

COMMISSION OF THE EUROPEAN COMMUNITIES

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PROPOSAL FOR A COUNCIL DIRECTIVE ON A RIGHT
OF RESIDENCE FOR NATIONALS OF MEMBER STATES IN
THE TERRITORY OF ANOTHER MEMBER STATE

(submitted to the Council by the Commission)

EXPLANATORY MEMORANDUM

I. INTRODUCTION

Freedom of movement of persons means the right of citizens freely to choose their residence in the national territory.

This right forms part of the general principles which are values common to all Member States.

At Community level, freedom of movement of persons is established by Article 3 (c) of the EEC Treaty and constitutes one of the fundamental principles of the European Community. It has already been attained in respect of gainfully occupied citizens of the Community, i.e. those nationals of Member States who carry on an activity as wage-earners or self-employed persons by way of freedom of movement of workers, freedom of establishment and freedom to provide services, and also in respect of members of their family⁽¹⁾. To a certain extent this also applies to former workers or self-employed persons⁽²⁾.

Direct general election of the members of the European Parliament, planned for June 1979, is an important step in the progressive development of the European Community from a market Community to a community of citizens.

(1) Council Directive 68/360/EEC of 15 October 1968 on the abolition of the restrictions on movement and residence within the Community for workers of Member States and their families, OJ N° L 257 of 19.10.1968. 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 N° L 172 of 28.6.1973.

(2) Commission Regulation (EEC) N° 1251/70 of 29 June 1970 on the right of workers to remain in the territory of a Member State after having being employed in that state, OJ N° L 142 of 30.6.1970. 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 N° L 14 of 20.1.1975.

A right of residence for nationals of Member States, extending throughout the territory of the Community and granted irrespective of the pursuit of an economic activity, will strengthen the feeling of all citizens of belonging to the Community and thus their interest in participating in this development through their directly elected representatives. Thus, "European Union will become for them a discernible reality"⁽¹⁾.

At present, nationals of Member States who wish to reside permanently in another Member State without pursuing any economic activity there come under the general rules applicable to foreign nationals and are treated, as regards the conditions of their residence, as nationals of non-member countries and subject to the discretionary power of the host Member States.

This proposal for a directive is aimed at partially filling this gap in Community law by laying down the rules under which this right of residence may be exercised by certain non-working persons.

The motive principle of the proposal is the recognition of an inherent right of residence in the Member States for Community citizens above 18 years of age.

Children under 18 years old and spouses without independent means have no direct right, but one derived from the person on whom they are economically dependent, provided they reside with that person in the host country. Children over 18 years old who have no individual means and are dependent on a citizen of a Member State are recognised as having a personal right if they are students in the wide sense of the term. In other cases, their right of residence derives from that of the citizen on whom they are dependent.

(1) Report by Mr Leo TINDEMANS to the European Council on European Union, Bulletin of the European Communities, Supplement 1/76, p. 29

It was not considered possible at the present time to propose the recognition of a right of residence for all citizens of all Member States, particularly because of the periods of transition applicable to acceding Member States for the purposes of establishing the free movement of workers.

With its proposal, the Commission is meeting the request of the European Parliament made in its Resolution of 16 November 1977 ⁽¹⁾ on the granting of special rights to the citizens of the European Community in implementation of the Paris Summit of December 1974 (point 11 of the final communiqué). Point 3 of the Resolution requests the Commission to consider the right of residence for all Community citizens among the rights to be granted as a matter of priority to Community citizens.

In preparing its proposal, the Commission has in addition taken account of the work carried out by the ad hoc Working Party set up by the Council following the Paris Summit "to study the conditions and time limits in which citizens of the nine Member States could be granted special rights as members of the Community".

(1) OJEC N° C 299 of 12 December 1977, p. 26

II. LEGAL BASIS

Freedom of movement for persons within the Community is one of the explicit objectives of the Community listed in Article 3 of the EEC Treaty. It implies the removal of restrictions on movement and residence in respect of those concerned.

