenance grants, which fall outside the scope of the Treaty.*

Amendment 12  
Recital 22

(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.

(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 ***in accordance with the proportionality principle***, to take account of the degree of integration of the person concerned, ***the length of stay, the impact on the Union citizen and his family, the links with the country of origin and the seriousness of the threat to public policy and public security***, 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.

*Justification*

*The expulsion of Union citizens and members of their families on grounds of public policy or public security is a serious exception to the principle of freedom of movement and residence. The principle of proportionality and the factors set out in the above amendment should therefore be taken into account when expulsion decisions are made.*

Amendment 13  
Recital 27

(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,

(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 as general principles of Community law,

*Justification*

*Self-explanatory.*

Amendment 14  
Article 2, paragraph 2, point (a)

(2) 'Family member' means:

(a) the spouse;

(2) 'Family member' means:

(a) the spouse, ***irrespective of sex, according to the relevant national legislation;***

*Justification*

*EU free movement legislation needs to reflect and respect the diversity of family relationships that exist in today's society.*

Amendment 15  
Article 2, paragraph 2, point (a a) (new)

***(aa) the registered partner, irrespective of sex, according to the relevant national legislation;***

*Justification*

*EU free movement legislation needs to reflect and respect the diversity of family relationships that exist in today's society, whether in the form of marriage, registered partnerships or unmarried partnerships. On the basis of equality and fair treatment, the fundamental right to family life should not be made dependent on individuals choosing to enter into marriage.*

Amendment 16  
Article 2, paragraph 2, point (b)

(b) the unmarried partner, if the legislation of the *host* Member State treats unmarried couples ***as equivalent*** to married couples

(b) the unmarried partner, ***irrespective of sex, with whom the applicant has a durable relationship,*** if the legislation ***or***

and in accordance with the conditions laid down in any such legislation;

*practice* of the host *and/or home* Member State treats unmarried couples *in a corresponding manner* to married couples and in accordance with the conditions laid down in any such legislation;

#### *Justification*

*EU free movement legislation needs to reflect and respect the diversity of family relationships that exist in today's society, whether in the form of marriage, registered partnerships or unmarried partnerships. On the basis of equality and fair treatment, the fundamental right to family life should not be made dependent on individuals choosing to enter into marriage.*

#### Amendment 17

##### Article 2, paragraph 2, point (c)

(c) the direct descendants and those of the spouse or unmarried partner as defined in **point (b)**;

(c) the direct descendants and those of the spouse, **registered partner** or unmarried partner as defined in **points (a), (aa) and (b)**;

#### *Justification*

*EU free movement legislation needs to reflect and respect the diversity of family relationships that exist in today's society, whether in the form of marriage, registered partnerships or unmarried partnerships. On the basis of equality and fair treatment, the fundamental right to family life should not be made dependent on individuals choosing to enter into marriage.*

#### Amendment 18

##### Article 2, paragraph 2, point (d)

(d) the direct relatives in the ascending line 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, **registered partner** or unmarried partner as defined in **points (a), (aa) and (b)**;

#### *Justification*

*EU free movement legislation needs to reflect and respect the diversity of family relationships that exist in today's society, whether in the form of marriage, registered partnerships or*

*unmarried partnerships. On the basis of equality and fair treatment, the fundamental right to family life should not be made dependent on individuals choosing to enter into marriage.*

Amendment 19  
Article 2, paragraph 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.

*a) 'Host Member State'* means the Member State to which a Union citizen goes in order to exercise his right of free movement and residence.

*b) 'Home Member State' means the Member State in which a Union citizen was residing prior to exercising his/her right of free movement to, and residence in, another Member State.*

*c) In assessing whether a durable relationship exists, Member States shall consider as evidence of the relationship factors such as, inter alia, the length of the relationship, previous cohabitation, shared parental responsibilities and any other means of proof.*

*Justification*

*EU free movement legislation needs to reflect and respect the diversity of family relationships that exist in today's society, whether in the form of marriage, registered partnerships or unmarried partnerships. On the basis of equality and fair treatment, the fundamental right to family life should not be made dependent on individuals choosing to enter into marriage.*

Amendment 20  
Article 3, paragraph 2

(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.

(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, ***or where there are serious health or humanitarian grounds for doing so***, notwithstanding any right to free movement and residence the persons concerned may have in their own right.



### *Justification*

*The amendment to Article 2 restricted the definition of 'family member' to dependent direct relatives in the ascending line. To offset this restriction, serious health or humanitarian grounds have been added here in order to cover any family members, including direct relatives in the ascending line, who are not dependants but need to be close to their family. This is a fair compromise that takes account of the need to prevent abuses.*

### Amendment 21 Article 4

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.

Member States shall give effect to the provisions of this Directive without discrimination on grounds of sex, **gender identity**, 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.

### *Justification*

*In the decision on the case P v S and Cornwall County Council, the Court of Justice explained that discrimination based on the fact that an individual 'intends to undergo, or has undergone, gender reassignment' is a form of discrimination based 'essentially, if not exclusively, on the sex of the person concerned'. Article 4 of the proposal includes a ban on any 'sex' discrimination in the implementation of the Directive. Although, according to the Court of Justice, this includes discrimination against 'trans-gender persons', we consider that this interpretation is not explicitly clear either to national legislators or to European citizens. In order to clarify the scope of this law and thereby create greater legal certainty, we propose that protection against all forms of discrimination linked to 'gender identity' should be explicitly banned in the implementation of the Directive.*

### Amendment 22 Article 4 a (new)

***4a. This Directive shall be implemented in accordance with the Convention on the Rights of the Child. Any decision affecting children shall be taken on the basis of the child's best interests.***

### *Justification*

*We also consider it of fundamental importance that priority be given to the interests of children in decisions concerning family unification. Children should not be faced with separation from either parent simply on the basis of the absence of a biological link or a failure in the law to recognise the existence of a parental relationship. This approach is supported by the UN Convention on the Rights of the Child.*

### Amendment 23 Article 4 b (new)

***4a. This Directive shall not lead to the withdrawal of existing rights established by the legislation of the European Union or Court of Justice decision.***

### *Justification*

*This directive must not lead to the withdrawal of existing rights. The rights enjoyed by an individual in the Member State of origin must continue to be guaranteed. The deadline will make it easier for families to plan their stay.*

### Amendment 24 Article 6, paragraph 2

(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.

(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 ***or, where appropriate, national legislation. For the purposes of this Directive, possession of a*** current residence document issued by a Member State shall ***exempt the holder from the requirement to obtain*** a visa.

Member States shall accord such persons every facility to obtain the necessary visas. ***Visas shall be issued no later than one week after the submission of the application, shall be free of charge and shall be issued on the territory of the Member State concerned.***

### *Justification*

*The reference to national legislation is necessary in order to cover Member States outside the Schengen area. The new wording of paragraph 2 clarifies the fact that it is not a question of treating residence documents as equivalent to visas, but of exempting family members who already have a residence document. The inclusion of a deadline for the issue of visas will enable families to plan their stay.*

### Amendment 25 Article 6, paragraph 4

(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.

(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.

### *Justification*

*To clarify the text.*

### Amendment 26 Article 6, paragraph 5

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.***

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.

*Justification*

*This requirement is out of step with the aims of the text.*

Amendment 27  
Article 7, point (a)

(a) are engaged in gainful activity in an employed or self-employed capacity; or

(a) are engaged in gainful activity in an employed or self-employed capacity or ***are recipients of services***; or

*Justification*

*Recipients of services are not explicitly covered by the new directive and hence it is not clear to what category they belong. One might therefore consider them to be covered by Article 7(b), but this would constitute an additional condition which is not envisaged in the law at present. The amendment is therefore in line with the current acquis.*

Amendment 28  
Article 7, paragraph 1, point (c)

(c) are ***students admitted to*** a course of ***vocational training***; or

(c) are ***enrolled at an accredited establishment to follow a course of studies, including vocational training, and have sickness insurance covering all risks in the host Member State***; or

*Justification*

*More comprehensive definition.*

Amendment 29  
Article 7, paragraph 1, point (d)

(d) are a family member of a Union citizen who satisfies conditions (a), (b) or (c).

