



COMMISSION OF THE EUROPEAN COMMUNITIES

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2001/0111 (COD)

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**

**(presented by the Commission)**

## EXPLANATORY MEMORANDUM

### **1. Introduction**

- 1.1 The introduction of citizenship of the Union “constitutes, for the citizen, the guarantee of belonging to a political community under the rule of law”. This was the opinion of the European Parliament in its Resolution on the second Commission report on citizenship of the Union<sup>1</sup>. In this report<sup>2</sup>, the Commission states that citizenship of the Union “raised citizens’ expectations as to the rights that they expect to see conferred and protected”. The conclusions of the Cardiff European Council recognised that “a sustained effort is needed by the Member States and all the institutions to bring the Union closer to people by making it more open, more understandable and more relevant to daily life”.
- 1.2 In its Communication to the European Parliament and the Council on the follow-up to the recommendations of the High-Level Panel on the Free Movement of Persons<sup>3</sup>, the Commission confirmed that the introduction of Union citizenship “generalised, for the benefit of all citizens, the right to enter, the right to reside and the right to remain in the territory of another Member State. From this point of view, these rights are becoming an integral part of the legal heritage of every citizen of the European Union and should be formalised in a common corpus of legislation to harmonise the legal status of all Community citizens in the Member States, irrespective of whether they pursue a gainful activity or not”. A fresh look needs to be taken at the arrangements for Union citizens to exercise these rights with a view to producing a single set of rules governing freedom of movement within the meaning of Articles 17 and 18 of the EC Treaty.
- 1.3 This Directive is being proposed in the context of the new legal and political environment entailed by citizenship of the Union. The basic concept is as follows: Union citizens should, *mutatis mutandis*, be able 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. 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”.
- 1.4 This proposal serves several purposes: first of all, it takes the form of a single instrument in the interests of reader-friendliness and clarity; then, it streamlines the arrangements for exercising freedom of movement, which, depending on how long the person has been in the country, range from extending the right of residence without formalities to six months, to removing any conditions or differential treatment and to putting non-nationals on an equal footing with nationals after four years of residence in the host Member State; finally, it tightens up the definitions of restrictions on the right of residence that apply to family members of a Union citizen, irrespective of nationality.

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<sup>1</sup> Resolution on the second report from the Commission on citizenship of the Union (COM(97) 230 C4-0291/97), OJ C 226, 20.7.1998, p. 61.

<sup>2</sup> Second report from the Commission on citizenship of the Union (COM(97) 230 final).

<sup>3</sup> Communication from the Commission to the European Parliament and to the Council on the follow-up to the recommendations of the High-Level Panel on the Free Movement of Persons (COM(98) 403 final).

## 2. The measures laid down in the proposal for a Directive

- 2.1 The right of entry and residence for Union citizens is currently governed by a complex corpus of legislation, comprising two Regulations and nine Directives. These instruments have different parts of the EC Treaty as their legal bases and are specific to different categories of people.

This proposal brings these categories together in a single legislative instrument. For those in work, whether in paid employment or self-employed, the only condition on their right of residence will continue to be that they engage in gainful activity, which is to be proved simply by their making a *bona fide* declaration to that effect.

For people not in work, the right of residence will, for the first four years of residence in the host Member State, continue to be subject to their having sufficient resources and sickness insurance, so that they do not have recourse to public funds in the host Member State. However, the requirements have been relaxed in that the amount of resources considered sufficient is no longer defined in the proposal and cannot be fixed by the Member States, and evidence that the two conditions are met is replaced by a simple *bona fide* declaration, which may be checked out only if the individual concerned seeks recourse to social security or the sickness insurance scheme for persons without health insurance. Students must prove that they are enrolled in an educational establishment and assure the relevant authority, by means of a declaration, that they have sufficient resources and sickness insurance cover.

- 2.2 The right of permanent residence in the host Member State after four years of continuous legal residence there is a new right introduced as a corollary of the fundamental personal right conferred by the Treaty on every citizen of the Union. On completing four years of residence in the host Member State, the individuals concerned will no longer be subject to any conditions on the exercise of or restrictions on their right of residence, with virtually complete equality of treatment with nationals.

- 2.3 The objectives set out above would not count as having been achieved, if the administrative practicalities and procedures were so unwieldy and disproportionate that they constituted an additional obstacle standing in the way of Union citizens exercising their the right to free movement. The purpose of this proposal for a Directive is therefore to make sure that the safeguards and formalities for Union citizens and their family members are “equivalent” to those enjoyed by nationals.

This is already a requirement under Community law. Article 40 of the EC Treaty itself calls for the abolition of administrative procedures and practices, qualifying periods and other restrictions that may impede freedom of movement for workers. Article 9(3) of Directive 68/360/EEC<sup>4</sup> and Article 7(3) of Directive 73/148/EEC<sup>5</sup> stipulate that Member States are to take the necessary steps to simplify as much as possible the formalities and the procedures for obtaining residence documents.

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<sup>4</sup> 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, OJ L 257, 19.10.1968, p. 13.

<sup>5</sup> 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, OJ L 172, 28.6.1973, p. 14.

In this light, new Community legislation should include administrative provisions that take account of, among other things, the case-law of the Court of Justice.

The Court of Justice has consistently held (see, for example, the judgment of 8 April 1976 in Case 48/75 *Royer* [1976] ECR 497, para. 31 *ff.*) that the right of Union citizens to enter the territory of another Member State and to reside there for the purposes specified by the Treaty is a right conferred directly by the Treaty or, in certain cases, by provisions implementing it and, as such, is a right acquired regardless of whether the competent authority in the host Member States has issued a residence card. Consequently, the granting of a residence card should be regarded as an act by a Member State acknowledging the status that nationals of another Member State have in their own right by virtue of Community law. In other words, the residence card has, according to the Court of Justice, a purely declaratory value and is not constitutive of Union citizens' right of residence. But it would be wrong to overlook Member States' legitimate right, recognised by the Court of Justice, to keep track of people's movements on their territory. This consideration can be fully catered for in the form of registration with the competent authorities in the place of residence and possession of a valid identity card from the country of origin or passport.

In view of the above, the proposal first extends the period non-nationals can stay in another Member State with just a valid identity card or passport without having to go through any particular formalities. The extension of the current three-month period to six months is intended to cater for the modern, high mobility lifestyles, we are witnessing in Member States.

At the same time, there is a need for a new approach to the right of residence arrangements, in particular by restricting the residence card requirement to cases where it is really warranted. The obligation to have a residence card may be maintained only for members of the family of an EU citizen who are not nationals of a Member State: the purpose here is to make it easier for the latter to exercise the right of free movement conferred by Community law by issuing them with a residence card.

By giving a complete list of the documents to be submitted to the competent authorities in the host Member State, describing the procedures to be followed and laying down the time limits to be adhered to, this proposal for a Directive drastically simplifies the formalities for Union citizens and their family members to exercise the right of residence, cutting them back to the bare essentials.

- 2.4 This proposal for a Directive also specifically takes into account the situation of the family members of Union citizens. While it is true that the right of movement and residence of family members of Union citizens is not explicitly referred to by the Treaty, the right does flow from the right to preserve family unity, which is intrinsically connected with the right to the protection of family life, a fundamental right forming part of the common constitutional traditions of the Member States, which are protected by Community law and the Charter on Fundamental Rights of the European Union.

First of all, by broadening the definition of "family member", this proposal is intended not only to accommodate the case-law of the Court of Justice and acknowledge changes in the law of the Member States, but also to facilitate the free movement of Union citizens by eliminating any possibility of family reunification reasons having a negative influence. One problem is that under Community law as it stands, the right of

residence in the host Member State may be taken away from divorced spouses and from children who are no longer minors or dependent on the Union citizen, regardless of their nationality. This problem is particularly acute for members of a Union citizen's family who are third-country nationals; hence the 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.

- 2.5 The proposal also sets out to provide a tighter definition of the circumstances under which the right of residence right of Union citizens and their family members may be restricted. The Treaty itself allows the right of free movement and residence to be refused on grounds of public policy, public security and public health. Although the Court of Justice has accepted that the concept of public policy can vary under national legislation, it has nonetheless interpreted Directive 64/221/EEC<sup>6</sup> in such a way as to clarify the concept in certain respects, which deserves inclusion in this proposal replacing that Directive. In addition, the introduction of new provisions drawing on the concept of fundamental rights will provide Union citizens with greater safeguards in dealings with both administrative authorities and the courts concerning decisions restricting their fundamental right of movement and residence; this protection is also fully enjoyed by minors who have family ties in the host country and people who have acquired a right of permanent residence.

### **3. Choice of legal basis**

- 3.1 This proposal for a Directive is based on Articles 12, 18(2), 40, 44, and 52. Since Article 18(2) of the Treaty is a sort of back-up legal basis that can be used only for people not working, the specific legal bases of Articles 40, 44 and 52, which cover people engaged in gainful activity in the host Member State, need to be used, so that a single instrument can be adopted, applying a single procedure covering all the procedures laid down in the above provisions. In order to meet this key objective of having a single instrument, the Commission is giving up the exercise of the power, conferred on it by Article 39(3)(d) of the Treaty, to draw up implementing regulations laying down the conditions on the right to remain in the territory of a Member State, after having been employed there. This proposal for a Directive includes already existing provisions on the right to remain provided for in Commission Regulation (EEC) No 1251/70<sup>7</sup>; in due course the Commission will present an instrument repealing the Regulation (see also commentary on Article 42 below).
- 3.2 Since this proposal for a Directive is based on provisions of the EC Treaty other than Title IV thereof, which deals with visas, asylum, immigration and other policies related to the free movement of persons, it will have to be implemented in the national law of all the Member States of the Union.

