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Report

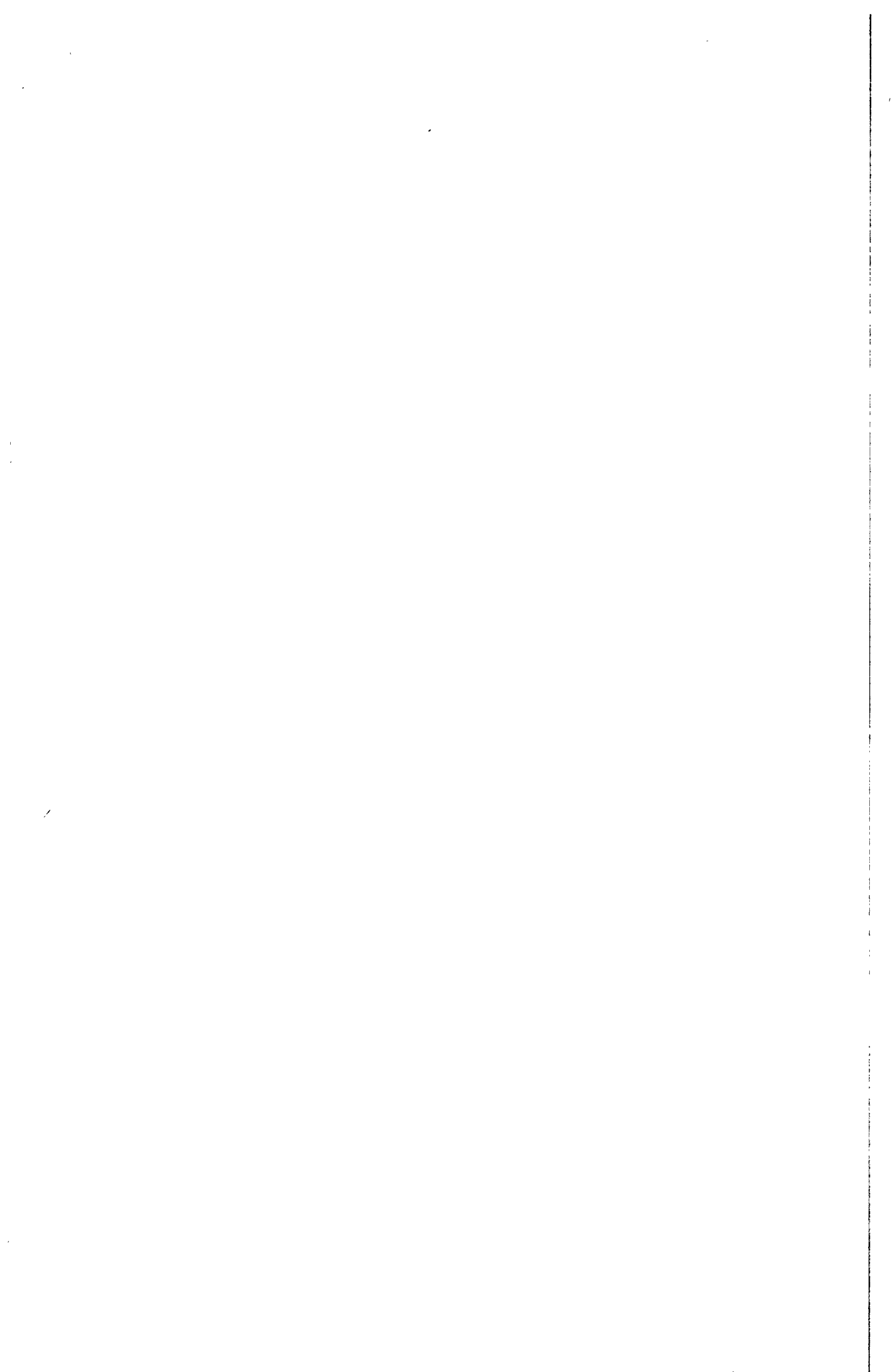
drawn up on behalf of the Legal Affairs Committee

on the proposal from the Commission of the European Communities to the Council (Doc. 1-324/79) for a directive on a right of residence for nationals of Member States in the territory of another Member State

Rapporteur: Mr G. GONELLA

121

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By letter of 21 September 1979, the President of the Council of the European Communities requested the European Parliament, pursuant to Article 235 of the EEC Treaty, to deliver an opinion on the proposal (Doc. 1-324/79) from the Commission of the European Communities to the Council for a directive on a right of residence for nationals of Member States in the territory of another Member State.