(d) are a family member of a Union citizen who satisfies conditions (a), (b) or (c). ***Spouses are entitled to an independent legal status and work permit.***

### *Justification*

*The position of women with dependent status as spouse can be very unstable and vulnerable due to the lack of individual rights. They are only eligible for derived rights as their legal position and residence permit totally depend on their husband's status. Death or separation automatically leads to losing their status when the dependent spouse does not fulfil conditions a, b or c of art. 7. As it is still most often the case that women depend on men this provision on free movement for Union citizens and their family will not work out gender neutral.*

### Amendment 30 Article 7, paragraph 2 a (new)

***2a. For the purposes of paragraph 1(a), a Union citizen worker who is no longer engaged in an employed or self-employed activity shall retain worker status 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 has 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.***

*Justification*

*Paragraph 2a (ex Article 8(7)): this paragraph, which deals with conditions relating to worker status should not come under administrative formalities in Article 8.*

Amendment 31  
Article 29, paragraph 2 b (new)

***2b. In the event of serious sickness, accident or other humanitarian reasons coming into play more than six months after the date of arrival, the conditions set out in paragraph 1(a), (b) and (c) shall not apply***

*Justification*

*Social reasons must not lead to any limitation of rights.*

Amendment 32  
Article 8, paragraph 1

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

(1) For stays of longer than ***two years***, the host Member State may require Union citizens to register with the relevant authorities ***if a similar requirement applies to its own citizens. The Member State shall in any case allow any Union citizens applying to do so to register.***

*Justification*

*In order to allow mobility without excessive administrative restrictions, particularly for students, it is preferable to extend the length of unrestricted residence to two years, and then to require that citizens comply with certain unavoidable administrative requirements.*

Amendment 33  
Article 8, paragraph 2

(2) The deadline for registration may not

(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.

be less than six months from the date of arrival. A certificate of registration **shall be** issued on the spot. **It shall state** 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.

#### *Justification*

*The certificate of registration does not provide evidence of the right of residence, which derives directly from the Treaties, but merely proves that registration has taken place. Penalties cannot but be of an administrative nature in such cases.*

#### Amendment 34 Article 8, paragraph 4

(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.

(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 **studies, including** 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.

#### *Justification*

*More comprehensive definition.*

Amendment 35  
Article 8, paragraph 6

- (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.

- (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 **declaration attesting to** the family relationship;
  - (c) 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.

*Justification*

*To simplify formalities, a declaration is sufficient.*

Amendment 36  
Article 8, paragraph 7

- (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:*** ***deleted***
- (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.*

*Justification*

*For reasons of consistency, paragraph 7 has been moved to Article 7(2a).*

Amendment 37  
Article 9, paragraph 3

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

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

*Justification*

*Penalties cannot but be of an administrative nature in such cases.*

Amendment 38  
Article 9, paragraph 2 a (new)

***2a. Family members shall not be denied a residence card solely on the grounds that their visas have expired prior to the application for a residence card.***

*Justification*

*Aims to align the text with the Court of Justice's MRAX judgement.*

Amendment 39  
Article 10, paragraph 1

(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.***

(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 **six** months from the date on which they submit the application. A certificate of proof of application ***for a residence card as a family member of a Union citizen*** shall be issued on the spot.

*Justification*

*A six-month period for the issue of the card would appear more appropriate in order to enable the documentation to be checked. It is impossible to establish immediately whether someone is in fact a family member; the certificate of proof of application therefore merely proves the fact that a person has applied as a family member.*

Amendment 40  
Article 10, paragraph 2

(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).***

(2) For the residence card to be issued, Member States shall require presentation of the **following** documents:.

***(a) a valid identity card or passport;***

***(b) a document proving the family relationship;***

***(c) 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.*

#### *Justification*

*The list of documents set out in Article 8 as amended is taken over, although a document is required in this instance for the purpose of proving the family relationship, since a declaration is not sufficient for family members who are not nationals of a Member State.*

#### Amendment 41 Article 11, paragraph 2

(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.***

(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 compulsory military service, serious illness, pregnancy and childbirth. ***The validity of the residence card shall not be affected by absences for study or vocational training, or a work assignment in another Member State or third country, provided that they do not exceed one year.***

#### *Justification*

*A clear limit should be set for absences from the territory of the host Member State, except in connection with compulsory military service, which in some countries lasts longer than one year, and serious illness, pregnancy and childbirth, which could last longer than one year, owing for example to post-natal complications.*

#### Amendment 42 Article 12, paragraph 1, subparagraph 1

(1) ***Without prejudice to the second subparagraph,*** the Union citizen's death or

(1) The Union citizen's death or departure from the host Member State shall not affect

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.

the right of residence of the family members of a Union citizen who are nationals of a Member State.

*Justification*

*These conditions constitute treatment which differentiates between nationals of a Member State and other Community nationals; they are therefore incompatible with the principles of non-discrimination on the grounds of nationality and of free movement of EU citizens.*

Amendment 43

Article 12, paragraph 1, subparagraph 2

***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).*** ***deleted***

*Justification*

*These conditions constitute treatment which differentiates between nationals of a Member State and other Community nationals; they are therefore incompatible with the principles of non-discrimination on the grounds of nationality and of free movement of EU citizens.*

Amendment 44

Article 12, paragraph 2, subparagraph 1

***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.

**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.**

*Justification*

*These conditions constitute treatment which differentiates between nationals of a Member State and other Community nationals; they are therefore incompatible with the principles of non-discrimination on the grounds of nationality and of free movement of EU citizens.*

Amendment 45

Article 12, paragraph 2, subparagraph 3

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.

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.  
***In the event of serious sickness, accident or other humanitarian reasons coming into play, the Member States shall not apply these criteria.***

*Justification*

*Serious reasons should not lead to any limitation of rights.*

Amendment 46

Article 12, paragraph 3

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.***

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.

*Justification*

*Children's residence must not be linked exclusively to that of their parents. Their residence permit should not, for example, be automatically withdrawn on completion of their studies.*

Amendment 86

Article 13, paragraph 1, subparagraph 1

(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.

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

*Justification*

*This is a logical consequence of the amendments to Article 2.*

Amendment 48

Article 13, paragraph 1, subparagraph 2

***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)***                      ***deleted***

*Justification*

*It is not clear why a person who has been integrated in a society should be expelled only because their private relationships with Union citizens are no longer functioning. Furthermore, it is not clear why people 'engaged in gainful activities' or who 'have sufficient resources' should have more rights than those who do not.*

Amendment 49

Article 13, paragraph 2, subparagraph 1

(2) Without prejudice to the second subparagraph, divorce or annulment of

(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:

marriage *or the registered partnership or cessation of unmarried partnership* 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:

*Justification*

*This is a logical consequence of the amendments to Article 2.*

Amendment 50  
Article 13, paragraph 2, point (a)

(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

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

*Justification*

*This is a logical consequence of the amendments to Article 2. Five years is too long a period.*

Amendment 51  
Article 13, paragraph 2, point (b)

(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

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

*Justification*

*This is a logical consequence of the amendments to Article 2.*

Amendment 52  
Article 13, paragraph 2, point (c)

(c) this is warranted by particularly difficult circumstances.

(c) this is warranted by particularly difficult circumstances ***such as physical or mental abuse within the family, or on humanitarian grounds.***

*Justification*

*The amendment clarifies the wording, which was too unclear, in particular in the Commission's explanatory memorandum.*

Amendment 53  
Article 13, paragraph 2, subparagraph 2

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.

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 as the assisting spouse or partner of a self-employed person,*** 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.

*Justification*

*Self-explanatory.*



Amendment 54  
Article 13 a (new)

***1. The right of residence shall be retained until such time as the persons entitled to that right satisfy the conditions set out in Articles 7, 12 and 13.***

***2. 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.***

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

*Justification*

*Paragraph 1 is new and clarifies the fact that the right of residence is subject to the conditions set out in Articles 7, 12 and 13. Paragraphs 2 and 3 have been taken from former Article 24. It is more logical for the description of the provisions to be tied to the right of residence.*

Amendment 55  
Article 14, paragraph 1 a (new)

***1a. Continuity of residence shall not be affected by absences not exceeding six months a year or by absences not exceeding 12 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 third country.***

### *Justification*

*It seems desirable to stipulate that continuity of residence shall not be affected by absences not exceeding 6 months and 12 months for important reasons, as this would be much easier to implement in practice. Moreover, absences exceeding these periods would not entail losing the right to permanent residence; the calculation of 4 years' continuous residence would simply be interrupted at this point.*

### Amendment 56

#### Article 15, paragraph 1, point (a)

(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**;

(a) employed or self-employed workers **and their assisting spouses or partners** 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 **65**;

### *Justification*

*The age is raised to 65 because this is the age stipulated in Commission Regulation 1251/70 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, if in the relevant Member State there is no old-age pension scheme for self-employed workers.*

### Amendment 57

#### Article 15, paragraph 1, point (b), subparagraph 1

(b) employed or self-employed workers

(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.

**and their assisting spouses or partners** 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.

*Justification*

*No justification.*

Amendment 58  
Article 15, paragraph 1, point (c)

(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.