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<sup>6</sup> Council Directive 64/221/EEC of 25 February 1964 on the coordination of the special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health, OJ L 56, 4.4.1964, p. 850.

<sup>7</sup> Commission Regulation (EEC) No 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, OJ L 142, 30.6.1970, p. 24.

#### **4. Subsidiarity and proportionality**

- 4.1 Articles 40, 44 and 52 require the European Community to enact the legislative instruments necessary to ensure the free movement of workers (right to enter and remain), freedom of establishment and freedom to provide services. Article 18(1) gives every Union citizen a right to move and reside freely, subject to restrictions and conditions laid down by the Treaty or in secondary legislation: Member States do not have power over this aspect. Article 18(2) allows the Community to adopt provisions to facilitate the exercise of the right to freedom of movement. Before Article 18 was included in the Treaty, Article 235 (now Article 308) had allowed the Community to adopt measures to ensure free movement of persons not engaged in gainful activity (people who are retired or out of work), while Article 7 (now Article 6) did the same for the free movement of students.
- 4.2 The measures in this proposal for a Directive are without prejudice to the Protocol on the application of certain aspects of Article 14 of the Treaty establishing the European Community to the United Kingdom and to Ireland, annexed by the Treaty of Amsterdam to the Treaty on European Union and to the Treaty establishing the European Community, and are in line with the powers of the European Community, which must be exercised in accordance with the stipulation in Article 5 of the Treaty that “any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.” Union citizens’ right to move and reside is currently governed by a corpus of legislation made up of two Regulations and nine Directives: the aim of this proposal is to bring this corpus together in the form of a single legislative instrument and to make changes to further facilitate the exercise of these rights. This means the only choice is a Directive, if there is to be a single legislative instrument and the type of instrument is dictated by some of the Articles which form the legal basis of the proposal.
- 4.3 The choice of a Directive also makes it possible to clearly define the principles governing the exercise of the right to move and reside freely, while leaving it up to the Member States to choose the most suitable ways and means of implementing these principles within their own legal and administrative set-up and national context. However, certain provisions in the proposal are very detailed in order to avoid differences between administrative practices or differences of interpretation creating obstacles to the rights concerned being exercised in practice. Moreover, the time allowed for transposal in the case of a Directive will enable the Member States to adopt all the necessary measures to adapt the current arrangements in line with the new provisions in this proposal for a Directive.

### **ARTICLE-BY-ARTICLE COMMENTARY**

#### **CHAPTER I**

#### **GENERAL PROVISIONS**

##### **Article 1**

Since the Directive replaces a whole series of legislative instruments concerning freedom of movement and residence, it covers a variety of matters.

First, it lays down the conditions governing the exercise of the right to move and reside freely for Union citizens and their family members: these provisions replace those contained in Directives 68/360/EEC, 73/148/EEC, 90/364/EEC<sup>8</sup>, 90/365/EEC<sup>9</sup> and 93/96/EEC<sup>10</sup> concerning the right of free movement and residence of workers, the self-employed, people not working, pensioners and students.

Secondly, it establishes the right of permanent residence, a new concept introduced by the Directive. These provisions adapt and incorporate those of Regulation (EEC) No 1251/70 and Directive 75/34/EEC<sup>11</sup> concerning the right to remain of workers and the self-employed.

Lastly, it establishes restrictions on these rights on grounds of public policy, public security and public health, replacing the provisions of Directive 64/221/EEC concerning public policy.

## Article 2

This Article defines three concepts used in the instrument.

1. First, it defines the concept of a Union citizen on the basis of Article 17 of the Treaty.
2. These provisions also define who counts as a family member. As things have stood up to now, which members of a Union citizen's family are entitled to freedom of movement irrespective of nationality varies according to the category to which the Union citizen they are dependent on belongs. In the case of workers, Article 10(1) of Regulation (EEC) No 1612/68<sup>12</sup> gives the right of residence to the spouse, descendants who are minors or dependants and to dependent relatives in the ascending line. The same right is granted by the Directives concerning the residence right of the self-employed, people not working and pensioners. However, Directive 93/96/EEC on the right of residence for students grants this right only to the spouse and to dependent descendants. The upshot of this is that the mother of a Union citizen working in another Member State cannot, as things stand, go and live with her son, if, having an income, she does not count as dependent on him, even though her income is lower than the amount the host Member State counts as sufficient resources. Similarly, the mother of a student has no right to settle with her son, unless she has sufficient resources and sickness insurance.

Paragraph 2 proposes a definition of family member that applies across the board.

First, this definition includes not only spouses, but also unmarried partners. Subparagraph (b), which is new, deals with the issue of the right of residence for unmarried partners of Union citizens. The "family group" has been recently undergoing rapid change and more and more people, often with children, are forming *de facto* couples. Furthermore, several Member States have introduced a special status,

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<sup>8</sup> Council Directive 90/364/EEC of 28 June 1990 on the right of residence, OJ L 180, 13.7.1990, p. 26.

<sup>9</sup> 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, OJ L 180, 13.7.1990, p. 28.

<sup>10</sup> Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students, OJ L 317, 18.12.1993, p. 59.

<sup>11</sup> Council Directive 75/34/EEC of 17 December 1974 concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity, OJ L 14, 20.1.1975, p. 10.

<sup>12</sup> Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community, OJ L 257, 19.10.1968, p. 2.

with a set of rights and obligations, which cohabiting unmarried couples can register for. In the context of the right of residence, Community law cannot ignore this development, so the proposal is to treat unmarried partners as equivalent to spouses for residence purposes, where the legislation of the host Member State provides for unmarried partner status and on the terms of any such legislation.

Secondly, the definition includes the descendants of spouses/partners, even if they are not minors or dependent, and parents of spouses/partners, whether or not they are dependent.

As the report of the high-level group chaired by Mrs Veil stated, there is no good reason to deny children over 21 who are not dependent on their parents, or relatives in the ascending line who are not dependent on their children, the right to join their family in another Member State.

3. Finally, the Article defines the concept of a host Member State.

### Article 3

1. These provisions define who benefits from the Directive. That is to say, any Union citizen moving or residing in another Member State and members of their family, irrespective of nationality, who accompany or join them. There are no specifications as to the purpose of the movement or residence. It is clear that Union citizens will be able to go to another Member State to work in an employed or self-employed capacity, or to engage in a non-profit-making activity or in vocational training, or without work, or as a pensioner, student, service provider or service recipient.
2. These provisions are taken from the existing provisions of Article 10(2) of Regulation (EEC) No 1612/68 and Article 1(2) of Directive 73/148/EEC, which call on Member States to facilitate the entry of any other family members of Union citizens or their spouses who are dependent on them or lived with them in the country from where they are arriving. These provisions would apply only to people without a residence entitlement in their own right.

### Article 4

This provision requires Member States to abide by the principle of non-discrimination when acting on any of the obligations laid down in the Directive. This provision takes account of the European Union Charter of Fundamental Rights (Article 21) and is without prejudice to obligations arising from other international instruments, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 14).

## **CHAPTER II**

### **RIGHT TO MOVE AND RESIDENCE UP TO SIX MONTHS**

### Article 5

1. The first subparagraph of paragraph 1 establishes the right of Union citizens to leave the territory of one Member State to go to another Member State. This subparagraph is basically taken from Article 2(1) of Directive 68/360/EEC, which stipulates that the right to leave the territory of a Member State “shall be exercised simply on production of a valid identity card or passport”, but changed in line with the new arrangements

abolishing checks at EU-internal borders. For this purpose, “on production of” has been changed to “with”.

The second subparagraph extends the right to leave the territory to family members not having the nationality of a Member State who accompany the Union citizen or join him in the host Member State; it broadly takes over the last sentence of Article 2(1) of Directive 68/360/EEC.

2. This paragraph is taken from paragraph 4 of Article 2 of Directive 68/360/EEC concerning the prohibition on imposing a requirement for exit visas or equivalent formalities as regards persons enjoying freedom of movement.
3. This paragraph is taken from the provisions of Article 2(2) of Directive 68/360/EEC concerning the issuing and renewal of travel documents (passport or identity card) by Member States for their own nationals.
4. This paragraph is taken from and clarifies the similar provisions of paragraph 3 of Article 2 of Directive 68/360/EEC regarding the validity of travel documents.

#### Article 6

1. This paragraph is taken from Article 3(1) of Directive 68/360/EEC regarding the right to enter the territory of a Member State, which is exercised by Union citizens and their family members by virtue of having an identity card or passport. Here too, “on production of” has been changed to “with”. The second subparagraph takes from Article 3(2) of Directive 68/360/EEC the prohibition for Member States to impose a requirement for exit visas or equivalent formalities on Union citizens.
2. These provisions make clear that the only family members of a Union citizen who are nationals of a third country whose nationals are subject to a visa requirement who can be exempt from that visa requirement are those referred to in Council Regulation (EC) No 539/2001 which lists 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<sup>13</sup>. The second sentence of the paragraph makes a great innovation in providing for the equivalence of visas and entry documents issued by one of the Member States.

At present family members who are nationals of a third country are already entitled to every facility to obtain the necessary visas, which must be issued free of charge. This measure is to be maintained to cater for family members who have not yet been issued with a residence card.

3. This provision is intended to restrict the stamping of family members’ passports to cases where it is strictly necessary (i.e. an entry stamp to mark the start of the length of stay stated on the visa or an exit stamp to mark the end of the stay). Stamping passports no longer serves any purpose once the people concerned have obtained a residence card, which entitles them to enter and leave the country for as long as the card is valid.

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<sup>13</sup> OJ L 81, 21.3.2001, p. 1.

