EUROPEAN PARLIAMENT

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Committee on Legal Affairs

2008/2184(INI)

13.2.2009

OPINION

of the Committee on Legal Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States
(2008/2184(INI))

Rapporteur: Monica Frassoni

SUGGESTIONS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

A whereas consideration is to be given to the draft interim report of the 'Comparative study on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States' requested by the Committee on Legal Affairs and delivered by European Citizen Action Service (ECAS),

1. Notes that several provisions in the legislation of most Member States run counter to the letter and the spirit of the Directive, undermining rights of free movement and EU citizenship, and that national administrative practices very often constitute significant obstacles to the exercise by citizens of their rights;

2. Notes with disappointment that only in Cyprus, Greece, Finland, Luxembourg, Malta, Portugal and Spain is the transposition of the Directive satisfactory;

3. Notes that this demonstrates that the Commission has been unable to secure coherent and timely compliance with the Directive by Member States and to handle the large number of complaints from citizens in relation to the application of the Directive; requests the Commission to elaborate and present to Parliament a consistent, effective and transparent enforcement policy guaranteeing the application of rights of free movement; considers that the lack of human and financial resources allocated within the Commission to deal with the transposition and application of the Directive represents a serious obstacle to the capacity of the Commission to credibly monitor the application of the Directive in all Member States and therefore to the unity of law in such a matter which is so crucial for EU citizens;

4. Notes that the failure of the correct application of the Directive by the Member States calls for consideration of amending the most problematic provisions, namely the right of entry and residence of third country family members and the requirement for EU citizens to submit, along with the applications for residence, additional documents not provided for in the Directive;

5. Notes the significant negative impact on citizens' rights of administrative practices which are not in conformity with Community law; draws attention, by way of example, to the proliferation of different ID cards and residence cards within the Member States, which has rendered the exercise by EU citizens of their right of free movement confusing and irksome; points out that, in Spain, in addition to the registration certificate, EU citizens are issued with a Foreigner Identity Number which is necessary in order to work or register with the Spanish social security system, that France has also maintained an ambiguous voluntary residence title additional to the registration certificate issued to Union citizens and that, in Member States such as the Czech Republic, Sweden and Belgium, authorities request additional documents in order to issue residence cards or impose conditions which are not listed in the Directive;

6. Notes that the transposition of the "sufficient resources" principle within Member States gives rise to confusion among EU citizens as it is often ambiguously defined in the national legislation at all levels; points out that this gives rise to deep concern, for example in relation to Italian legislation which requires EU citizens to prove the authenticity of their sufficient resources;

7. Notes that the situation of registered partners who benefit from the Directive is not always clear, especially in those countries which do not recognise registered partnership; asks the Commission to monitor this important aspect of the Directive carefully;

8. Notes that the legal and administrative obstacles affecting third-country family members are extremely problematic; points out that, in breach of the Directive, UK legislation precludes a non-EU family member who has a residence card issued by another country from entering the country without a visa, and that UK administrative practices are such that lengthy delays and extensive documentation in the processing of applications for residence cards for family members who are third-country nationals also constitute significant obstacles to the exercise of free movement rights; draws attention to the fact that, in Estonia, third-country nationals face problems when attempting to enter the country with a residence card issued by another Member State, and that third-country family members applying for visas have been also asked to pay the visa fee; points out that, in Italy, a third-country national citizen who applies for family reunification will be required to show the lawfulness of the origin of his/her economic resources, the amount of which may not be lower than the yearly social allowance;

9. Recalls that the public policy exceptions cannot be invoked to serve economic ends or to pursue general preventive aims; notes the absence in Estonian and Hungarian legislation of a clear reference to the exclusion of economic ends when imposing an expulsion order and, in Hungarian and Romanian legislation, of any reference to the exclusion of previous criminal convictions and general preventive aims.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	12.2.2009
Result of final vote	+: 10 –: 5 0: 0
Members present for the final vote	Alin Lucian Antochi, Monica Frassoni, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Alain Lipietz, Manuel Medina Ortega, Aloyzas Sakalas, Francesco Enrico Speroni, Rainer Wieland, Jaroslav Zvěřina, Tadeusz Zwiefka
Substitute(s) present for the final vote	Sharon Bowles, Mogens Camre, Brian Crowley, Jean-Paul Gauzès, Kurt Lechner, Georgios Papastamkos