(c) employed or self-employed workers **and their assisting spouses or partners** 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.

*Justification*

*No justification.*

Amendment 59  
Article 15, paragraph 2

(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.

(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 **or partner, within the meaning of Article 2(2) (a),(aa) or (b)** is a national of the Member State concerned or has lost the nationality of that State by marriage to that worker.

*Justification*

*This is a logical consequence of the amendments to Article 2.*

Amendment 60  
Article 15, paragraph 4, point (c)

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

(c) the surviving spouse **or partner, within the meaning of Article 2(2)(a),(aa) or (b)**, lost the nationality of that State following marriage, **registered partnership or unmarried partnership** to the **employed or self-employed** worker.

*Justification*

*This is a logical consequence of the amendments to Article 2.*

Amendment 61  
Article 16

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.

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 **having resided legally and continuously for** four years in the host Member State.

*Justification*

*To bring wording into line with Article 14.*

Amendment 62  
Article 17, paragraph 1

(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

(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.***

shall be valid indefinitely.

*Justification*

*A residence card cannot be both valid indefinitely and renewable every 10 years. Indefinite validity is the preferable option.*

Amendment 63

Article 17, paragraph 2, subparagraph 2

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

*Justification*

*Obtaining a residence card is a right, so it should not be possible to make it compulsory to apply for one, subject to penalties for failure to do so.*

Amendment 64

Article 17, paragraph 3

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

(3) Breaks in residence not exceeding four years ***at a time*** shall not affect the validity of the permanent residence card.

*Justification*

*'At a time' refers back to Article 14.*

Amendment 65

Article 18, paragraph 1

(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***

(1) Continuity of residence may be attested by any means of proof in use in the Member State of residence.

*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.*

*Justification*

*The section deleted from paragraph 1 has been taken over into Article 14, since it is a basic rule rather than an administrative requirement.*

Amendment 66  
Article 19

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.

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 ***in the Member State*** only where the same restrictions apply to their own nationals.

*Justification*

*Clearer wording.*

Amendment 67  
Article 21, paragraph 2

(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.

(2) By way of derogation from paragraph 1, ***during the six-month period following the date of arrival***, 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. ***Furthermore, until they have acquired the right of permanent residence, it is a matter for the host Member State to decide whether it will*** award maintenance grants to persons having the right of residence who have come to the country to study.

### *Justification*

*During the first six months, access by Community citizens and members of their families to the territory of the host Member State is not subject to any conditions; the Member State may therefore decide whether or not to provide social assistance cover. In all other cases, equality of treatment with the Member State's own citizens applies, except in connection with maintenance grants, which fall outside the scope of the Treaty.*

### Amendment 68 Article 22, paragraph 1

***(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.***

***(1) The pursuit of a gainful activity or the granting of a service or benefit or 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 if it can be proved by any other means that that person is entitled to the rights deriving from this Directive.***

### *Justification*

*Clearer wording.*

### Amendment 69 Article 23

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

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, ***or, in the case of Community citizens, their identity card or passport***, 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 ***administrative*** penalties as those they impose on their own nationals for

identity card.

failure to carry their identity card.

*Justification*

*Community citizens must be able to show their identity card or passport.*

Amendment 70

Article 24

*(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.* *deleted*

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

*Justification*

*Moved to Article 13 for the purposes of consistency.*

Amendment 71

Article 25, paragraph 1

(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.

(1) This Chapter shall apply to **all** decisions **which restrict the freedom of movement of** Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends.

*Justification*

*The new definition given in paragraph 1 is broader; Article 25 must refer to all decisions that restrict freedom of movement.*



Amendment 72  
Article 25, paragraph 2, subparagraphs 1 and 2

(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.

(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 the taking of 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 removed from the particulars of the case or that rely on considerations of general prevention shall not be accepted.

*Justification*

*It is essential that all measures taken comply with the proportionality principle. In keeping with Court of Justice case law, the conduct to be punished must represent not just a present and serious threat but also a genuine one.*

Amendment 73  
Article 29, paragraph 3

(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.

*(Does not affect English version.)*

*Justification*

Amendment 74  
Article 25, paragraph 4

(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.

(4) When issuing the registration certificate or initial residence card, ***and not later than six months after the date of arrival***, the host country may, ***for reasons which it must justify***, 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.

*Justification*

*A clear time limit must be set for Member States where registration is not compulsory.*

Amendment 75  
Article 25, paragraph 5

(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.

*(Does not affect English version.)*

*Justification*

Amendment 76  
Article 25, paragraph 5 a (new)

***5a. Member States shall notify the Commission of all decisions to expel Community citizens or members of their families.***

*Justification*

*The Commission must have a comprehensive overview of expulsions planned by the Member*

States.

Amendment 77  
Article 27, paragraph 1

(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.*

(1) The only diseases justifying *measures that restrict freedom of movement* 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.

*Justification*

*The first change clarifies the wording. The second sentence in paragraph 1 is a clause that comes from Directive 64/221/EEC but is now obsolete, not least because the list of diseases is now drawn up at European rather than national level.*

Amendment 78  
Article 27, paragraph 2

(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.

(2) Disease occurring after *the six-month period following arrival* shall not be grounds for expulsion.

*Justification*

*In line with the new provisions proposed for the directive.*

Amendment 79  
Article 27, paragraph 3

(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.

(3) Where there are serious indications that it is necessary, Member States may, ***not later than six months after 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.

*Justification*

*A clear time limit must be set for Member States where registration is not compulsory.*

Amendment 80  
Article 28, paragraph 1

(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.

(1) The persons concerned shall be notified ***in writing of the provisions of Article 25(1)***, in such a way that they are able to comprehend ***their*** content and what ***they entail*** for them.

*Justification*

*To make the text more logical.*

Amendment 81  
Article 28, paragraph 2

(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.

*(Does not affect English version.)*

*Justification*

Amendment 82  
Article 28, paragraph 3

(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**

(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 **thirty** days **from the date of notification.**

*Justification*

*To simplify the procedure.*

Amendment 83  
Article 29, paragraph 1

(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.**

(1) The persons concerned shall have access to 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. **Judicial protection should be the same as for national citizens of the Member States**

*Justification*

*Administrative measures should be considered separately, since they do not exist in all the Member States. Women, who might be without an income, should be entitled to legal aid.*

Amendment 84  
Article 29, paragraph 2

(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.

(2) **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.

*Justification*

*Administrative measures should be considered separately, since they do not exist in all the Member States.*

Amendment 85  
Article 29, paragraph 4

(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.

(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, **particularly** as to the requirements laid down in Article 26.

*Justification*

*The proportionality principle applies as a general rule.*

Amendment 86  
Article 30, paragraph 2

(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.

(2) After a reasonable period, depending on the circumstances, persons ***excluded*** on grounds of public policy, public security or public health, may submit a new application for leave to enter. ***That period may not in any event exceed two years from the date of notification of the final decision ordering their exclusion, validly adopted in accordance with Community law. When submitting their applications, the persons concerned shall put*** forward arguments to establish that there has been a material change in the circumstances which justified the first decision ordering their ***exclusion***.

The Member State concerned shall reach a decision on ***this*** application within ***six*** months of its submission.

*Justification*

*The original wording was insufficiently clear. Six months is a more reasonable timescale.*

Amendment 87  
Article 31, paragraph 2

(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.*** ***deleted***

*Justification*

*Paragraph 2 becomes new Article 31a, since these are two separate issues.*

Amendment 88  
Article 31 a (new)

***31a. 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.***

*Justification*

*Paragraph 2 of Article 31 becomes new Article 31a, since these are two separate issues.*

Amendment 89  
Article 32

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.

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, ***particularly by means of awareness-raising campaigns conducted through national and local media.***

*Justification*

*Awareness-raising campaigns are a fundamentally important means of informing European citizens of their right to freedom of movement and residence within the European Union.*



Amendment 90  
Article 33

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.

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. 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.

*Justification*

*Clearer and more logical wording.*

Amendment 91  
Article 35

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

(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**.

(1) Articles 10 and 11 of Regulation (EEC) No 1612/68 are deleted with effect from 1 July **2004**.

(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 **2004**.

*Justification*

*2004 is a more credible deadline.*

Amendment 92

Article 36

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.

No later than 1 July **2007**, 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.

*Justification*

*This change follows on from that made to Article 35.*

Amendment 93

Article 37, paragraph 1

(1) 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.

(1) Member States shall adopt and publish the provisions necessary to comply with this Directive by 1 July **2004** at the latest. They shall promptly inform the Commission thereof.

They shall apply such provisions from 1 July **2004**.

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.