On 24 September 1979 the President of the European Parliament referred this proposal to the Legal Affairs Committee as the committee responsible.

On 9 October 1979, the Legal Affairs Committee appointed Mr Gonella rapporteur. It considered the proposal at its meeting of 28 and 29 January 1980.

It considered the draft report at its meeting of 19 March 1980, and adopted the motion for a resolution and explanatory statement unanimously with one abstention.

Present: Mr Ferri, chairman; Mr Luster and Mr Turner, vice-chairmen; Mr Gonella, rapporteur; Mr Adonnino (deputizing for Mr Modiano), Mr D'Angelosante, Mr Geurtsen, Mr Goppel, Mrs van den Heuvel (deputizing for Mrs Veyssade), Mr Janssen van Raay, Mr Malangré, Mr Pelikan, Mr Peters (deputizing for Mr Vetter), Mr Prout, Mr Shwenke (deputizing for Mr Megahy), Mr Sieglerschmidt and Mr Tyrrell.

C O N T E N T S

	<u>Page</u>
A. MOTION FOR A RESOLUTION	5
B. EXPLANATORY STATEMENT	10
I. Introduction	10
II. Freedom of movement and right of establishment.....	11
III. Summary of the proposal	13
IV. The legal basis	14
V. Comments on individual articles	16

The Legal Affairs Committee hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a directive on a right of residence for nationals of Member States in the territory of another Member State

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council¹,
 - having been consulted by the Council, pursuant to Article 235 of the EEC Treaty (Doc. 1-324/79),
 - having regard to the report by the Legal Affairs Committee (Doc. 1-40/80),
1. Welcomes the fact that the Commission has taken the first step towards implementing Parliament's resolution² on 'the granting of special rights to citizens of the European Community in implementation of the decision of the Paris Summit of December 1974 (point 11 of the final communiqué)';
 2. Notes that the proposal for a directive introduces a new dimension to previous legislation on freedom of movement and the right of establishment since it extends these rights to all citizens of the Community, independently of the pursuit of an economic activity;
 3. Welcomes the fact that this will represent the first step towards the creation of a 'European citizenship';
 4. Believes that the definition of 'members of the family' of the person to whom this right is granted is too restrictive, excluding from the proposal for a directive family relationships which ought to be protected;
 5. Notes that the Commission has based its definition of 'members of the family' on the provisions already in force for workers and self-employed persons;

¹ OJ No. C 207, 17 August 1979, p.14

² OJ No. C 299, 12 December 1977, p. 25 ff

6. Asks the Commission, therefore, to adopt the proposed amendment to paragraphs 2 and 3 of Article 1, and then to submit a proposal amending all the existing Community legislation on freedom of movement and the right of establishment, in order to bring the definition of members of the family into line with that contained in the proposed amendment, and to prevent discrimination between those who do not pursue an economic activity and workers;
7. Requests that the proposal shall not grant Member States the power to make the exercise of the right of residence subject to proof that the applicant has sufficient resources;
8. Believes that such a condition would make the granting of the right of residence dependent upon socially discriminatory procedures, which would be contrary to the aims of the Community Treaties, and that where appropriate other measures must therefore be taken to resolve any difficulties that might arise from the differences in the levels of national assistance to which those without means are entitled;
9. Considers it desirable that the Member States be urged to extend Community rules concerning the right of residence, freedom of movement and right of establishment to cover stateless persons and refugees who, born in a non-member state, are resident in a state of the European Community;
10. Approves the Commission's proposal with these reservations and subject to the following amendments;
11. Calls upon the Commission to incorporate the following amendments in its proposal, pursuant to Article 149, second paragraph, of the EEC Treaty:

