



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE

Directorate C: Fundamental Rights and Union citizenship
Unit C2: Union citizenship

Brussels, 16 July 2010

**DRAFT MINUTES OF THE EIGHT MEETING OF EXPERTS ON THE RIGHT TO
FREE MOVEMENT OF PERSONS (DIRECTIVE 2004/38/EC)**

Draft minutes of the meeting held on 16 June 2010

Introduction

The Chair opened the meeting and welcomed the participants. The draft agenda and the draft minutes of the seventh meeting were approved.

Following a request of Cyprus, the COM's understanding of Article 7(1)b of the Directive will be included in these minutes on the 8th meeting.

7th meeting minutes – Cypriot request for clarification

Under Article 7(1)(b) of the Directive, inactive EU citizens must demonstrate that they have sufficient resources to acquire a right of residence. The resources must be demonstrated at the moment of application for a registration certificate and must be already available at that moment¹ (*not only in the future*).

However, where the EU citizens did meet the conditions at the moment of their application and were issued with a registration certificate under Article 8(3) of the Directive, then they are entitled to equal treatment, including a right to social assistance². The case-law of the Court has stressed that Member States must show a certain degree of solidarity with EU citizen in need of social assistance and cannot automatically terminate their right of residence on the grounds that they no longer meet the conditions of residence (*i.e. that they do not meet the condition of having sufficient resources*).

As long as such EU citizens are not declared to be an unreasonable burden to social assistance system, their residence documents may not be withdrawn and they must continue to receive social assistance under the same condition as nationals.

Monitoring of abuse and fraud

The Chair presented the outcome of the three months pilot phase for the templates. Unfortunately, only few States had filled in templates 1 and 2 and commented on template 3. Therefore, the chair announced that the three months pilot period would be extended for another three months.

The Chair asked the Member States to elaborate on cases on abuse and fraud. Belgium, Cyprus, Ireland, the Netherlands, Slovenia, the Czech Republic, United Kingdom and Finland commented on them.

The Chair underlined that COM had looked into existing collections of statistics (DG EMPL/ Eurostat) and that the results were not encouraging. Indeed, almost none of the data outlined at template 3 are already available within the Commission services.

The Chair also presented the outcome of the submissions concerning template n.3 through a table handed out to the Member States. According to the table a limited number of Member States had informed the Commission of the availability of limited statistical data.

¹ See Chapter 2.3.1 of the July 2009 Guidelines which state that “National authorities can, when necessary, undertake checks as to the existence of the resources, their lawfulness, amount and availability.”

² Judgment of the Court of 7 September 2004 in case C-456/02 *Trojani* (Rec. 2004, p. I-7573)

Presentation on the Visa Code

██████████ (DG HOME) made a presentation on the Visa Handbook and ██████████ (DG JUST) made a presentation on the entry visas for family members of EU citizens falling under Directive 2004/38/EC. The handouts are available on CIRCA.

Finland asked the chair whether, when issuing residence cards, Member States were entitled to

- a) use the same format as for residence cards issued to TCNs
- b) take biometrics

The chair explained that the format was not an issue as long as the title indicated in the Directive was respected. However, on the question of biometrics, there are ongoing talks with the data protection unit and no definite answer can be given.

The Netherlands asked whether the investigations concerning abuse and fraud would have to be concluded within the 15 days allowed for the issuance of a visa.

According to the COM the deadline can be extended if it is justified. In addition to that, Directive 2004/38/EC does not constitute an obstacle for the withdrawal at a later stage if abuse/fraud is proven.

Italy asked whether a TCN who is a family member of a EU citizen who arrives at the border without a Visa and appears in SIS can be rejected on this sole ground. In addition to that, the Italian delegation asked whether the issuance of the Visa could be delayed while waiting for the information on criminal records from another Member State.

According to the COM, Section 4 of part III of the Visa handbook explains article 5(4) of Directive 2004/38/EC. Member States must issue the visa unless the TCN represents a genuine, present and sufficiently serious threat to one of the fundamental interests of society. In relation to these questions the COM cites Case C-503/03 Commission v. Spain in which the European Court of Justice stated that the Member States must ascertain whether the TCN constitutes a genuine, present and sufficiently serious threat and that the response to a request for information must be delivered rapidly in such a case. The family member cannot be held hostage because of the inability of a Member State to reply to the request for information of another Member State. The Member State has in any case the possibility to withdraw the Visa at a later stage.

Information on the bilateral meetings concerning the transposition of Directive 2004/38/CE

As already announced in a previous experts group, following the COM Report of December 2008 on the application of the free movement directive COM has been organising bilateral meetings with MS to go through problematic or potentially problematic issues of transposition and implementation. COM met 50% of the MS so far. By this year COM aims at concluding the bilateral meetings. The infringement exercise, where needed, will start by sending to relevant MS a warning information in the EU Pilot system.

After the bilateral meetings, COM requests MS to send their written comments to the legal analysis within 6 weeks/2 months. If COM receives no reply, COM will send one reminder and then will have to initiate an infringement procedure where needed.

Information on the network on free movement of workers

██████████ of DG Employment gave a presentation on the network on free movement of workers, an independent network of academics of the 27 Member States which monitors legislation and jurisprudence on the free movement of workers, responds to questions of the COM and raises awareness of the rights related to the free movement of workers by, among other things, organising conferences on specific topics.

Any other business

Germany explained a particular case which is now being appealed before the *Bundesverwaltungsgericht* and concerns a minor who is an EU citizen, the father of which is in prison. The issue raised is whether the mother of the child who is a TCN has the right to reside in Germany although neither the child nor the mother have sufficient resources. According to the *Verwaltungsgerichtshof* the mother and the child have a right to reside in Germany but the German government has appealed the judgment.

The German delegation promised to forward a summary and a follow up of the case.

Finland raised the so called "grandmother problem" and asked how to interpret article 2(d) of Directive 2004/38/EC. The question concerned the fact of timing of the dependency.

According to COM, as long as it is genuine and structural in nature the Directive 2004/38/EC does not require for a duration of the dependency. In addition to that, the dependency can start at any time, even at a later stage.

Due to a question raised by the Italian delegation the COM underlined, in relation to the proof of dependency, that the family member has to proof the dependency and he/she has the possibility to choose the documents he/she wants to submit.

Conclusion

The Chair thanked the participants for their contributions and announced that the next meeting of the expert group is foreseen for October.

ANNEX

List of participants

CHAIRMAN: Chiara Adamo

EU MEMBER STATES

Austria
Belgium
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Luxembourg
Malta
Netherlands
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden
United Kingdom

EFTA MEMBER STATES

Norway
Liechtenstein
EFTA Secretariat

EUROPEAN COMMISSION

DG JLS

Chiara Adamo