*Justification*

*This change follows on from that made to Article 35.*

## EXPLANATORY STATEMENT

### Introduction

Union citizenship is the cornerstone of the bond between the individual citizen and the European Union (EU) and the necessary basis for the consolidation of the European identity by involving citizens in the European integration process. In establishing the principle of Union citizenship, the Treaty on European Union gave each Union citizen a fundamental and personal right of movement and residence throughout the EU. This right exists independently of the exercise of an economic activity.

Furthermore, the Charter of Fundamental Rights (CFR) made European citizenship (Article 45.1) a key priority for the EU.

Although the right to freedom of movement and residence was enshrined in the Treaty of Rome, there remain even today a number of barriers to its exercise, as is illustrated by repeated Court of Justice rulings on the matter. Parliament has also drawn attention to this in a number of resolutions (the most recent of which dealt with the Commission's third report on citizenship of the Union). The *acquis* in this area comprises a complex body of law consisting of two regulations and nine directives (covering different categories of persons having specific rights in each case). The aim of the present proposal is to replace this existing legislation and to build on it in innovative fashion.

### *Commission proposal*

The aim of the Commission proposal is to ensure that Union citizens are able '*mutatis mutandis*, [...] to move between Member States on similar terms as nationals of a Member State moving around or changing their place of residence or job in their own country'. The proposal also states that 'any additional administrative or legal obligations should be kept to the bare minimum required by the fact that the person in question is a "non-national"'.

In the proposal, the procedures governing the exercise of the right to freedom of movement are streamlined and made more flexible. Furthermore, formalities should not serve to obstruct the freedom of movement of citizens, and are thus reduced to a minimum and made 'equivalent' to those applying to national citizens, with particular reference to:

#### **1. The right of residence**

For the initial period, which is extended to six months, the only formality citizens are required to fulfil is to possess an identity card or a passport.

For stays of more than six months, if a Union citizen is engaged in a gainful activity, he is simply required to make a declaration to that effect. If he is not engaged in a gainful activity, he is obliged to declare that he has sufficient resources (there is no longer any definition of a minimum threshold, and Member States may not fix any such threshold) and to take out sickness insurance cover for his first four years of residence.

The existing residence card will be replaced by a simple act of registration where Member

States so require (this requirement is optional).

The right of permanent residence is the most important new provision contained in the proposal. The innovation here is that a right of permanent residence will henceforth be granted to European citizens and their family members at the end of four years of legal and continuous residence in the host Member State. This entails the disappearance of all conditions for the exercise of the right of residence and a status of all but total equality with nationals of the Member State concerned.

## **2. Members of the family of a European citizen**

There is no specific reference in the Treaty to the right of movement and residence of persons falling within this category. However, that right exists as a derivative of the right to the preservation of family unity, which is intrinsically linked to the right to the protection of family life as guaranteed in Community law and enshrined in Article 33 of the CFR.

The intention of the proposal is to remove the obstacles to the free movement of citizens which could arise from the imposition of hindrances to family reunion, and to facilitate its exercise as far as possible. The Commission points to the need to need to introduce measures providing equitable solutions that respect family life and human dignity, coupled with certain conditions in order to avoid abuses of the system.

## **3. Restrictions on public order, public security and public health grounds**

The proposal incorporates and modifies the provisions of the existing legislation, adds a number of clarifications arising from Court of Justice cases, and strengthens the procedural guarantees with respect to decisions restricting the fundamental right of movement and residence. In particular, the Commission provides for an absolute ban on the expulsion of Union citizens or members of their families who have a permanent right of residence.

### ***Parliament's proposed amendments***

The central purpose of the directive is to move from a mainly economic approach to the free movement of persons within the European Union to one based on the principle of European citizenship itself and the day-to-day exercise of the rights deriving therefrom. The rapporteur wholeheartedly endorses this approach and feels that he can go along with the broad lines of the proposal without departing unduly from the original text. He has tabled two types of amendments: the first are of a technical nature, involving the rewording of passages that are unclear and attempts to make the text more logical, consistent and comprehensive; the second cover substantive matters on which it is difficult to come up with clear and unambiguous solutions, given that extremely delicate personal and social issues are involved.

The main policy issues dealt with in the rapporteur's amendments are:

#### **(a) Definition of 'family members'**

This aspect is crucial, as it conditions the scope of the directive. The proposal introduces a far-reaching extension of the current definitions.

'Spouse' must necessarily mean a heterosexual spouse. It is clear from Court of Justice case-law that the term 'spouse' refers exclusively to married heterosexual partners (see the justification to Amendment 13). The rapporteur considers it preferable to state this explicitly in the directive itself

'Unmarried partner' may come under the definition 'family members' only where provided for in national law. The Commission proposal speaks of treating unmarried couples as 'equivalent' to married couples; the rapporteur prefers a different definition that is in keeping with Court of Justice case law (see the justification to Amendment 13).

'Direct descendants' and 'direct relatives in the ascending line': the conditions relating to age and dependency have been removed. This could generate fears of a massive rise in the numbers of people seeking to join their relatives, with possible financial implications for the Member States. The rapporteur considers that a fair compromise would be to consider direct descendants to be full members of the family of a Community citizen, with no conditions attached, while direct relatives in the ascending line would be subject to the requirement of being dependent, so as to prevent abuses. To offset this restriction, Article 3 has been amended in order to facilitate entry and residence for family members where there are serious health or humanitarian grounds for doing so. This gives direct relatives in the ascending line who are not dependants but have serious health problems the possibility of joining their relatives even if they are not financially dependent.

#### (b) Conditions of residence

- European citizens: the existing residence card will be replaced by a simple registration certificate, which Member States may require at their discretion. Registration procedures should be simplified to the greatest possible extent and the principle of self-certification should be applied as a general rule, as it is already in some Member States for their own nationals. The principle of self-certification also applies to the provision of proof (of income and health insurance cover), until such time as evidence contradicting the assertions made comes to light.
- Family members who are third-country nationals: a document must be supplied in order to prove the existence of a family relationship, so as to prevent abuses.
- The validity of residence cards must not be affected by absences for compulsory military service, serious illness, pregnancy and childbirth, on which no time limits must be placed. Absences for study or vocational training must not exceed one year.
- The Union citizen's departure from the host Member State must not entail the loss of the right of residence of his/her children and of the person responsible for their care during the time the children are enrolled at an educational establishment. This must apply irrespective of the nationality of the children and of the person responsible for their care. The amendment covering this issue is in line with recent Court of Justice case law (Baumbast and R judgment of 17 September 2002).

#### (c) Expulsion

Article 26 of the proposal makes it clear that a European citizen or a member of that citizen's

family (even where that person is a third-country national) who has acquired the right of permanent residence may not be expelled from the host Member State in any circumstances whatever. This puts an end to the historic sovereignty of the Member States in this area. This is a controversial provision, particularly in cases where there has been a serious breach of public security. Introduction of this provision is a consequence of the 'Amsterdam objective', namely the creation of a border-free area of freedom, security and justice, in which expulsion is a thing of the past and freedom of movement has become a reality for all. For the moment, the rapporteur has left the Commission proposal as it stands, but reserves the right to table further amendments at a later stage.

23 May 2002

## **OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET**

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the 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 with the territory of the Member States  
(COM(2001) 257 – C5-0336/2001 – 2001/111(COD))

Draftsman: Manuel Medina Ortega

### **PROCEDURE**

The Committee on Legal Affairs and the Internal Market appointed Manuel Medina Ortega draftsman at its meeting of 11 September 2001.

It considered the draft opinion at its meetings of 25 February, 22 April and 22 May 2002.

At the last meeting it adopted the following amendments by 19 votes to 1, with 1 abstention.

The following were present for the vote: [Giuseppe Gargani](#) (chairman), [Willi Rothley](#), [Ioannis Koukiadis](#), [Bill Miller](#) (vice-chairmen), [Manuel Medina Ortega](#) (draftsman), [Janelly Fourtou](#), [Marie-Françoise Gaud](#), [Evelyne Gebhardt](#), [Fiorella Ghilardotti](#), [Malcolm Harbour](#), [Heidi Anneli Hautala](#), [Kurt Lechner](#), [Klaus-Heiner Lehne](#), [Neil MacCormick](#), [Toine Manders](#), [Hans-Peter Mayer](#) (for [Rainer Wieland](#)), [Arlene McCarthy](#), [Giacomo Santini](#) (for [Paolo Bartolozzi](#) pursuant to Rule 153(2)), [Marianne L.P. Thyssen](#), [Rijk van Dam](#) (for [Ole Krarup](#)) and [Diana Wallis](#).

## SHORT JUSTIFICATION

The Commission proposal aims to consolidate the many different current legal texts and introduce some innovations into the present legal framework.