THE COUNCIL OF THE EUROPEAN
COMMUNITIES,

Unchanged

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

Having regard to the Treaty estab-
lishing the European Economic
Community, and in particular
Articles 235 and 56(2) thereof;

2nd to 9th recitals unchanged

Whereas Directive 64/221/EEC ²
coordinated special measures con-
cerning the movement and residence
of foreign nationals which are jus-
tified on grounds of public policy,
public security or public health;

Whereas Directive 64/221/EEC ²,
which is based on Article 56(2)
of the EEC Treaty, coordinated
special measures concerning the
movement and residence of foreign
nationals which are justified on
grounds of public policy, public
security or public health;

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;

Unchanged

WHEREAS, therefore, for the sole
purpose of extending the application
of those provisions, this Directive
should also be based on Article 56(2)
of the EEC Treaty;

HAS ADOPTED THIS DIRECTIVE:

Unchanged

Article 1

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 ³, Regulation
(EEC) No 1251/70 ⁴, Directive 73/148/
EEC ⁵ or Directive 75/34/EEC ⁶.

Unchanged

¹ OJ No C 207, 17.8.1979, p. 14

² OJ No 56, 4.4.1964, p. 850/64.

³ OJ No L 257, 19.10.1968.

⁴ OJ No L 142, 30.6.1970.

⁵ OJ No L 172, 28.6.1973.

⁶ OJ No L 14, 20.1.1975.

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.

Articles 2 and 3 unchanged

Article 4

1. Unchanged
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.

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 also reside 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;
- (c) any person whom the holder of the right of residence has an obligation to support or who is in practice dependent on the holder.

3. Delete

Article 4

1. Unchanged
2. Delete

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.

2. Unchanged

Article 5 : Unchanged

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 6

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

- by the applicant:
 - the document under cover of which he entered their territory,

(15 words deleted)
- by the members of the family:
 - the document under cover of which they entered the territory,
 - a document issued by the competent authority of the State of origin or the State whence they came proving their family relationship,
 - 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.

Articles 7 to 11: unchanged

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'Council Recommendation

The Council of the European
Communities recommends that Member States
give to stateless persons and persons
having refugee status who were born
in a non-member state and
who are already resident in a state
of the European Community the same
treatment as that laid down by the
rules on the right of residence,
freedom of movement and right of
establishment for nationals of
Member States'.

EXPLANATORY STATEMENTI. INTRODUCTION

1. The development of the European Community from a market community to a community of citizens is a precondition for legal and political progress towards European union.

The free movement of persons is one of the general principles underlying the Community and one of the freedoms which the Community is intended to protect. Citizens have the right to choose freely their place of residence.

Article 3(c) of the EEC Treaty accords to all citizens working in the Member States freedom of movement and the right of establishment.

Now a further step is to be taken: recognizing the right of residence of citizens of the Member States throughout the Community, independently of the pursuit of an economic activity. At present, those who are not gainfully employed are treated as aliens, on the same footing as citizens of countries outside the Community.

2. Recognition of the right of residence whether or not a person is gainfully employed is also important as one of the steps towards the creation of a 'Community citizenship'. The only citizenship which exists at present is that of the Member States. Although it is true that a common denominator can be found among the civil and political rights granted to such citizens, it is also true that a common denominator is not - at least to any significant extent - the result of Community measures, but rather of a common tradition of democratic principles on which the legal orders of the various Member States rest.

3. And yet the European Parliament has long pressed for the Community to adopt a political dimension and addition to its nature as an economic and trading body by guaranteeing a minimum common level of rights to all its citizens; this was seen as an important first step towards European union.

Special mention should be made of the resolution¹ adopted by Parliament on 16 November 1977 on the basis of a proposal in the report drawn up by Mr Scelba on behalf of the Political Affairs Committee on 'the granting of special rights to citizens of the European Community in implementation of the decision of the Paris Summit of December 1974 (point 11 of the final communiqué)'. In that resolution Parliament called upon the Commission

¹ OJ No.C 299, 12 December 1977, p. 25 ff

' to consider among the rights to be granted as a matter of priority to Community citizens' a certain number of rights including (paragraph 3(j)) 'the right of residence for all Community citizens'.