4. This provision is to cover situations where people entitled to free movement are unable to show the necessary documents (passport or identity card, plus, where required, residence card or visa) when crossing a border. In this event, before refusing leave to enter, Member States will be required to give the individuals concerned every opportunity to prove that they are entitled to free movement. For example, a member of the family could bring the necessary documents along, if they had merely been inadvertently left at home. In the case of visas, there would have to be an examination of whether the conditions were met for the family members requiring a visa to be issued with one at the border.
5. During the first six months of their stay, Union citizens may reside within the territory of another Member State simply with their passport or identity card. This paragraph incorporates the existing provisions (Article 8 of Directive 68/360/EEC and Article 4 of Directive 73/148/EEC), with two changes. First, the period during which a Union citizen may reside within the territory of another Member State without going through any formalities is extended to six months. This period takes account of the fact that people are, as a rule, regarded as domiciled in a country if they live there at least six months a year. This will facilitate short-term stays of less than six months, for example by trainees, students, etc. Second, a change has been made to Article 8(a) of Directive 68/360/EEC and Article 4(2)(3) of Directive 73/148/EEC, which refer to the document “with which the person concerned entered the territory”, which does not make sense where there are no checks at the internal borders and citizens are required merely to be in possession of, but not show, an identity card or passport.

The second sentence allows host Member States to impose a requirement that beneficiaries announce their presence in the country (the obligation imposed by existing law). The point would be merely to inform the competent authorities that exist under the domestic law of certain Member States; this is compatible with their powers as regards measures to provide public authorities with detailed knowledge of population movements in their territory (*cf.* judgment given by the Court of Justice on 7 July 1976 in Case 118/75 *Watson*, paras. 17 and 18). Failure to discharge this obligation may result in liability for proportional, non-discriminatory sanctions.

6. The same provisions provided for in paragraph 5 apply to family members not having the nationality of a Member State who accompany or join the Union citizen. There is an exception for family members required to have a visa because, for example, they have not yet got a residence card. People in this situation must submit their residence card application before their visa expires, to avoid falling foul of the rules.

## **CHAPTER II**

### **STAYS OF OVER SIX MONTHS**

#### Article 7

1. These provisions define the conditions governing the exercise of the right of residence. While the exercise of this right is to be facilitated, the fact that, at the present stage, social assistance provision is not covered by Community law and is not, as a rule, “exportable”, complete equal treatment as regards social security benefits is not possible without running the risk of certain categories of people entitled to the right of residence, in particular those not engaged in gainful activity, becoming an undue burden on public funds in the host Member State.

For Union citizens, the conditions are clarified in points (a), (b), (c) and (d). Union citizens must either engage in gainful activity or have sufficient resources and sickness insurance covering risks in the host Member State, or be students admitted for vocational training in the host Member State.

Point (d) covers Union citizens who are entitled to exercise the right of residence, either because they themselves meet the conditions laid down in points (a), (b) or (c) (exercise a gainful activity or have sufficient resources or be a student), or because they are a family member of a Union citizen who does. Where there are different conditions depending on the status on the basis of which the right of residence is being exercised, in the interest of free movement, whatever arrangement is most favourable should be applied to the person entitled to the right of residence.

2. The right of residence of the family members of a Union citizen who are not nationals of a Member State is derived from the right of residence of the Union citizen, which means that the right is based on their family tie and that they must, in the broad sense of the term, accompany the Union citizen in the host Member State. However, exceptions are allowed in the event of the death of the Union citizen or divorce (Articles 12 and 13).

#### Article 8

1. The Court of Justice has upheld that the residence card is not an authorisation, but simply a document recording a pre-existing right (Judgment of 8 April 1976, Case 48/75 *Royer*, ECR 497, para. 50). If residence cards are to be maintained and made use of, they must serve some useful purpose for Union citizens and not be just an administrative burden that is costly even for the Member States.

The Commission does not think there is necessarily any case for residence cards having to be issued; but it would be acceptable for non-national Union citizens to be subject to the same conditions as nationals when changing address, namely the duty to have themselves entered on the population register (or whatever other arrangements apply to nationals), so that the authorities can record their presence by, for example, entering them on a register of non-national Union citizens, such as already exists in most Member States for the electoral rolls for the purpose of the right to vote in European and local elections.

This is the context of the first sentence of paragraph 1, which allows Member States to require Union citizens and members of their family who are nationals of a Member State to register with the competent authorities in their place of residence.

2. The time allowed by the host Member State for registration may not be less than six months, to be consistent with Article 6, which provides for residence without formalities for up to six months; even so, a Union citizen may be registered before six months are up if he sees fit. Following registration, the second sentence provides for a registration certificate to be issued on the spot by the competent national authority. The registration certificate is meant to be a kind of receipt for the citizen and proof for the authorities that the formality has been carried out. The certificate is to be issued immediately by the department responsible, once the formalities referred to in paragraphs 3, 4 or 6 have been completed. The residence certificate states the name and address of the person concerned; it does not have a period of validity and simply

states the date of registration. The purpose of the certificate is merely to record that an administrative formality has been carried out.

The last sentence defines the penalties applicable for failure to comply with the requirement to register, which must be non-discriminatory and proportionate. Since there is a provision in the Directive governing penalties for failure to comply with the obligations it provides for, that provision should apply in this respect too.

3. To be issued with the registration certificate, Union citizens must declare either that they are engaged in gainful activity or, if they are not, that they have sufficient resources and sickness insurance. The system proposed here is comparable to the one that already exists for students under the current legislation; it substantially simplifies the exercise of the right of residence and is inspired by the self-certification system used by several Member States. A false declaration could be penalised on the basis of the principle of equal treatment with nationals in compliance with the proportionality principle.

Under the system proposed, Member States are not to check that Union citizens meet the conditions governing residence, but are to take them on their word. In case of a false declaration or if the citizen seeks recourse to public funds, Member States may require proof of means of subsistence and/or carry out administrative investigations potentially challenging the right of residence. On the same basis, the fact that a citizen is not able to pay for his medical charges because he is not in receipt of medical assistance, could have repercussions on his civil liability and could eventually challenge his right of residence.

Finally it must be noted that the presentation of a simple declaration of sickness insurance doesn't exempt the person to give evidence of the insurance in the relations with authorities charged with dispensing medical assistance, in line with national legislation.

4. A Union citizen who goes to another Member State to study will be required to provide evidence that he is enrolled at an accredited establishment to follow a course of vocational training and to make a declaration to the effect that he has sufficient resources and sickness insurance cover.
5. Member States cannot put a figure on the amount of resources to be deemed sufficient, as is the case in current legislation, since such a requirement would fail to allow for the variety of possible situations.
6. Union citizens intending to settle in another Member State as family members of another Union citizen who satisfies the residence conditions must produce proof that they fall into one of the categories provided for in Article 2(2) or Article 3(2), which define family members.
7. These provisions broadly take over certain provisions of Directive 68/360/EEC, with clarifications, and incorporate Court of Justice case-law regarding the retention of worker status where the worker is no longer engaged in any employed or self-employed activity.

## Article 9

1. Family members of a Union citizen who are not nationals of a Member State must apply for a residence card. In their case, unlike the case of Union citizens, there does appear to be good reason for an actual residence card to be physically issued, in the interest of both the person concerned (for example, since a residence card is also to count as a visa as provided for in Article 6) and the authorities.
2. The application must be submitted within six months of arrival in the territory of the host Member State. The second sentence refers to family members required to have a visa, who must submit the residence card application before their visa expires.
3. This provision allows Member States to punish failure to comply with the requirement to apply for a residence card with penalties meeting the same criteria as those laid down in Article 8(2).

## Article 10

1. The right of residence of family members who are not nationals of a Member State is recorded by a residence card issued within three months of submission of the application: the residence card clearly indicates that the holder is a family member of a Union citizen, so as to make it clear that the holder has an entitlement under Community law. A certificate proving that the application has been submitted is issued immediately and free of charge: this certificate states that the person concerned has an entitlement under Community law.
2. By reference to Article 8(6), this provision provides an exhaustive list of the supporting documents that must be submitted by family members of a Union citizen who are not nationals of a Member State in order to obtain their residence card. The supporting documents are the same as the ones required of family members who are nationals of a Member State.

## Article 11

1. The residence card is valid for at least five years from the date of issue. After four years of continuous residence, family members will acquire a right of permanent residence and will have to apply for a new residence card, as laid down in Chapter IV. The fact that the initial card is valid for five years will make sure that the person concerned is not left without any documentation, should it take time to obtain the new card (to complete the administrative formalities).

Under the current legislation, family members who are not nationals of a Member State are issued with “a residence document which shall have the same validity as that issued to the worker on whom [they are] dependent” (Directive 68/360/EEC, Article 4(4)). Since, under the proposed Directive, Union citizens no longer have a residence card, but just a certificate which serves as a receipt, the idea of the validity of the family member’s residence document depending on a Union citizen’s residence card no longer makes sense.

2. The validity of the residence card is not affected by periods away of six months or, in specific circumstances, even longer. This provision is taken from Article 6(2) of Directive 68/360/EEC and extends the legitimate reasons for breaks in residence, which are the same as those set out in Article 18(1) of the proposed Directive.

## Article 12

1. Family members who are Union citizens have a residence entitlement in their own right: their right of residence is not affected by the death or the departure of the Union citizen on whom they depend. The purpose of this paragraph is merely to make it clear that, in the event of the death or departure of the Union citizen, these persons must themselves satisfy the conditions for the exercise of the right of residence laid down in Article 7(1) until they acquire the permanent right of residence.
2. Family members who are not nationals of a Member State have a right of residence via the Union citizen on whom they are dependent. However, they may retain the right of residence in the event of the Union citizen's death. Family members who are not nationals of a Member State do not retain the right of residence in the event of the Union citizen's departure, but must leave together with the citizen. An exception is provided for by paragraph 3 as regards children who are still studying.