In the original EC Treaty, the principle of the free movement of persons was limited to provisions concerning freedom of economic movement (free movement of workers, freedom of establishment and freedom to provide services). These provisions apply if a national of a Member State moves to another Member State in order to engage in an economic activity.

The second element which was present in the Treaty, and which the Court has established as an essential principle, is the principle of non-discrimination on the grounds of nationality. This principle has been enshrined more specifically in laws on freedom of movement for workers and the right of establishment and freedom to provide services, which lay down the right of EU citizens to engage in professional activities in another Member State under the same conditions as nationals of the host Member State. Thus, in general, this principle implies that people may not be treated differently on the basis of their nationality if this would put nationals of other Member States at a disadvantage.

The Treaty provisions on freedom of movement have been extensively interpreted both by secondary legislation and by Court of Justice case-law, which has made it possible to extend the subjective and material scope of these provisions. Thus, a fairly large range of individuals have been able to enjoy freedom of movement and residence rights: job-seekers, retired people, students, participants in vocational training courses and people who are not entitled to freedom of movement under other provisions of Community law, on condition that they have sickness insurance and sufficient resources. In addition, freedom of movement is granted to family members of those with residence rights.

Current secondary legislation in this area is based on the issue of an appropriate document – the *residence card* – which is valid for at least five years from the date of issue and is automatically renewable. This residence card has a purely declaratory value and is not constitutive of the right to freedom of movement. However, the very fact that it is necessary to possess this card is incompatible with the affirmation of a generalised right, which should depend on no other formalities than proof of citizenship of one of the Member States.

Nevertheless, a comparison of the status of Community nationals with that of the nationals of a Member State reveals that there are still considerable differences. In particular, the 1990 directives on the right of residence require proof of *sufficient resources*, defined as being above the level of resources below which social assistance could be granted by the host Member State to its own nationals, taking account of the applicant's personal situation and, if applicable, that of the family members entitled to reside with the person who has the right of residence in another Member State.

In conclusion, the essentially economic nature of the Community at the time when the Treaty was drawn up explains why the principles of free movement and non-discrimination laid down by the original Treaty applied only to those engaged in gainful activity.

Account should be taken of the way in which the Community legal system has evolved towards the establishment of a single market, European citizenship and, later, an area of



freedom, security and justice. We must act consistently with this evolution and thus take the view that the principles of free movement and non-discrimination are no longer purely economic, but now apply to all EU citizens, whether they are in work or not. Thus, citizens who change their place of residence for exclusively personal (rather than work-related) reasons should be able to derive full benefit from the application of these Community principles.

The requirements concerning the possession of sufficient resources are laid down only in secondary Community legislation. As this constitutes treatment which differentiates between nationals of a Member State and other Community nationals, which is not compatible with the principle of non-discrimination on grounds of nationality, they must be expunged from the Commission proposal.

## AMENDMENTS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission<sup>1</sup>

Amendments by Parliament

### Amendment 1 Recital 9

*(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*

*Deleted*

<sup>1</sup> OJ C 270, 25.09.2001.

*citizen who does satisfy one of these requirements.*

*Justification*

*These conditions constitute treatment which differentiates between nationals of a Member State and other Community nationals; they are therefore incompatible with the principles of non-discrimination on the grounds of nationality and of free movement of EU citizens.*

Amendment 2

Recital 11

***(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.*** Deleted

*Justification*

*This condition is not proportionate to the desired aim.*

Amendment 3

Article 6, Paragraph 5

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***

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.

***liable to penalties, which shall be proportionate and non-discriminatory.***

*Justification*

*See justification at Amendment 2.*

Amendment 4  
Article 7, Paragraph 1

(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).***

(1) All Union citizens ***holding a valid passport or identity card*** shall have the right to reside on the territory of another Member State for a period of longer than six months.

*Justification*

*See justification at the draftsman's Amendment 1.*

Amendment 5  
Article 7, Paragraph 2

(2) The right of residence shall extend to family members who are not nationals of a Member State, where they accompany or

(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).***

join the Union citizen in the host Member State.

*Justification*

*See justification at the draftsman's Amendment 1.*

Amendment 6

Article 8, Paragraph 1

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

(1) For stays of longer than six months, the host Member State may require Union citizens to register with the relevant authorities, ***as long as it also requires its own nationals to do so.***

*Justification*

*See justification at Amendment 2. This institutes treatment that does not discriminate between nationals of the host Member State and Community nationals.*

Amendment 7

Article 8, Paragraph 3

***(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.***

***Deleted***

*Justification*

*See justification at the draftsman's Amendment 1.*

Amendment 8  
Article 8, Paragraph 4

***(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.*** Deleted

*Justification*

*See justification at the draftsman's Amendment 1.*

Amendment 9  
Article 8, Paragraph 5

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

*Justification*

*See justification at the draftsman's Amendment 1.*

Amendment 10  
Article 8, Paragraph 6

***(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:***

*Deleted*

***(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.***

*Justification*

*See justification at the draftsman's Amendment 1.*

Amendment 11  
Article 8, Paragraph 7

***(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:***

*Deleted*

***(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 ;***

***he/she is in involuntary unemployment after the end of a fixed-term employment contract of less than 12 months and has not yet 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 6 months; where the person concerned has entitlement to unemployment benefits, worker status shall be retained for as long as such entitlement***

***(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.***

*Justification*

*See justification at the draftsman's Amendment 1.*

Amendment 12  
Article 10, Paragraph 2

***(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).*** Deleted

*Justification*

*See justification at the draftsman's Amendment 1.*

Amendment 13  
Article 11, Paragraph 1

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

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

*Justification*

*See justification at the draftsman's Amendment 1.*



Amendment 14  
Article 12, Paragraph 1, first subparagraph

(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.***

(1) ***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.***

*Justification*

*See justification at the draftsman's Amendment 1.*

Amendment 15  
Article 12, Paragraph 1, second subparagraph

***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).***

***Deleted***

*Justification*

*See justification at the draftsman's Amendment 1.*

Amendment 16  
Article 12, Paragraph 2, first subparagraph

***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.***

***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.***

*Justification*

*See justification at the draftsman's Amendment 1.*

Amendment 17

Article 12, Paragraph 2, second and third subparagraphs

***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.***

*Deleted*

***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.***

*Deleted*

*Justification*

*See justification at Amendment 1.*

Amendment 18  
Article 13, Paragraph 1, first subparagraph

***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.***

***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.***

*Justification*

*See justification at the draftsman's Amendment 1.*

Amendment 19  
Article 13, Paragraph 1, second subparagraph

***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).***

***Deleted***

*Justification*

*See justification at the draftsman's Amendment 1.*

Amendment 20  
Article 13, Paragraph 2, first subparagraph

***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:***

***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:***

*Justification*

*See justification at the draftsman's Amendment 1.*

Amendment 21  
Article 13, Paragraph 2, second and third subparagraphs

*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.*

*Deleted*

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

*Deleted*

*Justification*

*See justification at Amendment 1.*

9 January 2002

## **OPINION OF THE COMMITTEE ON CULTURE, YOUTH, EDUCATION, THE MEDIA AND SPORT**

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the 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 – C5-0336/2001 – 2001/0111(COD))

Draftsman: Pedro Aparicio Sánchez

### **PROCEDURE**

The Committee on Culture, Youth, Education, the Media and Sport appointed Pedro Aparicio Sánchez draftsman at its meeting of 18 September 2001.

It considered the draft opinion at its meetings of 20 November 2001 and 8 January 2002.

At the latter meeting it adopted the following amendments by 27 votes to 1, with no abstentions.

The following were present for the vote: Giuseppe Gargani, chairman; Pedro Aparicio Sánchez, draftsman), Ole Andreasen, Per-Arne Arvidsson (for Christopher Heaton-Harris), Thierry de La Perriere, Marielle de Sarnez, Christine de Veyrac, Janelly Fourtou (for Vasco Graça Moura), Geneviève Fraisse, Jas Gawronski (for Mario Mauro), Lissy Gröner, Ruth Hieronymi, Hans Karlsson (for Barbara O'Toole), Lucio Manisco, Maria Martens, Pietro-Paolo Mennea, Doris Pack, Roy Perry, Christa Prets, Marieke Sanders-ten Holte, Peter Sichrovsky, The Earl of Stockton (for Sabine Zissener), Kathleen Van Brempt, Phillip Whitehead, Eurig Wyn, Theresa Zabell, Myrsini Zorba (for Martine Roure) and Christopher J.P. Beazley (for Mónica Ridruejo pursuant to Rule 153(2)).