4. It should be pointed out that although the proposals put forward by the European Parliament are intended to constitute a coherent whole, this does not mean that they cannot be implemented at different times and by different methods: for example although extending the right for individuals to appeal to the Court of Justice of the European Communities may require an amendment to the Treaty, extending the right of residence to citizens who are not gainfully employed can be achieved by adopting a directive.

For this reason the Legal Affairs Committee welcomes the proposal which has been submitted by the Commission.

II. FREEDOM OF MOVEMENT AND THE RIGHT OF ESTABLISHMENT

5. Consideration must be given to the most appropriate method to be used to attain the aim of greater protection of the right of residence.

Title III of Part 2 of the Treaty establishing the European Economic Community deals, inter alia, with the free movement of persons.

In particular Articles 48 to 51 cover the free movement of workers; Articles 52 to 58 concern the right of establishment of self-employed persons (and companies) in a Member State other than their own.

6. The Community has adopted a large number of provisions¹ to implement the rules of the Treaty mentioned in point 1, with a view to facilitating

¹ See in particular:

A. As regards paid workers:

- Council Regulation (EEC) No. 1612/68, of 15 October 1968 on freedom of movement for workers within the Community (OJ No. L 257, 19 October 1968);
- Council Directive No. 68/360/EEC, of 15 October 1968, on the abolition of restriction on movement and residence within the Community of workers of Member States and their families (OJ No. L 257, 19 October 1968).

B. As regards self-employed and on the basis of a general programme (see Article 54(1) and Article 63(1) of the EEC Treaty) setting out the stages by which the acts concerned are to be adopted, the Community has implemented the principle of non-discrimination in successive stages which are approximately as follows.

- (1) prohibition on Member States introducing any new restrictions other than those already in force (see for example Article 53 of the EEC Treaty);
- (2) progressive abolition of restrictions (see for example Article 54(2) of the EEC Treaty).
- (3) coordination of national provisions on this matter (see for example Article 57(2) of the EEC Treaty);
- (4) recognition of diplomas (see for example Article 57(1) of the EEC Treaty).

the movement and establishment of workers of the Member States within the Communities in the spirit of Article 3(c) of the Treaty which provides for 'the abolition, as between Member States, of obstacles to freedom of movement for persons'.
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7. The proposal on which our committee has been consulted is an innovation and introduces a new dimension to existing legislation in that it facilitates in a number of respects the free movement of citizens of the Member States of the Community whether or not they are gainfully employed: the citizen is here considered not solely as an economic agent.

As the Commission rightly points out in its explanatory memorandum to the proposal, 'a right of residence granted irrespective of the pursuit of an economic activity, will strengthen the feeling of all citizens of belonging to the Community'¹.

The common market in goods is thus becoming a real community of citizens.

In spite of the limitations of this directive, due in part to the fact that it takes over the provisions of other directives, its practical importance is significant, in particular because once admitted to residence in a Member State citizens of another Member State will enjoy to the full the general provisions of the EEC Treaty on non-discrimination (the basic principle is set out in Article 7 of the Treaty).

¹ Doc. 1-324/79, Explanatory Memorandum, Part I, page 2

III. SUMMARY OF THE PROPOSAL

8. The proposal is based on the premise that, on signing the Treaty setting up the European Economic Community, the Member States intended to 'lay the foundations of an ever closer union among the peoples of Europe' and so undertook to remove the obstacles to the free movement of persons.

The Treaty provided for powers to guarantee that freedom of movement be established for salaried and self-employed workers. The Treaty did not, however, provide for powers¹ concerning the free movement of persons independently of the pursuit of an occupation. One of the aims of the Community (Article 3(c) of the Treaty) is the free movement of persons, and this freedom of movement can only be fully established if a permanent right of residence is granted to Community nationals and to those members of their family who do not already have this benefit under existing Community legislation.