This objective is implemented as regards persons carrying on an economic activity, in Chapters 2 and 3 of Title III of the Treaty, which provide for the specific powers to attain fully this freedom for such persons.

The Treaty contains however no specific powers with regard to persons not carrying on an economic activity, and since action appears necessary to fully attain the Community's objective of freedom of movement of persons, action based on Article 235 of the Treaty appears justified. It is recalled in this connection that 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 is also based on Article 235 in the absence of specific powers provided for by the Treaty.

This proposal is in addition based on Article 56 (2) of the Treaty. It appeared necessary to make the right of residence of those concerned subject to restrictions relating to public policy, public security and public health that are already laid down in respect of those in whom this right vests at present.

III. CONTENT OF THE PROPOSAL

1. The objective is to lay down the rules under which nationals of a Member State may exercise the right of residence in the territory of another Member State, in so far as they are not covered by the Community law in force in this connection.

Consequently, the proposal does not affect the right of residence and the right to remain already conferred in accordance with Community provisions concerning freedom of movement of workers, freedom of establishment and freedom to provide services.

This has proved necessary to ensure that workers or self-employed persons or members of their families are not made subject to conditions which are more restrictive than those at present in force.

2. The proposal is restricted to questions of movement and residence and accordingly incorporates as far as possible the provisions adopted in respect of workers and self-employed persons.

This involves in particular the following provisions :

- right to leave the territory, Article 2 ;
- entry documents, Article 3 ;
- residence documents for members of the family who are not nationals of a Member State of the Community, Article 5 (3) ;
- territorial scope of the right of residence, Article 7 ;
- the charges for issuing and renewing residence documents, Article 8 ;
- the documents to be produced for the issue of the residence permit, Article 6, with the exception of (b), a specific provision concerning the proof of means of subsistence.

3. The proposal for a Directive differs from the legislation in force on the following points :

- Condition of means of subsistence, Article 4 :

An examination of the laws of Member States has shown that in some of them, persons who do not have their own means of subsistence are automatically granted social security.

Although Member States consider it reasonable to provide economic assistance by way of solidarity to nationals of other Member States who have contributed through their work to the economic and social development of the country, they do not consider that such assistance should be granted to those persons whose residence in their territory is not connected with the pursuit of an occupation or its continuation.

For these reasons, and having regard to the case law of the Court, it appears acceptable for Member States to be authorized to make right of residence of this last category of persons subject to proof (if adequate means of subsistence which, to avoid any arbitrary decisions, could be the minimum subsistence level laid down by the law of the host country for its own nationals.

- Validity and renewal of the residence permit, Article 5 :

The period of validity of the residence permit should be identical to that adopted for workers and self-employed persons, that is, at least five years. For those concerned, a change of residence involves a number of commitments, in particular of an economic nature, which should be balanced by a minimum guarantee of stability even in the event of a temporary reversal of fortunes.

Moreover, those concerned should be spared from repeated checks on their means of subsistence which would constitute an affront to their dignity.

If, however, it is clear at the end of this first period that these means of subsistence are lacking, the host Member State must be able to refuse to extend the right of residence.

For humanitarian reasons Member States should not be authorized to apply this measure to members of the family in the event of the death of the person concerned.

The residence permit is then automatically renewable because of the de facto integration of the holders in the host country.

The provisions of this proposal do not affect the obligations of the Member States arising from the European Convention on social and medical assistance.

- Break in residence, article 5

Absences due to the fulfilment of a service carried out instead of military duties or for medical reasons does not affect the validity of the residence permit.

4. Restrictions imposed by hos Member States on the right of residence of those to whom this proposal applies, on grounds of public policy, public health or public security, must not be based on grounds other than those allowed in respect of those to whom Community provisions already adopted in this respect apply. Moreover, persons covered by this Directive must also enjoy the guarantees of protection afforded workers and self-employed persons. Thus, the scope of Directive 64/221/EEC of 17 December 1964 on 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 * should be extended to those to whom this Directive applies.