## SHORT JUSTIFICATION

What has the Committee on Culture to do with matters of citizenship? This is a crucial question in terms of understanding the thrust of the amendments that your draftsman is seeking to table to the directive in question.

The first reply which might spring to mind is obvious: culture has little or nothing to do with such issues. Questions of citizenship are concerned with freedom of movement for individuals, so they are legal questions concerning civil liberties.

However, a less rigid analysis enables us to highlight the deep-seated connection between culture, freedom of movement and European integration.

Citizens moving to and staying in another part of the Union, in order to study or work, or simply as a choice of lifestyle, carry their culture with them and are, even involuntarily, active players promoting cultural diversity. The act of welcoming a citizen from another Member State is invariably a factor for enrichment.

European culture is rooted in the free movement of ideas and people, just as the Union relies on cultural relations to achieve its objectives, above all that of organising, 'in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples' (Article 1, third paragraph, of the Treaty on European Union).

If this is true and is recognised in all quarters (or at least in solemn declarations), then we must act accordingly.

A State does not issue residence permits to a citizen who moves from one region to another within its own territory. Neither an Andalusian who moves to Galicia nor an Alsatian who lives partly in Paris and partly in Strasbourg has any need of a residence permit. All that they need to do on national territory relates to the administrative aspects of residence formalities.

The same approach should apply for citizens of another Member State.

Citizenship of the Union either exists or does not exist; freedom of movement either exists or does not exist; unrestricted student mobility should be encouraged. Residence permits are a leftover from a Europe marked by frontier posts. They should be abolished for citizens of all Member States (just as the Schengen Agreement abolished controls at internal borders), and retained only for third-country nationals.

This proposal for a directive is moving in the right direction, but it still exhibits elements of the old Europe; this is perhaps attributable to the Commission's wish to secure the political approval of the Member States, which unfortunately have an ill-concealed tendency to resist change.

It is true that there are also several questions with a material dimension (adequate resources, insurance, public policy), and it is right to address them. However, any solution relating to public policy or to accounting for the costs and benefits to the budget of the 'host' State should be arrived at without reference to the use of 'residence permits', and on the basis of existing provisions covering citizens of that State.

We know how delicate this issue is, and how much progress has already been achieved by the Union.

From a pragmatic point of view, this proposal for a directive could be accepted as it stands, with it being seen as a stage in the process of strengthening Union citizenship. Your draftsman considers, however, that the Committee on Culture should give a clear political signal concerning the ultimate goal of that process.

That is why this opinion tables amendments which seek the 'unrestricted' implementation of the right of free movement for all Union citizens.

## AMENDMENTS

The Committee on Culture, Youth, Education, the Media and Sport calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission<sup>1</sup>

Amendments by Parliament

### Amendment 1 Recital 8

(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.

(8) In keeping with new developments in mobility, working arrangements and lifestyles less tied to a single place, stays not exceeding **two years** by Union citizens should not be subject to any formalities other than the requirement to hold a valid identity card or passport.

### *Justification*

*It is preferable to extend the 'initial' phase of unrestricted residence in order to allow mobility without excessive administrative restrictions, particularly for students.*

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<sup>1</sup> Not yet published in the OJ.

Amendment 2  
Recital 9

(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.

(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 *or be pursuing studies of any kind, including* vocational training in the host Member State, or be family members of a Union citizen who does satisfy one of these requirements. ***Citizens exercising their right to reside in any Member State of the Union must be eligible for the normal means of financial support for students either in their original state or the host state.***

*Justification*

*It is important to avoid a situation where students themselves are ineligible for support from any Member State of the Union.*

Amendment 3  
Recital 9 a (new)

***(9a) Currently the Member States' educational systems do not enable pre-university and university courses to be recognised automatically, as university qualifications are, and until this is the case there will be no real freedom of***



***movement for students or degree-holders  
within the European Union.***

*Justification*

*The mobility of students should be an integral element of a European educational area.*

Amendment 4  
Recital 10

(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.***

(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.

*Justification*

*Free movement for citizens of another Member State should be placed on the same footing as that for national residents.*

Amendment 5  
Article 6, paragraph 5

(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

(5) The right of Union citizens to enter the territory of a Member State shall include the right to reside there 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 ***thirty*** days. Failure to comply with this requirement may make the person liable to ***administrative*** penalties, which shall be proportionate and non-

non-discriminatory.

discriminatory.

*Justification*

*Free movement for citizens of another Member State should be placed on the same footing as that for national residents. There should therefore be no obligation for them to register their presence over and above the normal administrative procedures relating to residence (which all citizens carry out in their own interests), as holders of rights and duties in the community in which they have chosen to live.*

Amendment 6  
Article 7, paragraph 1, point (c)

(c) are students admitted to a course of vocational training; or

(c) are students admitted to a course of **any kind, including** vocational training; or

*Justification*

*In order to allow mobility without excessive administrative restrictions, particularly for students, it is preferable that this freedom of movement should not apply solely to admission to vocational training.*

Amendment 7  
Article 8, paragraph 1

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

(1) For stays of longer than **two years**, the host Member State may require Union citizens to register with the relevant authorities.

*Justification*

*In order to allow mobility without excessive administrative restrictions, particularly for students, it is preferable to extend the length of unrestricted residence to two years, and then to require that citizens comply with certain unavoidable administrative requirements.*

Amendment 8  
Article 11, paragraph 2

***(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.***

***Deleted***

*Justification*

*The validity of the residence card should not be subject to a restriction on time spent in the territory of another Member State or a third country, since this would restrict the mobility of citizens that the Commission advocates.*

Amendment 9  
Article 12

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

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 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.

***(1)*** 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 without recourse to public assistance funds in 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 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 no less than the amount of the minimum social security allowance paid by the host Member State.

**(3)** The Union citizen's death or 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 the relevant studies.

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 without recourse to public assistance funds in 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 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 no less than the amount of the minimum social security allowance paid by the host Member State.

**(2)** The Union citizen's death or 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 the relevant studies.

#### *Justification*

*Deletion of the section concerning Union citizens.*

#### Amendment 10 Article 12, paragraph 3

(3) The Union citizen's death or departure

(3) The Union citizen's death or 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 the relevant studies.***

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.

#### *Justification*

*The children's right to reside in the host Member State should be facilitated, and not restricted to a certain level of studies.*

#### Amendment 11 Article 13

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

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

***(1) 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 not to become 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.

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

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 not to become 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.

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

#### *Justification*

*Deletion of the section concerning Union citizens.*

#### Amendment 12 Article 14, paragraph 3

(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.***

(3) Once acquired, the permanent residence ***card*** shall be ***valid indefinitely.***

#### *Justification*

*This restriction on the right of residence should be dropped because, apart from the difficulty of policing it, it does not encourage mobility, and fails to take account of the tendency of citizens who are already accustomed to mobility to organise their own lives freely within Europe.*

Amendment 13  
Article 17, paragraph 1

(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.***

(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.

*Justification*

*If the card is valid indefinitely, what need is there to renew it?*

Amendment 14  
Article 17, paragraph 2

(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.

(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.***

*Justification*

*Obtaining a residence card is a right, so it should not be possible to make it compulsory to apply for one, subject to penalties for failure to do so.*

Amendment 15  
Article 17, paragraph 3

(3) Breaks in residence ***not exceeding four years*** shall not affect the validity of the

(3) Breaks in residence shall not affect the validity of the permanent residence card.

permanent residence card.

*Justification*

*This restriction on the right of residence should be dropped because, apart from the difficulty of policing it, it does not encourage mobility, and fails to take account of the tendency of citizens who are already accustomed to mobility to organise their own lives freely within Europe.*

Amendment 16  
Article 18, paragraph 1

(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.

(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 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.

*Justification*

*This restriction on the right of residence should be dropped because, apart from the difficulty of policing it, it does not encourage mobility, and fails to take account of the tendency of citizens who are already accustomed to mobility to organise their own lives freely within Europe.*

Amendment 17  
Article 20

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.

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, **social, artistic and cultural** activity there, in either an employed or a self-employed capacity.



*Justification*

*Mobility within the Union should also be encouraged in connection with social, cultural and artistic activities, which contribute in a specific way to the development of the European cultural model, which is based on encounters between diversity.*

Amendment 18  
Article 22, paragraph 1

(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.

(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 **or non-gainful** activity or for the granting of a service or benefit or for any other administrative formality.

*Justification*

*Mobility within the Union should also be encouraged in connection with social, cultural and artistic activities, which contribute in a specific way to the development of the European cultural model, which is based on encounters between diversity.*

Amendment 19  
Article 23, paragraph 1

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.

Member States may carry out checks on compliance **by family members who are not nationals of a Member State** 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.