This right cannot be made to depend on the pursuit of an occupation.

9. In order to extend the scope of recognition of the right of residence, the proposal sets out some rules which are summarized here.

It is intended to abolish the restrictions laid down under the previous rules on movement and residence of nationals of a Member State. These restrictions are also abolished for those members of their family who do not come within the conditions laid down by the existing provisions. By members of the family is meant the spouse and relatives in the descending line who are under 18 or are dependent and their spouses, as well as dependent relatives in the ascending line and those of their spouse (Article 1).

The Member States grant the right to leave their territory simply on production of an identity card or passport which shows the holder's nationality. Members of the family enjoy the same right as the national on whom they are dependent. The passport must be valid for not less than five years. There is no power to require an exit visa or equivalent requirement (Article 2).

Simply on production of a valid identity card or passport, Member States grant to nationals of another State the right to enter their territory without requiring an entry visa or equivalent requirement, except in the case of members of the family who are not nationals of one of the Member States. Such persons must be granted every facility for obtaining the necessary visas (Article 3).

¹ This is why explicit reference is made to Article 235 of the EEC Treaty as the legal basis for the proposal.

Member States grant a permanent right of residence to citizens of another Member State who reside or wish to reside in their territory. The persons concerned must supply evidence of a minimum of sufficient resources to provide for their own needs and, if the case arises, for those of members of the family dependent on them (Article 4).

Provision is made for the issue of a 'Residence Permit for a National of a Member State of the European Community', to be valid for five years and renewable. Breaks in residence not exceeding twelve consecutive months are allowed for military service or on medical grounds. Members of the family who are not nationals of a Member State can be granted a residence document having equal validity (Article 5).

A list is given of the documents which must be produced to obtain a residence permit. The documents are particularly concerned with proof of the resources required and of family relationships (Article 6).

The right of residence covers all the territory of the Member State concerned (Article 7).

Residence documents, visas and formalities must be free of charge (Article 8).

Derogation from the directive is allowed only on grounds of public policy, public security or public health (Article 9).

Within 12 months of notification, Member States shall bring into force the measures necessary to comply with the Community directive and shall inform the Commission of this (Articles 10 and 11).

IV. THE LEGAL BASIS

10. The proposal must have a rock-hard basis in law, especially in order to avoid the risk of the Court of Justice of the European Communities annulling the directive on the grounds that its legal basis is inadequate if a case is brought before it.

The proposal for a directive in question is based on Articles 56(2) and 235 of the EEC Treaty.

The use of these two Articles as a basis gives rise to some perplexity:

- in Article 56(2), reference is made to 'directives for the coordination of such provisions as.... are a matter for regulation or administrative action'.

In the case in point we are not in any way dealing with a proposal for a directive concerning the coordination of national provisions: Article 56 cannot therefore constitute a valid legal basis for the proposal; it is, however, clear that the proposal for a directive, as is the case, moreover, for all Community legislation on this matter, is subject to the general reservation in Article 56 on provisions justified by reasons of public policy, public security and public health (see also Article 9 of the proposal);

- the principal objection to the legal basis proposed is that the use of Article 56 of the EEC Treaty (or of any other Article) as a legal basis together with Article 235 is excluded by the main provision of this Article itself:

'Article 235 - If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the Assembly, take the appropriate measures'.

11. As can be seen, the use of Article 235 together with another article as a legal basis is equivalent to admitting at the outset that Article 235 cannot be applied, since it can only be used if there is no other valid legal basis in the Treaty.

It has happened on previous occasions that another Article of the Treaty and Article 235 have been taken together as the legal basis for a proposal; this was done on the understanding that one part of the proposal was based on Article 235, and the rest on the other Article.

In this case, too, the Commission seems to have considered that the legal basis for the proposal for a directive as a whole was constituted by Article 235; only Article 9 (2) (which extends the application of Directive 64/221/EEC to the persons covered by the proposal we are now considering) is apparently based on Article 56(2). This can be deduced from the penultimate paragraph of the preamble.