The right of residence for the surviving family members who are not nationals of a Member State is subject to their being engaged in gainful activity or having sufficient resources, or being a member of a family, already constituted in the host Member State, of a person satisfying these conditions, until they acquire the permanent right of residence. Unlike the case of Union citizens, a simple *bona fide* declaration would not be sufficient: the persons concerned will have to prove that they satisfy the conditions. This paragraph also defines what is to count as sufficient resources and is taken from the existing provisions regarding the residence of people not in work.

3. This paragraph gives legislative status to the principle propounded by the Court of Justice in Joined Cases 389/87 and 390/87 *Echternach* and *Moritz* (judgment given on 15.3.1989) and concerns the children of Union citizens, not being nationals of a Member State, who are studying in the host Member State, and are integrated in the education system of a Member State and might have difficulty integrating into a new education system for reasons such as, amongst others, language and culture. These persons might be penalised by the fact that the parent, being a Union citizen, leaves the territory of the host Member State for professional or other reasons. This right of residence, which may be limited to the duration of the studies, is subject to enrolment at an educational establishment at a secondary or post-secondary level, precisely because re-integration in a new system may prove more difficult at this level. Logically, the stay of such persons remains bound by the principles of Article 21 concerning equal treatment.

## Article 13

1. Divorce or legal separation do not affect the right of residence of members of the family who are themselves Union citizens. This paragraph aims simply to make it clear that these members of the family, in light of a divorce or legal separation, must satisfy the conditions for the exercise of the right of residence laid down in Article 7(1) in their own right.

2. Paragraph 2 of this Article settles the problem of the right of residence of non-EU family members of Union citizens where the marriage is ended by divorce or dissolved. The purpose of this provision is to provide certain legal safeguards to people whose right of residence is dependent on a family relationship by marriage and who could therefore be open to blackmail with threats of divorce. It must be specified that, for reasons of legal certainty, for a marriage to count as dissolved a decree absolute must have been granted; in the event of *de facto* separation, the spouse's right of residence is not affected at all. The Court of Justice has upheld that "the marital relationship cannot be regarded as dissolved so long as it has not been terminated by the competent authority. It is not dissolved merely because the spouses live separately, even where they intend to divorce at a later date" (Judgment of the Court of Justice of 13 February 1985 in Case 267/83 *Diatta*, ECR 567, para. 20).

The right granted under this provision is subject to three disjunctive conditions:

- (a) the marriage must have lasted for five years up until the initiation of the judicial divorce or annulment proceedings, including at least one year in the host country, in order to avoid people using marriages of convenience to get round the residence entitlement rules; or
- (b) the spouse, not being a Union national, whose right of residence depends on their being married to a Union citizen has been granted custody of the Union citizen's children. This condition is in the interests not only of the children, who will not be forced to leave the host country where they may already be well integrated, but also of the Union citizen, who will be able to exercise any visiting or supervision rights more easily; or
- (c) the marriage was dissolved because of particularly difficult circumstances. The wording in the Article is vague and is meant to cover, in particular, situations of domestic violence.

The right of residence for family members who are not nationals of a Member State is subject to their being engaged in gainful activity or having sufficient resources until they acquire the permanent right of residence or being members of the family, already constituted in the host Member State, of a person satisfying these conditions. Unlike the case of Union citizens, a simple *bona fide* declaration would not be sufficient: the persons concerned will have to prove that they satisfy the conditions. This paragraph also defines what is to count as sufficient resources and is taken over from the existing provisions regarding the residence of people not in work.

## **CHAPTER IV**

### **RIGHT OF PERMANENT RESIDENCE**

The scope of the right to reside is extremely narrow in current Community law and subject to restrictive conditions. The Commission is, therefore, proposing to establish a right of residence on a permanent basis for all Union citizen and family members, even if they are not nationals of a Member State, after four years of unbroken residence in the host Member State. Several Member States, the law already provides for indefinite leave to reside after a certain period of residence regardless of nationality.

**SECTION I**  
**ACQUISITION**

Article 14

1. Union citizens acquire the right of permanent residence in the host Member State after a four-year period of continuous residence. This permanent right of residence is no longer subject to the conditions laid down in Chapter III of the Directive.

After a sufficiently long period of residence, it may be assumed that the Union citizen has developed close links with the host Member State and become an integral part of its society, which justifies granting what may be termed an upgraded right of residence. Furthermore, the integration of Union citizens settled long-term in a Member State is a key element in promoting social cohesion, a fundamental objective of the Union.

2. Family members who are not nationals of the host Member State may also acquire the right of permanent residence after four years' residence in the host Member State with the Union citizen on whom they depend.
3. Once acquired, the right of permanent residence is lost only in the event of more than five years' absence from the host Member State. The right of permanent residence acknowledges the integration of the Union citizen and his family members into the host Member State. Absences of more than four years would suggest a kind of "disintegration".

Article 15

The provisions of Article 15 aim to maintain the existing *acquis* on the right to reside.

1. Article 2 of Commission Regulation (EEC) No 1251/70 and Article 2 of Council Directive 75/34/EEC provide for specific conditions on which workers who have stopped working in the host Member State may acquire indefinite leave to reside, after having resided there for less than four years. The purpose is to retain this arrangement which is more favourable to workers than the general rule laid down in Article 14.
2. This paragraph takes over Article 2(2) of Regulation (EEC) No 1251/70 and Directive 75/34/EEC.
3. Where Union workers acquire the right of permanent residence on the basis of paragraph 1, the same right is acquired by their family members, irrespective of nationality, with no qualifying residence requirement. This provision takes over the current legislation on the right to reside, which provides that family members may remain in the host Member State permanently if the worker acquired the right to remain there (Article 3(1) of Regulation (EEC) No 1251/70 and Council Directive 75/34/EEC).

4. These provisions are taken from Article 3(2) of Regulation (EEC) No 1251/70 and Article 3 of Directive 75/34/EEC, granting the right of permanent residence – subject to certain conditions – to family members of employed or self-employed Union citizens who die while still working, before having acquired the right themselves. The only changes here are that the qualifying period during which the worker must have been resident prior to death has been reduced to one year from the two years laid down in the current legislation, and that point (c) has been clarified.

#### Article 16

For the sake of clarity, these provisions cover family members who are not nationals of a Member State and who had kept their right of residence where the Union citizen died or got divorced before the right of permanent residence was acquired, who are covered by Articles 12(2) and 13(2). If people in this situation satisfy the conditions, they acquire the right of permanent residence after four years of continuous residence in the host Member State, counted from their date of arrival.

### **SECTION II**

#### **ADMINISTRATIVE FORMALITIES**

#### Article 17

1. Acquisition of the right of permanent residence entails a series of important additional rights, such as access to social security in the host Member State for all categories of persons benefiting from the Directive and immunity from expulsion from the territory of the Member State of residence. This is why permanent residence status should be confirmed by the issuance of a residence card. While obtaining this card necessarily involves administrative formalities, once done, they are done once and for all, since the card will be valid indefinitely.
2. People entitled to the right of permanent residence have to apply for the residence card within two years. This provision is based on Article 5(1) of Regulation (EEC) No 1251/70. At first sight this provision may seem restrictive, but it prevents host Member States from imposing even more restrictive deadlines. Failure to comply with the deadline can give rise to non-discriminatory and proportionate penalties as in the case of failure to comply with the duty to register under Article 8.
3. The validity of the permit is affected only by absences of longer than four consecutive years.

#### Article 18

1. These provisions are based on Article 4 of Regulation (EEC) No 1251/70 regarding the right to remain. Continuity of residence may be proved by various means, such as evidence of being gainfully employed or self-employed or rent receipts. Member States must show flexibility regarding proof of residence duration and continuity. The duration of permitted absences not affecting continuity of residence has been extended to six months or more than six months where there are special reasons, such as compulsory military service, pregnancy and childbirth, study or work away.

2. This paragraph means that continuity of residence is broken by any expulsion decision duly taken against a person with right of residence.

## CHAPTER V

### COMMON PROVISIONS – RIGHT OF RESIDENCE AND RIGHT OF PERMANENT RESIDENCE

#### Article 19

The first sentence is taken from Article 6(1)(a) of Directive 68/360/EEC and Article 5 of Directive 73/148/EEC. The second sentence reflects the principle of equal treatment and is taken from the Court of Justice judgment of 28 October 1975 in Case 36/75 *Roland Rutili v Minister for the Interior* [1975] ECR 1219, para. 50.

#### Article 20

Irrespective of nationality, family members of Union citizens are entitled to work in an employed or self-employed capacity in the host Member State. The Article makes no distinction between different members of the family. This is a new departure from the current legislation, which confines this right to spouses and minor or dependent children, though logically any Union citizen's right to engage in gainful activity flows directly from the Treaty.

#### Article 21

1. This provision lays down the principle of equal treatment as between Union citizens and host-country nationals. It broadly takes up the conclusions of the Court of Justice in its judgment of 12 May 1998 in Case C-85/96 *María Martínez Sala v Bavaria Freistaat* [1998] ECR I-2691, point 62, and establishes a direct link between the principle of non-discrimination and the right of residence (Articles 12 and 18(1) of the EC Treaty).

The same right to equal treatment is extended to family members who are not nationals of a Member State but enjoy the right of residence or permanent residence in the host Member State.

2. In order not to entail undue financial burdens on host Member States, this provision qualifies the general principle of equal treatment for all Union citizens, by not according entitlement to social assistance to Union citizens and family members who reside in another Member State but are not engaged in gainful activity there. In addition, Article 7 clearly stipulates that people not working must have sufficient resources and sickness insurance, and by consequence having recourse to public funds may challenge his right of residence. The notion of public funds also includes free medical benefits provided by the Member States as indicated in national legislation for destitute persons.