*Justification*

*This measure may not be applied to citizens of another Member State.*

5 December 2002

## **OPINION OF THE COMMITTEE ON WOMEN'S RIGHTS AND EQUAL OPPORTUNITIES**

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the proposal for a Council decision on the right of EU citizens and their families to move and reside freely within the territory of the Member States  
(COM(2001) 257 – C5-0336/2001 – 2001/0111(COD))

Draftsperson: Anna Karamanou

### **PROCEDURE**

The Committee on Women's Rights and Equal Opportunities appointed Christa Klaß draftsperson at its meeting of 11 September 2001. On 3 December 2002 Anna Karamanou was appointed draftsperson instead of Christa Klaß.

It considered the draft opinion at its meetings of 25 February 2002, 18 March 2002, 27 March 2002, 22 May 2002, 4 June 2002 and 3 December 2002.

At the last meeting it adopted the following amendments by 12 votes to 8, with 2 abstentions.

The following were present for the vote: Anna Karamanou, chairperson and draftsperson; Marianne Eriksson and Olga Zrihen Zaari, vice-chairpersons; María Antonia Avilés Perea, Regina Bastos, Lone Dybkjær, Ilda Figueiredo, Marie-Hélène Gillig, Lissy Gröner, Karin Jöns, Christa Klaß, Rodi Kratsa-Tsagaropoulou, Astrid Lulling, Maria Martens, Ria G.H.C. Oomen-Ruijten, Christa Prets, Amalia Sartori, Karin Scheele, Miet Smet, Patsy Sørensen, Feleknas Uca and Sabine Zissener.

## SHORT JUSTIFICATION

The proposal for a 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, adopted by the Commission on 23 May 2001, is a product of the legal and political environment created by the introduction of citizenship of the Union. The legal basis for the text is Articles 12, 18(2), 40, 44 and 52 of the Treaty. Its principal aim is to replace the various pieces of legislation existing in this area by a single legislative instrument, to relax and simplify the conditions and formalities associated with the exercise of this right and to clarify the restrictions that may be placed on these rights for reasons of public policy, public security and public health.

It thus provides a solution to the main problems and obstacles to the exercise of the right of free movement identified on several occasions by the Commission.

The most important change introduced by this proposal is that after four years of uninterrupted residence individuals will acquire a permanent right of residence in the host Member State. Once acquired, this right is no longer subject to any conditions.

The proposal reduces to a strict minimum the conditions and administrative formalities associated with exercising the right of residence. For residence of less than six months the only requirement is a valid identity document. For residence of over six months citizens of the Union must convince the host Member State, by means of a simple declaration, that they are able to perform an economic activity or have sufficient resources and a health insurance. For initial periods of residence up to four years, the residence card for citizens of the Union is abolished and replaced by registration with the relevant registry office in the place of residence.

The proposal also makes it easier for family members to exercise the right of free movement and residence. Family members who are nationals of third countries also enjoy greater legal protection, for example in the event of the death of the Union citizen on whom they depend, or the dissolution of the marriage, under certain circumstances.

In relation to rights of residence in the European Union specific problems women tend to have, should be taken into consideration. One of the aims of the Commission proposal on this issue is to make it easier for family members to exercise the right of free movement and residence. Nevertheless, for residence of over six months citizens still need a declaration proving economic independence. This can in particular have negative effects on women who often they still have a (economically) dependent and therefore unstable status due to lack of individual rights. A woman depending on her husband having a gainful activity, as most often still is the case, in the event of death or separation, does not possess any individual rights on the basis of this proposal (see in particular art. 7).

Therefore the outcome of this proposal - make it easier for family members to exercise the right of free movement and residence - will most definitely not be gender neutral.

Having examined the Commission's third report on citizenship in the Union, the Committee on Women's rights calls on the Committee responsible to incorporate the following amendments in its report:

Recalls that the introduction of Union citizenship is an important step towards democratising

the Union and provides a framework for involving both women and men in political and institutional decisions in the event of future reform of the Union;

Regrets that the Commission in its Third report on Citizenship of the Union fails to integrate the gender dimension and fails in particular to develop gender-sensitive and gender-specific guidelines and indicators and use sex-desegregated data at all levels;

Welcomes the Commission's proposal in its report for a directive recasting the different legislative instruments on movement and residence of European citizens, which is in particular important for women and the problems they face in the framework of European unification;

Having examined the opinion as adopted, the draftsman, Mrs Klaß, felt obliged to relinquish responsibility for the opinion on the grounds that it had moved too far away from her own position. In that respect the draftsman referred to the adopted amendments on same sex marriages and on putting at equal footing marriage and partnership and therefore the Chairperson has taken it over.

## AMENDMENTS

The Committee on Women's Rights and Equal Opportunities calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission<sup>1</sup>

Amendments by Parliament

### Amendment 1 Article 2, paragraph 2, point (b)

(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;

(b) the unmarried partner, ***irrespective of gender***, if the legislation of the host Member State ***treats unmarried and married couples in the same way*** and in accordance with the conditions laid down in any such legislation;

### *Justification*

*This legislation should apply a broad definition of the term 'family member' since there are several different family configurations in present-day society which should all be treated equally and have the same rights. The main purpose of this article is that unmarried couples, regardless of gender, should be treated as married couples. The law should be the same for everyone and should therefore include unmarried couples of the same sex.*

<sup>1</sup> OJ C 270 E, 25.9.2001, p. 150.

Amendment 2  
Article 2, paragraph 2, point (-c) (new)

***(-c) the registered partner in a stable relationship;***

*Justification*

*More and more Member States have created some form of legal recognition for non-marital partnerships. One of the core, shared elements in these national laws is the registration of this partner. Therefore it is necessary to include this category in the definitions of family members.*

Amendment 3  
Article 2, paragraph 2, point (d)

(d) the direct relatives in the ascending line 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) ***or the registered partner as defined in point (-c);***

Amendment 4  
Article 4

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.

Member States shall give effect to the provisions of this Directive without discrimination on grounds of sex, ***gender identity***, 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.

*Justification*

*Transgender individuals in particular can experience practical difficulties when exercising their right of free movement. Protection against discrimination related to gender identity should be explicitly forbidden in the implementation of the Directive.*

Amendment 5  
Article 6, paragraph 2, 1

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

Member States shall accord such persons every facility to obtain the necessary visas; such visas shall be free of charge **and will be issued on the territory of the Member State concerned.**

*Justification*

*If people were granted certain rights in the Member State of origin they should continue to be entitled to them.*

Amendment 6  
Article 7, paragraph 1, point (d)

(d) are a family member of a Union citizen who satisfies conditions (a), (b) or (c).

(d) are a family member of a Union citizen who satisfies conditions (a), (b) or (c).  
**Spouses are entitled to an independent legal status and workpermit.**

*Justification*

*The position of women with dependent status as spouse can be very unstable and vulnerable due to the lack of individual rights. They are only eligible for derived rights as their legal position and residence permit totally depend on their husband's status. Death or separation automatically leads to losing their status when the dependent spouse does not fulfil conditions a, b or c of art. 7. As it is still most often the case that women depend on men this provision on free movement for Union citizens and their family will not work out gender neutral).*

Amendment 7  
Article 8, paragraph 7

(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:

(7) The certificate of registration may not be refused to a worker **and his or her spouse or partner** who is no longer engaged in an employed or self-employed activity, in the following circumstances:

Amendment 8  
Article 8, paragraph 7, point (a)

(a) he/she is temporarily unable to work as the result of an illness or accident;

(a) he/she is temporarily unable to work as the result of an illness, ***pregnancy***, or accident;

Amendment 9  
Article 12, paragraph 1

(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.

(1) 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.

*Justification*

*The position of women with dependent status as spouse can be very unstable and vulnerable due to the lack of individual rights. They are only eligible for derived rights as their legal position and residence permit totally depend on their husband's status. Death or separation automatically leads to losing their status when the dependent spouse does not fulfil conditions a, b or c of art. 7. As it is still most often the case those women depend on men this provision on free movement for Union citizens and their family will not work out gender neutral). In case the amended article 7 will be approved art. 12 can be accepted as it is.*

Amendment 10  
Article 12, paragraph 1, 2

***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).***

***Delete***



Amendment 11  
Article 12, paragraph 3

(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.

(3) The Union citizen's departure from the host Member State shall not entail the loss of the right of residence of **his/her spouse** or 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.

*Justification*

*In keeping with the definition set out in Article 2(b), it is proposed that unmarried partners should have the same rights as married couples.*

Amendment 12  
Article 13, paragraph 1, 1

(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.