Since Directive 64/221/EEC, which aims to coordinate special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health, is based on Article 56(2), the Commission considered it appropriate to base the present proposal also on the same Article. This justification seems reasonable from a conceptual standpoint.

12. Nevertheless, precisely in order to avoid the possibility of there being even the slightest doubt concerning the interpretation of the true legal basis of the proposal, it seems appropriate to specify, in the penultimate paragraph of the preamble, that Article 56 was added to Article 235 only for the purposes of extending the provisions of Directive 64/221/EEC to the persons covered by this proposal. With the same end in view, in the first paragraph of the preamble, the order of Article 56(2) and Article 235 should be reversed (see proposed amendments to the preamble).

V. COMMENTS ON INDIVIDUAL ARTICLES

13. Article 1. In paragraph 2 it should be made clear that the expression 'to reside with' should not be taken to imply that members of the family must necessarily live in the same dwelling as the national who holds the right of residence: members of family should be able to benefit from the right of residence in the host country even when they live in different dwellings, or cities, from the head of the family (see proposed amendment to paragraph 2 of Article 1).

Concerning the definition of 'member of the family', it should be pointed out that these are not only relatives in the descending or ascending line of the first degree; on the other hand, the minimum age of 18 (by comparison, for example, with the provisions of Directive 73/148/EEC, which provides for a minimum age of 21), was laid down in conformity with the majority of legislations of the Member States which consider the age of majority as 18.

14. From a more general point of view, it seems that restrictive criteria have been used to decide who are the 'members of the family'. The host Member State has no obligation concerning the relatives of the holder of the right who live with the holder and who do not come into the categories set out in paragraphs a and b.

In the same way, the present wording of the Article does not take into account the position of a person below the age of 18 whose parents have died and who has been made a ward by the legal authority; nor the case of the young person who has been 'fostered prior to adoption' (this, under Italian law, can last from one to three years).

15. In order to ensure that this proposal for a directive is adopted in a form which takes this and other possible cases into account, and considering that it is not fair to allow family links which have become established to be broken through changing residence from one Member State to another, an amendment to Article 1 is proposed.

16. But, as has been seen (point 7), this proposal for a directive is one which extends the scope of previous provisions, in the sense that the Commission proposes extending the existing rules for salaried and self-employed workers to all other Community nationals. Since, therefore, it is not conceivable to discriminate against persons who are gainfully employed, in the motion for a resolution (paragraph 6) the Commission is asked to propose modifications to the rules already adopted concerning workers, in order to bring the definition of members of the family into line with the present proposal for a directive.

17. Article 2. Some of the provisions of this article take up and amplify the rules contained in Protocol No. 4 annexed to the European Convention on Human Rights: two Member States of the Community (Italy and the United Kingdom) have not ratified this protocol.

It should be noted that paragraph 2 is taken almost word for word from Article 2(2) of Directive 73/148/EEC (OJ No. L 172 of 28 June 1973, p. 15), and from Article 2(2) of Directive 68/360/EEC (OJ No. L 257 of 19 October 1968, p. 13).

18. Article 4. Paragraph 2 gives Member States the power to require nationals of other Member States who wish to reside in their territory to supply evidence of sufficient resources to provide for their own needs. The Explanatory Memorandum, (Part III, paragraph 3) points out that this has proved necessary because of the existing social security system in some Member States, where 'persons who do not have their own means of subsistence are automatically granted social security', whatever their nationality: it does not seem fair that this benefit should be granted to 'those persons whose residence is not connected with the pursuit of an occupation or its continuation'.

This provision does not prevent Member States from applying more liberal rules which do not require proof of means of subsistence as a condition of admission; nor can proof of 'sufficient resources' (Article 5(1), second subparagraph) be required after a certain period - 10 years - of residence by the person in a Member State.

Nevertheless, there is no doubt that the exclusion of this rule from the directive would represent an important step towards complete freedom of movement for the citizens of Europe.

It is for this reason that amendments have been proposed to Article 4 and Article 6.