In the same vein, host Member States are not required to provide maintenance grants to Union citizens coming to the country to study as their principal occupation. Maintenance grants count as welfare assistance in the broad sense of the term and, therefore, students are not eligible for it under the terms of this Directive, since they are required to assure the relevant national authorities that they have sufficient resources to avoid being a burden on public assistance funds in the host Member State: this provision needs to be retained for the sake of clarity. Nonetheless, it should not be forgotten that under paragraph 1 students may not be discriminated against in other

fields on the grounds of nationality, such as when it comes to grants other than maintenance grants or medium-term loans with special low interest rates for students.

These qualifications apply until permanent residence status is acquired in accordance with the provisions of Title IV of the Directive: once this status is acquired, persons enjoying the right of permanent residence Union citizens are treated on an equal footing with nationals.

#### Article 22

1. This is a new clarifying provision on the validity of residence documents issued by the host Member States, which builds upon Court of Justice conclusions that the residence card merely records an existing right: holding a residence card is not a pre-condition for exercising rights connected with the free movement of persons and, in particular, the right of residence in another Member State (*inter alia*, judgment of 8 April 1976 in Case 48/75 *Royer* [1976] ECR 497, para. 50).
2. Residence documents are issued by the Member States free of charge or at the same rate charged to nationals for receiving similar documents (for example, the cost of a residence card could be comparable to that of national identity card).

#### Article 23

This Article reflects the principle of equal treatment as it relates to the requirement to carry a residence document. The first sentence is based on the Court of Justice judgment of 27 April 1989 in Case 321/87 *Commission v Belgium* [1989] ECR 997, para. 12, and the second on Court of Justice case-law (judgment of 12 December 1989 in Case C-265/88 *Messner* [1989] ECR 4209, para. 14, and judgment of 30 April 1998 in Case C-24/97 *Commission v Germany* [1998] ECR I-2133).

#### Article 24

This is a new provision to protect Union citizens against arbitrary decisions by public authorities.

This Article establishes procedural guarantees available to a person enjoying the right of residence where a Member State takes an expulsion decision against him on grounds other than those set out in Chapter VI (public policy): the aim here is to ensure that the citizen is no less well protected against expulsion decisions based on administrative grounds than where there are public policy grounds.

An expulsion decision taken on such grounds may not involve a ban on entry in the territory of the Member State taking the decision; this distinguishes it from a public policy decision.

### **CHAPTER VI**

#### **LIMITS ON THE RIGHT OF ENTRY AND THE RIGHT TO RESIDE ON GROUNDS OF PUBLIC POLICY, PUBLIC SECURITY OR PUBLIC HEALTH**

In accordance with Court of Justice case-law (judgment of 3 July 1980 in Case 155/79 *Regina v Pieck* [1980] ECR 2171), the proviso the Treaty attaches to the free movement of persons on grounds of public policy, public safety and public health does not constitute a screening criterion for the granting of leave to enter and leave to reside, but is intended to

make it possible, in individual cases and where duly warranted, for restrictions to be placed on the exercise of the right, which flows directly from the Treaty. This means that Member States may not cite grounds of public policy, public security or public health as general grounds or without case-specific justification in order to restrict the exercise of the right to move and reside freely.

The Commission proposal aims to provide a tighter definition of the concept of public policy by incorporating established Court of Justice case-law on the matter, strengthen procedural safeguards, in particular by ensuring that judicial redress procedures are always available, and provide greater protection against expulsion by taking account of how integrated the Union citizen is in the host country, as well as providing absolute protection for minors with family ties in the host country and for people with permanent residence status.

#### Article 25

1. This Article states the principle already contained in the Treaty that restrictions on freedom of movement and residence are permissible only on grounds of public policy, public security or public health. These grounds may not be cited to serve economic ends (Article 2(2) of Directive 64/221/EEC).
2. Measures taken on grounds of public policy or public security must be adopted on the basis of the personal conduct of the individual they concern. A previous criminal conviction does not justify the automatic adoption of such measures (Directive 64/221/EEC, Article 3(1) and (2)).

This paragraph defines the concept of public policy in light of the judgment given by the Court of Justice on 27 October 1977 in Case 30/77 *Bouchereau* [1977] ECR 1999, para. 35. The threat represented by the individual must be present and serious, and founded on personal conduct.

This paragraph gives legislative force to a principle that follows from the Court of Justice judgment of 18 May 1982 in Joined Cases 115 and 116/81 *Adoui and Cornuaille* [1982] ECR 1665, point 8, which clarifies the concept of serious threat and ensures equal treatment for nationals of other Member States and host-country nationals.

3. This paragraph is based on Article 3(3) of Directive 64/221/EEC.
4. This paragraph is based on Article 5(2) of Directive 64/221/EEC.
5. This paragraph is based on Article 3(4) of Directive 64/221/EEC.

#### Article 26

1. These provisions are intended to provide greater safeguards against expulsion, by requiring the Member States, before ordering the expulsion of a Union citizen or family member, to take account of the person's degree of integration in the host country on the basis of certain criteria referred to by way of examples. This provision is not devoid of legal effect, since any decision by a Member State that failed to take these criteria into account would be open to the charge that it was disproportionate and could, therefore, be overturned by national courts, which, as explicitly stipulated in this Directive (Article 29(4)), are required to check that these criteria have been properly taken into account.

2. This provision introduces absolute protection against expulsion for Union citizens and family members with permanent residence status and for family members who are minors. In the case of minors, this protection is dictated by humanitarian considerations. People with permanent residence status are assumed to have developed very close ties integrating them into the host Member State, which would make expulsion unjustifiable. Expulsion orders have a very serious impact on the person concerned, destroying the emotional and family ties they have developed in the host country.

#### Article 27

1. These provisions specify the only diseases and disabilities that may justify refusal of leave to enter or reside on public health grounds. The conditions in question are the ones from the annex to Directive 64/221/EEC that are still current. Since the remaining conditions are no longer current, the annex to Directive 64/221/EEC has not been incorporated into this Directive.
2. This restriction is taken from Article 4(2) of Directive 64/221/EEC and means that the right of residence cannot be contested on health grounds
3. These provisions may be used only in exceptional circumstances, where there are serious indications that the person concerned suffers from one of the diseases or disabilities that can justify refusal of leave to enter or reside and provided that the host Member State bears the full costs of the examination. Such examinations may on no account be carried out as a matter of course, as this would undermine the purpose of the provisions on the issuance of residence certificates and residence cards, laid down in Articles 8 or 10.

#### Article 28

1. This provision is taken from Article 7 of Directive 64/221/EEC, with the last phrase specifying the manner in which the person concerned is to be notified, based on a principle from the Court of Justice judgment of 18 May 1982 in joined Cases 115 and 116/81 *Adoui and Cornuaille* [1982] ECR 1665, para. 13. The phrase at the end does not mean that the decision has to be translated into the language of the person concerned, particularly where it is a lesser known language, but it does require Member States to do what they can to make sure that the person concerned understands what the decision is about and what it means for them.
2. These provisions are taken from Article 6 of Directive 64/221/EEC with two additions based on Court of Justice case-law (judgment of 28 October 1975 in Case 36/75 *Rutili* [1975] ECR 1219, para. 39), requiring Member States, when notifying the individual concerned of a decision taken against them, to specify the exact reasons for the decision in full, so that the person is in a position to prepare their defence properly. A further safeguard is that decisions refusing leave to enter or reside must not only state the reasons on which they are based, but also be done in writing, so that the courts can, if necessary, carry out a proper judicial review.
3. The final safeguard is the requirement that the notification must inform the person concerned of the procedures available to them to appeal against decisions refusing leave to enter or reside. The last sentence of this paragraph is taken over from Article 7 of Directive 64/221/EEC, allowing the person concerned, except in duly

substantiated emergencies, to stay in the host Member State at least fifteen days or one month, depending on the case, in order to have the time necessary to carry out the formalities to lodge their appeal.

#### Article 29

1. These provisions aim to ensure that people entitled to the right of residence have access to administrative and judicial redress, guaranteeing complete judicial protection.
2. Complete judicial protection does not exclude the possibility of a Member State providing for an appeals procedure before an administrative authority. In this eventuality, there must be objectivity safeguards, as taken over from Article 9 of Directive 64/211/EEC, in particular the matter must be first referred to an authority other than the one which is to take the decision refusing leave to enter or ordering expulsion, and the right of defence must be protected.
3. Under this provision, the national court will now be able to order suspension of the enforcement of decisions refusing leave to enter or ordering expulsion, where the decision is deemed *prima facie* unjustified, even if national law does not stipulate that appeals have suspensory effect. Giving appeals automatic suspensory effect would not be a suitable solution, since it would lay the arrangements open to abuse. The judgment of national courts can be relied on to ensure that the interests of both the individuals concerned and the Member States are adequately protected.
4. This provision, which is based on para. 15 of the *Adoui and Cornuaille* judgment, makes it clear that the national court's job is to review not only the legality of the contested decision (which is of limited importance in such cases), but also the facts which form the basis for it. The second sentence of paragraph 4 makes it a matter for national courts to consider the various criteria referred to, by way of examples, in Article 26, requiring them to check whether the measure in question is in line with the fundamental principle of proportionality.
5. Paragraph 5 allows the Member States to exclude the individual concerned from their territory pending the hearing, while ensuring the individual's presence in person at the hearing and protecting their fundamental right to a fair trial (Court of Justice judgment in *Pecastaing*, para. 13).