(1) Without prejudice to the second subparagraph, divorce or annulment of marriage **or partnership in those Member States whose legislation treats partnership in the same way as marriage** shall not affect the right of residence of an EU citizen's family members who are nationals of a Member State.

*Justification*

*Partnerships should be covered by this article where there is the same relationship between two people of the same sex as marriage.*

Amendment 13  
Article 13, paragraph 1

(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.

(1) 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.

*Justification*

*The position of women with dependent status as spouse can be very unstable and vulnerable due to the lack of individual rights. They are only eligible for derived rights as their legal position and residence permit totally depend on their husband's status. Death or separation automatically leads to losing their status when the dependent spouse does not fulfil conditions a, b or c of art. 7. As it is still most often the case those women depend on men this provision on free movement for Union citizens and their family will not work out gender neutral. In case the amended article 7 will be approved art. 13 can be accepted as it is.*

Amendment 14  
Article 13, paragraph 1, 2

*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)*

*Delete*

Amendment 15  
Article 13, paragraph 2

(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:

(2) Without prejudice to the second subparagraph, divorce or annulment of marriage *or partnership* 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:

*Justification*

*Women in bad marriages or worse, victims of domestic violence, will continue to suffer for fear of being thrown out of the country.*

Amendment 16  
Article 13, paragraph 2, point (a)

(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

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

*Justification*

*Women in bad marriages or worse, victims of domestic violence, will continue to suffer for fear of being thrown out of the country.*

Amendment 17  
Article 13, paragraph 2, point (b)

(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

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

Amendment 18  
Article 13, paragraph 2, point (c)

(c) this is warranted by particularly difficult circumstances.

(c) this is warranted by particularly difficult circumstances **such as physical or mental abuse within the family.**

*Justification*

*The wording used is unclear and too general. There is therefore a need for greater clarity, in particular in the Commission's explanatory memorandum.*

Amendment 19  
Article 13, paragraph 2, subparagraph 2

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.

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 as the assisting spouse or partner of a self-employed person***, 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.

*Justification*

*Self-explanatory.*

Amendment 20  
Article 15, paragraph 1, point (a)

(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

(a) employed or self-employed workers ***and their assisting spouses or partners*** 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.

months and have resided there continuously for at least three years.

### *Justification*

*Self-explanatory.*

#### Amendment 21 Article 15, paragraph 1, point (b)

(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.

(b) employed or self-employed workers ***and their assisting spouses or partners*** 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.

#### Amendment 22 Article 15, paragraph 1, point (c)

(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.

(c) employed or self-employed workers ***and their assisting spouses or partners*** 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.

#### Amendment 23 Article 25, paragraph 4

(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.

(4) When issuing the registration certificate or initial residence card, the host country may, ***for reasons which it must justify***, 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.

#### *Justification*

*Providing information concerning the police record of a Union citizen must be subject to a stringent and justified procedure between the host country and the Member State of origin.*

#### Amendment 24 Article 29, paragraph 1

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.

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. ***Judicial protection should be the same as for national citizens of the Member States.***

#### *Justification*

*Women, who might be without an income, should be entitled to legal aid.*

27 May 2002

## **OPINION OF THE COMMITTEE ON PETITIONS**

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the 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 – C5-0336/2001 – 2001/0111(COD))

Draftsman: Margot Keßler

### **PROCEDURE**

The Committee on Petitions appointed Margot Keßler draftsman at its meeting of 13 September 2001.

It considered the draft opinion at its meetings of 17-18 April 2002 and 22-23 May 2002.

At the latter meeting it adopted the following amendments unanimously.

The following were present for the vote: Roy Perry (first vice-chairman and acting chairman); Proinsias De Rossa (second vice-chairman); Margot Keßler (draftsman); Richard A. Balfe, Felipe Camisón Asensio, Janelly Fourtou, Laura González Álvarez, Ioannis Koukiadis, Jean Lambert, The Earl of Stockton and Eurig Wyn.

## SHORT JUSTIFICATION

This opinion refers to the Commission 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.

The Committee on Petitions welcomes this proposal, in particular regarding greater freedom of movement through the introduction of permanent right of residence after four years of continuous residence in the host Member State. This measure will help to overcome numerous difficulties now being encountered by Union citizens and their family members in this respect as evidenced by petitions to Parliament. In the period 1999 to 2001 alone, around 100 petitions were tabled concerning freedom of movement of Union citizens and their family members. These petitions are available on request from the Petitions Committee secretariat or the draftsman.

The Petitions Committee also welcomes the other objectives which the directive is seeking to achieve. One of these is the consolidation and incorporation in a legal instrument of the objectives being sought under secondary legislation regarding right of residence of European citizens. For Union citizens and their family members who frequently come from third countries as shown in the petitions tabled, this means increased clarity and legal security. On the other hand, freedom of movement is further facilitated by the simplification or elimination of administrative procedures and formalities. Other innovations being envisaged, for example extending to six months the period of residence in another Member State, simplifying the visa extension procedure and ensuring equivalence of visas and residence permits issued by Member States, are all moves towards considerable improvement of the current situation. They also provide a particularly useful means of resolving or forestalling the problems raised in numerous petitions.

Finally, it is of particular importance to the Committee on Petitions that the directive take account of the specific situation of the family members of Union citizens. The petitions tabled to the committee show that family members belonging to 'third' countries often face particularly intractable problems arising from their personal situation. The committee therefore welcomes the broad definition of the term 'family member', in particular the inclusion of unmarried couples. It is also pleased to note that the provisions extend to all categories of Union citizens, including those in employment, i.e. salary earners and the self-employed, together with those, including students, who are not engaged in gainful activity.

While the Commission proposal generally meets with great approval, a number of problems remain:

Unmarried partners classified as family members under Article 2(b) of the Commission proposal should, following separation, be treated and specifically mentioned here in the same way as married couples following divorce or annulment of marriage with regard to their right of residence (Amendment 1). The Commission proposal simply avoids this particular issue. However, such provisions are necessary for reasons of equality and help to ensure legal certainty in general. The same should also apply to unmarried partners who are not nationals of a Member State (Amendment 2).

Article 17(1) states that Member States shall issue persons entitled to permanent residence



with a permanent residence card within three months of submission of the application. The permanent residence card shall be valid indefinitely. It shall be renewable automatically every ten years. It is, however, illogical to require the issuing every ten years of permanent residence cards since they are, by definition, valid for an unlimited period. This would lead to unnecessary bureaucracy in the Member States. The renewal requirement should therefore be simply deleted (Amendment 3).

From petitions to the European Parliament it emerges that many difficulties still arise for Union citizens and their family members falling within the scope of this directive. While the number of petitions received from family members of a Union citizen who are nationals of a third country is far from negligible, it is very small compared with the total number of petitions tabled, which shows that most third-country citizens are failing to avail themselves sufficiently of the right of petition. To this extent, specific reference should be made to this right (Amendment 4).

## AMENDMENTS

The Committee on Petitions calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission<sup>1</sup>

Amendments by Parliament

### Amendment 1 Article 13, paragraph 1

(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.

(1) Without prejudice to the second subparagraph, divorce, annulment of marriage *or the ending of a relationship between unmarried partners within the meaning of Article 2(2)(b)* shall not affect the right of residence of an EU citizen's family members who are nationals of a Member State.

### *Justification*

*Unmarried partners referred to in Article 2(2)(b) under the classification of family members must, following separation, be treated and specifically mentioned here in the same way as married couples following divorce or annulment of marriage with regard to their right of*

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<sup>1</sup> OJ C 270, 25.9.2001, p. 150..

*residence.*

Amendment 2  
Article 13, paragraph 2

(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:

(2) Without prejudice to the second subparagraph, divorce, annulment of marriage *or the ending of a relationship between unmarried partners within the meaning of Article 2(2)(b)* 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:

*Justification*

*Same as Amendment 1.*

Amendment 3  
Article 17, paragraph 1

(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.***

(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.

*Justification*

*Ten-yearly renewal of an indefinitely valid permanent residence card is illogical and would lead to unnecessary bureaucracy.*

Amendment 4  
Article 29a (new)

***29a. In addition to the procedural safeguards contained in Article 29 Union citizens and members of their families who are not nationals of a Member State are, under Rule 174(10) of the European Parliament's Rules of Procedure, entitled to table petitions (right of petition).***

*Justification*

*From petitions to the European Parliament it emerges that many difficulties still arise for Union citizens and their family members falling within the scope of this directive. While the number of petitions from family members of a Union citizen who are nationals of a third country is far from negligible it is very small in comparison to the total number of petitions tabled, which shows that most third-country nationals are failing to avail themselves sufficiently of the right of petition. To this extent, specific reference should be made to this right.*