* OJ N° L 14 of 20 January 1975, p. 14

PROPOSAL FOR A COUNCIL DIRECTIVE ON A RIGHT
OF RESIDENCE FOR NATIONALS OF MEMBER STATES IN
THE TERRITORY OF ANOTHER MEMBER STATE

The Council of the European Communities,

HAVING regard to the Treaty establishing the European Economic Community,
and in particular Articles 56 (2) and 235 thereof ;

HAVING regard to the proposal from the Commission ;

HAVING regard to the Opinion of the European Parliament ;

HAVING regard to the Opinion of the Economic and Social Committee ;

WHEREAS the Member States, in signing the Treaty establishing the European Economic Community, have declared themselves "determined to lay the foundations of an ever closer union among the peoples of Europe" whereas to this end they have provided for the removal in the Member States of obstacles to the free movement of persons ;

WHEREAS to achieve this objective, the Treaty has provided for powers to take action to ensure freedom of movement for workers and self-employed persons ; whereas, however, no provision has been made for powers to take action with regard to freedom of movement for persons independently of the pursuit of an occupation activity ;

**Proposal for a Council Directive on a right of residence for nationals of Member States
in the territory of another Member State**

(Submitted by the Commission to the Council on 31 July 1979)

THE COUNCIL OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 56 (2) and 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas the Member States, in signing the Treaty establishing the European Economic Community, have declared themselves 'determined to lay the foundations of an ever closer union among the peoples of Europe'; whereas to this end they have provided for the removal in the Member States of obstacles to the free movement of persons;

Whereas, to achieve this objective, the Treaty has provided for powers to take action to ensure freedom of movement for workers and self-employed persons; whereas, however, no provision has been made for powers to take action with regard to freedom of movement for persons independently of the pursuit of an occupational activity;

Whereas, however, freedom of movement of persons is, by virtue of Article 3 (c) of the Treaty, one of the foundations of the Community and can be fully attained only if a right of permanent residence is granted to those Community nationals in whom such right does not already vest under the Community law in force, and to the members of their family;

Whereas the exercise of this right may, however, be made subject to economic conditions;

Whereas Directive 64/221/EEC (*) coordinated special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health;

(*) OJ No 56, 4. 4. 1964, p. 850/64.

Whereas Directive 64/221/EEC should also apply to nationals of Member States moving within the Community independently of the pursuit of an economic activity;

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Member States shall, under the conditions laid down in this Directive, abolish restrictions on movement and residence in respect of nationals of another Member State who reside or wish to reside in their territory and who are not covered by the provisions of Directive 68/360/EEC (1), Regulation (EEC) No 1251/70 (2), Directive 73/148/EEC (3) or Directive 75/34/EEC (4).

2. They shall abolish these restrictions in respect of members of those nationals' families who do not personally come within the conditions laid down in Article 4 (2) and who reside with those nationals on the territory of the host Member State.

'Members of the family' of nationals of a Member State means:

- (a) the spouse and relatives in the descending line who are either dependent or under 18 and their spouses;
- (b) the dependent relatives in the ascending line and those of their spouse, irrespective of their nationality.

3. Member States shall favour the admission of any other member of the family of a national referred to in paragraph 1 or of the spouse of that national, when that member is dependent on them or was living under the same roof in the country of origin.

(1) OJ No L 257, 19. 10. 1968.

(2) OJ No L 142, 30. 6. 1970.

(3) OJ No L 172, 28. 6. 1973.

(4) OJ No L 14, 20. 1. 1975.

Article 2

1. Member States shall grant the persons referred to in Article 1 the right to leave their territory. Such right shall be exercised simply on production of a valid identity card or passport. Members of the family shall enjoy the same right as the national on whom they are dependent.