#### Article 30

1. This provision incorporates into the legislation a right already recognised by the Court of Justice (judgment of 18 May 1982 in Joined Cases 115 and 116/81, *Adoui and Cornuaille*, point 12; judgment of 19 January 1999 in Case C-348/96, *Donatella Calfa*), by prohibiting life-long exclusion orders against people who have been expelled on grounds of public policy or public security.
2. Paragraph 2 provides that the reasonable period after which a new application may be submitted, as referred to in the Court of Justice judgment in *Adoui and Cornuaille*, may not be more than two years from the date of the decision refusing leave to enter or ordering expulsion. When considering fresh applications, Member States must take into account any material changes in the circumstances which justified the first expulsion order.

This provision also lays down the time limit for the Member State to decide on the new application, so as not to undermine the purpose of the first subparagraph.

3. Paragraph 3 is based on point 12 of the *Adoui and Cornuaille* judgment. This provision is needed to avoid leaving the way open for abuses of the system.

#### Article 31

1. This new provision concerns cases where an expulsion order is issued as a penalty or legal consequence of a custodial sentence, either by a criminal court or an administrative authority, as happens in certain Member States in cases of criminal conviction. While criminal law is generally speaking the preserve of the Member States, the Court of Justice has consistently held that Community law imposes certain limits on this power and that such law may not restrict the fundamental freedoms protected under Community law (judgment of 2 February 1989 in Case 186/87, *Cowan*, para. 19). Under this new provision, before ordering the expulsion of a Union citizen or family member, irrespective of nationality, as a penalty or legal consequence in accordance with national legislation, national criminal courts and administrative authorities will now be required to have regard to Community law, principally the provisions of this Directive, and in particular Articles 25, 26, 27 and 30(1).
2. In several Member States, expulsion decisions are taken at a particular juncture, often in conjunction with a criminal sentence, whereas actual enforcement of the decision takes place at a later date, often several years after the initial decision. This provision requires Member States, when enforcing an expulsion order, to check that the danger to public policy and public safety still applies and to assess whether the circumstances which gave rise to the initial decision have changed.

### **CHAPTER VII**

#### **FINAL PROVISIONS**

#### Article 32

Since the Directive introduces a new regime for the free movement and the right of residence of Union citizens and establishes new rights, it would be opportune for the Member States to inform Union citizens of their rights and obligations as covered by the present Directive.

#### Article 33

This Article lays down the principles to be respected in setting the penalties applicable to violations of national provisions enacted pursuant to the Directive. Penalties must be effective, proportional and dissuasive; they must be comparable to those applied by the Member States to their own nationals in the event of minor offences. This follows a long line of Court of Justice cases (e.g. Case C-265/88 *Messner* and Case C-24/97 *Commission v Germany*).

#### Article 34

This Directive does not prevent the application of national provisions that treat nationals of other Member States on terms that are more favourable than those provided for in the present Directive. For example, any Member State that gives non-EU family members status in their own right after two years of residence may continue to do so.

#### Article 35

This Article states which provisions of Community law are repealed or deleted and which are retained. In practice, the only current Community texts on freedom of movement and the right of residence to remain in force will be Regulation (EEC) No 1612/68 and Regulation (EEC) No 1251/70.

The Directive deletes some of the provisions of Regulation (EEC) No 1612/68 as regards the concept of family member and access to work for family members: the provisions of the Directive apply to everyone concerned and, therefore, replace the similar provisions figuring until now in Regulation (EEC) No 1612/68.

Following adoption of this Directive, the Commission will in due course submit a proposal for the repeal of Regulation (EEC) No 1251/70 which was adopted on the basis of Article 39(3)(d) of the Treaty, which gives the Commission sole authority over the right to reside for workers.

To avoid creating a legal vacuum, the provisions of paragraphs 1 and 2 of this Article will not come in force until 1 July 2003.

#### Article 36

This Article requires the Commission to produce a report on the application of the Directive, as is often done with new Directives. This will make it possible for the Commission to check that the Directive has been correctly transposed, detect any difficulties in applying it in practice and assess whether any of the provisions need to be amended.

#### Articles 37

Member States are required to adopt and publish measures transposing this Directive by 1 July 2003 at the latest and to apply it from the same date. They are to inform the Commission of the changes enacted in their laws, regulations or administrative provisions. They are to quote the Directive in any such provisions enacted.

#### Article 38

This Article sets the date of entry into force of the Directive.

#### Article 39

The Directive is addressed exclusively to the Member States.

Proposal for a

**EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE**

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

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the Opinion of the Economic and Social Committee<sup>2</sup>,

Having regard to the Opinion of the Committee of the Regions<sup>3</sup>,

Acting in accordance with the procedures laid down in Article 251 of the Treaty<sup>4</sup>,

Whereas:

- (1) The common provisions contained in Title I of the Treaty on European Union state that one of the objectives of the Union is to “strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union”.
- (2) The free movement of persons constitutes one of the fundamental rights of the internal market which is, under Article 14(2) of the EC Treaty, an area without internal borders, within which freedom is assured in accordance with the provisions of the Treaty.
- (3) The introduction of citizenship of the Union under Articles 17 and 18 of the Treaty confers on each citizen of the Union a primary, individual right to move and reside freely within the territory of the Member States.
- (4) The development of the mobility of students, researchers, those undertaking training, volunteers, teachers and trainers is recognised as a political priority of the European Union.

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<sup>1</sup> OJ C  
<sup>2</sup> OJ C  
<sup>3</sup> OJ C  
<sup>4</sup> OJ C

- (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<sup>5</sup>, 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<sup>6</sup>, 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<sup>7</sup>, Council Directive 90/364/EEC of 28 June 1990 on the right of residence<sup>8</sup>, 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<sup>9</sup> and Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students<sup>10</sup>, needs to be reviewed in order to facilitate the exercise of this right, in accordance with Article 18(2) of the Treaty.
- (6) The right of each citizen of the Union to move and reside freely within the territory of the Member States must, if it is to be exercised under objective conditions of freedom and dignity, be granted to their family members, irrespective of nationality. The definition of family member must be widened and standardised for all persons entitled to the right of residence.
- (7) There is a need for the formalities connected with the free movement on 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<sup>11</sup>, namely by treating residence documents as equivalent to short-stay visas.
- (8) In keeping with new developments in mobility, working arrangements and lifestyles less tied to a single place, stays not exceeding six months by Union citizens should not be subject to any formalities other than the requirement to hold a valid identity card or passport.
- (9) Persons exercising the right to free movement should not, however, have recourse to public funds in 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 country for themselves and their family members, or

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<sup>5</sup> OJ L 257, 19.10.1968, p. 2; Regulation as last amended by Regulation (EEC) No 2434/92 (OJ L 245, 26.8.1992, p. 1).

<sup>6</sup> OJ L 257, 19.10.1968, p. 13; Directive as last amended by the Act of Accession of Austria, Finland and Sweden.

<sup>7</sup> OJ L 172, 28.6.1973, p. 14.

<sup>8</sup> OJ L 180, 13.7.1990, p. 26.

<sup>9</sup> OJ L 180, 13.7.1990, p. 28.

<sup>10</sup> OJ L 317, 18.12.1993, p. 59.

<sup>11</sup> OJ L 81, 21.3.2001, p. 1.

that they be students undergoing vocational training in the host Member State, or be family members of a Union citizen who does satisfy one of these requirements.

- (10) The fundamental and personal right of Union citizens to reside in another Member State is not dependent upon their having been issued a residence card; the residence card requirement should therefore be restricted to cases where it is genuinely warranted, in particular for members of the Union citizen's family who are not nationals of a Member State and for stays of longer than six months.
- (11) For stays of longer than six months, registration by Union citizens with the competent authorities in the place of residence, attested by a certificate to that effect, in combination with the possession of a valid identity card from the Member State of origin, or a passport, is sufficient and proportionate and adequate for the host Member State's purpose of keeping a record of the movement of people on its territory.
- (12) The supporting documents required by the administrative authorities for the issuance of a certificate or residence card must be comprehensively specified in order to avoid divergent administrative practices or interpretations constituting an undue obstacle to the exercise of the right of residence by Union citizens and their family members.
- (13) Family members should be legally safeguarded in the event of the death of the Union citizen or of marriage dissolution; with due regard to family life and human dignity and on certain conditions to guard against abuses of the system, measures should be taken to ensure that persons in such circumstances retain their right of residence.
- (14) Guaranteed permanent residence for Union citizens who have chosen to settle long-term in another Member State strengthens the feeling of holding a common citizenship and is a key element in promoting social cohesion, which is one of the fundamental objectives of the Community; a right of permanent residence should, therefore, be laid down for all Union citizens after four years of uninterrupted residence.
- (15) Certain advantages specific to Union citizens who are in paid employment or who are self-employed should, however, be maintained, as these constitute acquired rights, conferred by Commission Regulation (EEC) No 1251/70 of 29 June 1970<sup>12</sup> and Council Directive 75/34/EEC of 17 December 1974<sup>13</sup>, which concern to the right to reside within the territory of a Member State after having worked there in an employed or self-employed capacity.
- (16) Where Union citizens exercise their right of permanent residence, it should also be extended to their family members. Where an employed or self-employed Union citizen dies while still working, but before having acquired the right of permanent residence, the family members should also be able to acquire the right of permanent residence and should be subject to special conditions.

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<sup>12</sup> OJ L 142, 30.6.1970, p. 24.

<sup>13</sup> OJ L 14, 20.1.1975, p. 10.

