

WRITTEN QUESTION P-4268/08
by Maria Grazia Pagano (PSE)
to the Commission

Subject: Changes by the Italian Government to the Directive 2004/38/EC implementing provisions which are discriminatory and contrary to the spirit of the Directive

Free movement of persons constitutes one of the internal market's fundamental freedoms, as laid down in Article 2 of the EU Treaty, Articles 3, 18, 39 and 43 of the EC Treaty and Articles 15 and 45 of the EU Charter of Fundamental Rights.

Pursuant to European Parliament and Council Directive 2004/38/EC¹ 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 right to reside in another State is conferred directly by the Treaty on EU citizens and is not conditional upon the completion of administrative formalities. Under no circumstances may salaried employees, the self-employed or job-seekers be expelled from a Member State other than for reasons of public order or public safety.

Failure to complete an administrative formality (such as registration) may not be regarded as a threat to public safety or to public order.

Of concern are the Italian Government's proposed changes to Legislative Decree No 30 of 2007 laying down the provisions for implementing Directive 2004/38/EC - changes which provide for the immediate expulsion for reasons of public safety of a Community citizen who has failed to register with the Italian State within the time-limit laid down by law. This means that such failure is regarded as tantamount to behaviour which threatens fundamental rights, public safety or public morality.

The combined effect of the changes to the Decree implementing Directive 2004/38/EC is that Community citizens who have not completed the requisite administrative formalities may be detained in a transit centre merely on account of technical delays to the expulsion procedure and may not secure a stay in that procedure if they lodge an appeal.

Does the Commission consider the Italian Government's proposed changes to Legislative Decree No 30 of 2007 to be compatible with Community law and non-discriminatory?

¹ OJ L 158, 30.4.2004, p. 77