2. Member States shall, acting in accordance with their laws, issue to their nationals, or renew, an identity card or passport, which shall state in particular the holder's nationality.

3. 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 a passport is the only document on which the holder may lawfully leave the country, its period of validity shall be not less than five years.

4. Member States may not demand from the persons referred to in Article 1 any exit visa or equivalent requirement.

Article 3

1. Member States shall grant to the persons referred to in Article 1 the right to enter their territory merely on production of a valid identity card or passport.

2. No entry visa or equivalent requirement may be demanded save in respect of members of the family who do not have the nationality of a Member State. Member States shall afford to such persons every facility for obtaining any necessary visas.

Article 4

1. Member States shall grant the right of permanent residence to citizens of another Member State referred to in Article 1 (1) who reside or wish to reside in their territory.

2. Nevertheless, the Member States may require those citizens to provide proof of sufficient resources to provide for their own needs and the dependent members of their family referred to in Article 1(a) (2). Citizens of at least 18 years of age who are studying

or wish to study in the host Member State may provide such proof by showing that their means of subsistence derive from a relative in the ascending line who does not live with them in the host country.

Member States may not require such resources to be greater than the minimum subsistence level defined under their law.

3. The Member States recognize a permanent right of residence for members of the family referred to in Article 1 (2) of any one who possesses such right by virtue of the preceding paragraph. This provision applies even after the decease of the interested party.

Article 5

1. The right of residence shall be evidenced by issue of a document entitled 'Residence Permit for a National of a Member State of the European Community'. This document shall be valid for not less than five years from the date on which it is issued.

The residence permit shall be automatically renewable except at the end of the first period for which it is valid if it is proved that the condition referred to in Article 4 (2) is no longer satisfied. Nevertheless, this exception shall not apply to members of the family referred to in Article 1 in the event of the death of the national on whom they are dependent.

2. Breaks in residence not exceeding 12 consecutive months and absence on military service or civil service done instead of military service or absence on medical grounds shall not affect the validity of the residence permit.

3. A member of the family who is not a national of a Member State shall be issued with a residence document which shall have the same validity as that issued to the national on whom he is dependent.

Article 6

For the issue of the residence permit, Member States may require only the production of the following documents:

— by the applicant:

- (a) the document under cover of which he entered their territory,
- (b) documents proving that he has at his disposal the resources referred to in Article 4 (2);

— by the members of the family:

- (c) the document under cover of which they entered the territory,
- (d) a document issued by the competent authority of the State of origin or the State whence they came proving their family relationship,
- (e) in the cases referred to in Article 1 (2) and (3), a document issued by the competent authority of the State of origin or the State whence they came, certifying that they are dependent on the relative or live with him in this country.

Article 7

The right of residence shall be effective throughout the territory of the Member State concerned.

Article 8

1. The residence documents granted to nationals of a Member State shall be issued and renewed free of charge or on payment of an amount not exceeding the dues and taxes charged for the issue of identity cards to nationals. These provisions shall also apply to documents and certificates required for the issue and renewal of such residence documents.

2. The visas referred to in Article 3 (2) shall be free of charge.

3. Member States shall take the necessary steps to simplify as much as possible the formalities and procedures for obtaining the documents mentioned in paragraph 1.

Article 9

1. Member States shall not derogate from the provisions of this Directive save on grounds of public policy, public security or public health.

2. Directive 64/221/EEC shall apply to the persons covered by this Directive.

Article 10

1. Member States shall, within 12 months of notification of this Directive, bring into force the measures necessary to comply with its provisions and shall forthwith inform the Commission thereof.

2. After notification of this Directive, Member States shall moreover inform the Commission, allowing sufficient time for it to submit its observations, of any subsequent draft laws, regulations or administrative provisions which they propose to adopt in the field covered by this Directive.

Article 11

This Directive is addressed to the Member States.