- (17) In order to be a genuine vehicle for integration into the society of the host Member State where the Union citizen resides, the right of permanent residence should not be subject to conditions, but should confer complete equality of treatment with nationals, as well as maximum protection against expulsion.
- (18) Consequently, the acquisition of the right of permanent residence provides Union citizens and their family members with additional rights and increased protection; this right should, therefore, be evidenced by the issuance of a residence card having unlimited duration.
- (19) In accordance with the principle of non-discrimination, all Union citizens and their family members should enjoy equal treatment with nationals in areas covered by the Treaty. However, prior to acquisition of the right of permanent residence, it is a matter for the host Member State to decide whether it will extend social security provision or sickness insurance coverage to persons not engaged in gainful activity, or maintenance grants to Union citizens coming to study on its territory.
- (20) Articles 39(3), 46(1) and 55 of the Treaty allow limits to be placed on the right of free movement on grounds of public policy, public security and public health. Council Directive 64/221/EEC<sup>14</sup> provided for the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health.
- (21) In view of the case-law of the Court of Justice of the European Communities and the basic right of freedom of movement, there is a need for a tighter definition of the circumstances and procedural guarantees subject to which Union citizens and their family members may be denied leave to enter, or may be expelled.
- (22) Expulsion of Union citizens and members of their families on grounds of public policy or public security is a drastic measure that can seriously harm persons who, having availed themselves of the rights and freedoms conferred on them by the Treaty, have become genuinely integrated into the host Member State. The scope for such measures should therefore be limited to take account of the degree of integration of the person concerned and to prohibit expulsion of Union citizens or members of their families who have a permanent right of residence or of family members who are minors.
- (23) The administrative rules of procedure should also be specified in detail in order to ensure a high level of protection of the rights of Union citizens and their family members in the event of their being refused leave to enter or reside in another Member State, as well as to uphold the principle that any action taken by the authorities must be properly justified.
- (24) In all events, judicial redress procedures should be available to Union citizens and members of their families who have been refused leave to enter or reside in another Member State, and on the same terms as those available to nationals as regards both the conditions for lodging an appeal and the conduct of the proceedings.

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

- (25) In line with the case-law of the Court of Justice, the right of Union citizens or members of their families who have been expelled to submit a fresh application after a reasonable period and no later than after two years should be confirmed.
- (26) Owing to the new conditions laid down by this Directive for the exercise of the right of free movement, provisions of existing legislation that are contrary to this Directive should be deleted or amended, while allowing national provisions that are more favourable to be applied.
- (27) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union as general principles of Community law,

HAVE ADOPTED THIS DIRECTIVE:

## **CHAPTER I**

### **GENERAL PROVISIONS**

#### *Article 1* *Subject*

This Directive lays down:

- (a) the conditions governing the exercise of the right to move and reside freely within the Member States by Union citizens and their family members;
- (b) the right of permanent residence in the Member States for Union citizens and their family members;
- (c) the limits placed on these rights on grounds of public policy, public security and public health.

#### *Article 2* *Definitions*

For the purposes of this Directive:

- (1) “*Union citizen*” means any person having the nationality of a Member State;
- (2) “*Family member*” means:
  - (a) the spouse;
  - (b) the unmarried partner, if the legislation of the host Member State treats unmarried couples as equivalent to married couples and in accordance with the conditions laid down in any such legislation;
  - (c) the direct descendants and those of the spouse or unmarried partner as defined in point (b);

- (d) the direct relatives in the ascending line and those of the spouse or unmarried partner as defined in point (b);
- (3) “*Host Member State*” means the Member State to which a Union citizen goes in order to exercise his right of free movement and residence.

*Article 3*  
*Persons entitled*

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

*Article 4*  
*Non-discrimination clause*

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

**CHAPTER II**

**RIGHT TO MOVE AND TO RESIDE FOR UP TO SIX MONTHS**

*Article 5*  
*Right of exit*

- (1) All Union citizens shall have the right to leave their territory to travel to another Member State with a valid identity card or passport.
- For family members who are not nationals of a Member State, this right shall be the same as for the Union citizen whom they accompany or join.
- (2) No exit visa or equivalent formality may be imposed on the persons to whom paragraph 1 applies.
- (3) Member States shall issue to their own nationals, and renew, an identity card or passport stating their nationality.

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

*Article 6*

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

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

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

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

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

- (3) The host Member State shall not place an entry or exit stamp in the passport of family members who are not nationals of a Member State provided they are in possession of a residence card.
- (4) Where a Union citizen or family member does not have the necessary travel documents or, if required, the necessary visas, the Member State concerned shall, before turning them back, give such persons every opportunity to obtain the necessary documents or have them brought to them or to corroborate or prove by other means that they are covered by the right to freedom of movement.
- (5) The right of Union citizens to enter the territory of a Member State shall include the right to reside there for a period of no more than six months with a valid identity card or passport. The Member State may only require the person concerned to report their presence on its territory within a time limit, which may not be less than fifteen days. Failure to comply with this requirement may make the person liable to penalties, which shall be proportionate and non-discriminatory.
- (6) The provisions of paragraph 5 shall also apply to family members who are third-country nationals accompanying or joining the Union citizen. However, if such family members are required to have a visa, they must apply for a residence card in accordance with Article 9 before their visa expires.

## CHAPTER III

### RIGHT OF RESIDENCE FOR MORE THAN SIX MONTHS

#### *Article 7*

#### *Conditions governing right of residence*

- (1) All Union citizens shall have the right to reside on the territory of another Member State for a period of longer than six months if they:
  - (a) are engaged in gainful activity in an employed or self-employed capacity; or
  - (b) have sufficient resources for themselves and for their family members without recourse to welfare funds in the host Member State during their stay and that they have sickness insurance covering all risks in the host Member State; or
  - (c) are students admitted to a course of vocational training; or
  - (d) are a family member of a Union citizen who satisfies conditions (a), (b) or (c).
- (2) The right of residence shall extend to family members who are not nationals of a Member State, where they accompany or join the Union citizen in the host Member State, provided that such Union citizen satisfies the conditions referred to in paragraph 1(a) or (b) or (c).

#### *Article 8*

#### *Administrative formalities for Union citizens*

- (1) For stays of longer than six months, the host Member State may require Union citizens to register with the relevant authorities.
- (2) The deadline for registration may not be less than six months from the date of arrival. The right of residence shall be evidenced by a certificate of registration, issued on the spot, stating the name and address of the person registering and the date of the registration. Failure to comply with the registration requirement may make the person liable to proportionate and non-discriminatory penalties.
- (3) For the certificate of registration to be issued, Member States may require only that Union citizens to whom Article 7(1)(a) or (b) applies present a valid identity card or passport and assure the relevant authority, by means of a declaration or by such alternative means as they may choose, that they satisfy the conditions laid down therein.
- (4) For the certificate of registration to be issued, Member States may require only that Union citizens to whom Article 7(1)(c) applies present a valid identity card or passport and evidence of enrolment at an accredited establishment to follow a course of vocational training and assure the relevant authority, by means of a declaration or by such alternative means as they may choose, that they have sufficient resources for themselves and for their family members not to become a burden on the social assistance system of the host Member State during their stay and that they have sickness insurance covering all risks in the host Member State.

- (5) Member States may not lay down an amount which they regard as sufficient resources.
- (6) For the certificate of registration to be issued to family members of Union citizens, Member States may require the following documents to be presented:
  - (a) a valid identity card or passport;
  - (b) a document proving the family relationship;
  - (c) where relevant, the registration certificate of the Union citizen whom they accompany or join;
  - (d) in cases falling under Article 2(2)(b), proof that the conditions laid down therein are met;
  - (e) in cases falling under Article 3(2), a document issued by the relevant authority in the country of origin or country from which they are arriving, certifying that they are dependants of the Union citizen or members of his/her household.
- (7) The certificate of registration may not be refused to a worker who is no longer engaged in an employed or self-employed activity, in the following circumstances:
  - (a) he/she is temporarily unable to work as the result of an illness or accident;
  - (b) he/she is in duly recorded involuntary unemployment and has registered as a jobseeker with the relevant employment office ;
  - (c) he/she is in involuntary unemployment after completing a fixed-term employment contract of less than a year and have registered as a jobseeker with the relevant employment office. In such cases, he/she shall retain worker status for a period which may not be less than six months; where the person concerned has acquired entitlement to unemployment benefits, worker status shall be retained for as long as such entitlement runs;
  - (d) he/she embarks on vocational training. Unless the person concerned is involuntarily unemployed, retaining worker status shall require the training to be related to their previous occupation.

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

- (1) Member States shall issue a residence card to family members of a Union citizen who are not nationals of a Member State, where the planned stay is for more than six months.
- (2) The deadline for submitting the residence card application may not be less than six months from the date of arrival. However, family members required to have a visa must apply before their visa expires.

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

*Article 10*  
*Issuing of residence cards*

- (1) The right of residence of family members of a Union citizen who are not nationals of a Member State shall be evidenced by the issue of a document bearing the words “residence card of a family member of an EU citizen” no later than three months from the date on which they submit the application. A certificate of proof of application shall be issued on the spot. This document shall also record that the person concerned is a family member of a Union citizen.
- (2) For the residence card to be issued, Member States shall require presentation of the same documents as those referred to in Article 8(6).

*Article 11*  
*Validity of the residence card*

- (1) The residence card provided for by Article 10(1) shall be valid for at least five years from the date of issue.
- (2) The validity of the residence card shall not be affected by breaks in residence not exceeding six months at a time or by absences of a longer duration for important reasons such as compulsory military service, serious illness, pregnancy and childbirth, study or vocational training, or a work assignment in another Member State or third country.

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

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

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

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

Before acquiring the right of permanent residence, the family members’ right of residence shall, nonetheless, be subject to the condition that they engage in gainful activity in an employed or self-employed capacity or that they have sufficient resources to support themselves and their family members 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.

### *Article 13*

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

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

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

- (2) Without prejudice to the second subparagraph, divorce or annulment of marriage shall not entail the loss of the right of residence of an EU citizen's family members who are not nationals of a Member State where:
- (a) prior to the initiation of the divorce or annulment proceedings, the marriage has lasted at least five years, including one year in the host Member State; or
  - (b) by agreement between the spouses or by court order, the spouse, not being an EU national, has custody of the EU citizen's children; or
  - (c) this is warranted by particularly difficult circumstances.

Before acquiring the right of permanent residence, the right of residence of the non-EU national shall, nonetheless, be subject to the condition that they engage in gainful activity in an employed or self-employed capacity or that they have sufficient resources to support themselves and their family members not to become a burden on the social assistance system of the host Member State for the duration of their stay and covering all risks in the host Member State, or be a member of the family, already constituted in the host Member State, of an applicant satisfying these conditions.

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

## CHAPTER IV

### RIGHT OF PERMANENT RESIDENCE

#### SECTION I

#### ELIGIBILITY

##### *Article 14*

##### *General rule for EU citizens and their family members*

- (1) A Union citizen who has resided legally and continuously for four years in the host Member State shall have the right of permanent residence there. Thereafter the right shall not be subject to the conditions provided for in Chapter III.
- (2) Paragraph 1 shall apply also to family members who are not nationals of a Member State and who have resided with the Union citizen in the host Member State for four years.
- (3) Once acquired, the right of permanent residence shall be lost only through absence from the host Member State for a period exceeding four consecutive years.

##### *Article 15*

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

- (1) By way of derogation from Article 14, the right of permanent residence on the territory of the host Member State shall be enjoyed before completion of four years of continuous residence, by:
  - (a) employed or self-employed persons who, at the time of termination of their activity, have reached the age laid down by the law of that Member State for entitlement to an old-age pension or who cease paid employment to take early retirement, provided they have been working in that State for at least the preceding twelve months and have resided there continuously for at least three years.

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

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

If the incapacity is the result of an accident at work or an occupational disease entitling the person to a pension payable in full or in part by an institution in that Member State, no condition shall be imposed as to length of residence;

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

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

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

- (2) The conditions as to length of residence and employment laid down in paragraph 1(a) and the condition as to length of residence laid down in paragraph 1(b) shall not apply if the worker's spouse is a national of the Member State concerned or has lost the nationality of that State by marriage to that worker.
- (3) The family members of an employed or self-employed worker who has acquired the right of permanent residence on the basis of paragraph 1 shall, irrespective of their nationality, have the right of permanent residence in the host Member State.
- (4) The family members of employed or self-employed persons who die while still working but before acquiring permanent residence status on the basis of paragraph 1 in the host Member State in question shall have the right of permanent residence there, on condition that :
  - (a) the employed or self-employed person had, at the time of death, resided continuously within the territory of the Member State for one year; or
  - (b) the death resulted from an accident at work or occupational disease; or
  - (c) the surviving spouse lost the nationality of that State following marriage to the worker.

#### *Article 16*

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

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

## SECTION II

### ADMINISTRATIVE FORMALITIES

#### *Article 17*

##### *Permanent residence card*

- (1) Member States shall issue persons entitled to permanent residence with a permanent residence card within three months of the submission of the application. The permanent residence card shall be valid indefinitely. It shall be renewable automatically every ten years.
- (2) The time limit within which the person entitled must apply for the permanent residence card may not be shorter than two years running from the date on which they became entitled. However, family members who are not EU nationals must submit the application before their existing residence card expires.

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

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

#### *Article 18*

##### *Continuity of residence*

- (1) Continuity of residence may be attested by any means of proof in use in the Member State of residence. It shall not be affected by temporary absences not exceeding a total of six months per year or by longer absences for important reasons such as compulsory military service, serious illness, pregnancy and childbirth, study or vocational training, or a work assignment in another Member State or third country.
- (2) Continuity of residence is broken by any expulsion decision duly taken against the person concerned, except where enforcement of the decision is deferred.

## CHAPTER V

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

#### *Article 19* *Territorial scope*

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

#### *Article 20* *Related rights*

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

#### *Article 21* *Equal treatment*

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

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

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

#### *Article 22* *General provisions concerning residence documents*

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

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

*Article 23*  
*Checks by the authorities*

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

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

*Article 24*  
*Procedural safeguards*

- (1) Without prejudice to Chapter VI, the procedures provided for by Articles 28 and 29 shall apply by analogy to all expulsion decisions taken by the host Member State against Union citizens and their family members on grounds other than public policy, public security or public health.
- (2) The host Member State may not impose a ban on entry in the context of an expulsion decision to which paragraph 1 applies.

**CHAPTER VI**

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

*Article 25*  
*General principles*

- (1) This Chapter shall apply to decisions whereby Union citizens and their family members, irrespective of nationality, are refused entry or expelled on grounds of public policy, public security or public health. These grounds may not be cited to serve economic ends.
- (2) Measures taken on grounds of public policy or public security shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for the taking of such measures.

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

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

- (3) Expiry of the identity card or passport on the basis of which the person concerned entered the host Member State and was issued with a registration certificate or residence card shall not constitute a ground for expulsion from the territory.
- (4) When issuing the registration certificate or initial residence card, the host country may, in cases where this is considered essential, request the Member State of origin of the applicant and, if need be, other Member States to provide information concerning any previous police record the EU citizen or family member may have. Such enquiries shall not be made as a matter of routine. The Member State consulted shall give its reply within two months.
- (5) The Member State which issued the identity card or passport shall allow the holder of the document to re-enter its territory without any formality even if the document is no longer valid or the nationality of the holder is in dispute.

*Article 26*  
*Protection against expulsion*

- (1) Before taking an expulsion decision on grounds of public policy or public security, the host Member State shall take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host country and the extent of his/her links with the country of origin.
- (2) A host Member State may not take an expulsion decision on grounds of public policy or public security against EU citizens or their family members, irrespective of nationality, who have the right of permanent residence on its territory or against family members who are minors.

*Article 27*  
*Public health*

- (1) The only diseases or disabilities justifying refusal of leave to enter or leave to reside on the territory of a Member State shall be the diseases subject to quarantine listed in International Health Regulation No 2 of the World Health Organisation of 25 May 1951 and other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to nationals of the host country. Member States shall not introduce new provisions or practices which are more restrictive than those in force at the date of notification of this Directive.
- (2) Disease or disabilities occurring after registration with the authorities in the place of residence or after a first residence card has been issued shall not be grounds for refusal to issue the permanent residence card or for expulsion.
- (3) Where there are serious indications that it is necessary, Member States may require persons entitled to the right of residence to undergo, free of charge, a medical examination to certify that they are not suffering from any of the conditions referred to in paragraph 1. Such medical examinations may not be required as a matter of routine.

*Article 28*  
*Notification of decisions*

- (1) The persons concerned shall be notified of any decision to refuse them leave to enter or to expel them, in such a way that they are able to comprehend the content of the decision and what it entails for them.
- (2) The persons concerned shall be informed, precisely and in full, of the public policy, public security, or public health grounds on which the decision taken in their case is based, unless this is contrary to the security interests of the State involved.
- (3) The notification shall specify the court with which the person concerned may lodge an appeal, the time limit within which any action must be taken and the time allowed for the person to leave the country's territory. Save in duly substantiated cases of urgency, the time allowed shall be not less than fifteen days if the person concerned has not yet registered with the authorities in the place of residence or been granted a residence card, and not less than one month in other cases.

*Article 29*  
*Procedural safeguards*

- (1) The persons concerned shall have access to administrative and judicial redress procedures in the host Member State to appeal against any decision taken against them on the grounds of public order, public safety or public health, or refusing them leave to enter, ordering their expulsion or refusing to issue them with the registration certificate, residence card or permanent residence card.
- (2) Where there is provision for administrative appeal, the decision shall not, save in cases of urgency, be taken by the administrative authority until the matter has been referred to a competent authority in the host country other than the authority qualified to take the decisions listed in paragraph 1, before which the person concerned shall be allowed to put their case in person, unless this is contrary to considerations of State security, or to be assisted or represented in the proceedings in the manner provided for in national legislation.
- (3) Where judicial redress procedures do not have suspensory effect, the court dealing with the case shall have the option of issuing an interim order suspending enforcement of the contested decision, pending the final ruling.
- (4) The court dealing with the case shall review not only the legality of the decision, but also the facts and circumstances on which the proposed measure is based. The court shall also check that the decision is not disproportionate as to the requirements laid down in Article 26.
- (5) Member States may exclude the individual concerned from their territory pending the trial, but they may not prevent the individual from appearing in person at the trial.

*Article 30*  
*Duration of exclusion orders*

- (1) Member States may not issue orders excluding persons covered by this Directive from their territory for life.
- (2) After a reasonable period, depending on the circumstances, and in any event once two years have elapsed since the decision ordering their expulsion was validly adopted in accordance with Community law, persons expelled on grounds of public policy, public security or public health, may submit a new application for leave to enter by putting forward arguments to establish that there has been a material change in the circumstances which justified the first decision ordering their expulsion.

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

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

*Article 31*  
*Expulsion as a penalty or legal consequence*

- (1) Expulsion orders may not be issued by the host Member State as a penalty or legal consequence of a custodial penalty, unless they conform to the requirements of Articles 25, 26, 27 and 30(1).
- (2) Before enforcing an expulsion order, the Member State shall check that the individual concerned is currently and genuinely a threat to public policy and public security and shall assess whether there has been any change in the circumstances since the expulsion decision was taken

**CHAPTER VII**

**FINAL PROVISIONS**

*Article 32*  
*Publicity*

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

*Article 33*  
*Penalties*

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

*Article 34*  
*More favourable national provisions*

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

*Article 35*  
*Repeals*

- (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.

*Article 36*  
*Reports*

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

*Article 37*  
*Transposal*

- (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.

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

*Article 38*  
*Entry into force*

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

*Article 39*  
*Addressees*

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council*  
*The President*