

Application of Directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the territory of the Member States

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PURPOSE: to present a Commission report on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

CONTENT: this report is submitted pursuant to Article 39(1) of Directive 2004/38/EC. Its purpose is to present a comprehensive overview of how Directive 2004/38/EC is transposed into national law and how it is applied in everyday life. The Directive is fundamental not only for more than 8 million³ EU citizens who reside in another Member State and their family members, but also for the millions of EU citizens travelling every year inside the EU.

The **overall transposition** of Directive 2004/38/EC is rather disappointing. Not one Member State has transposed the Directive effectively and correctly in its entirety. Not one Article of the Directive has been transposed effectively and correctly by all Member States. On the other hand, Member States in some areas adopted transposition measures that are more favourable to EU citizens and their family members than required by the Directive itself. Although in Cyprus, Greece, Finland, Luxembourg, Malta, Portugal and Spain the problems of compliance are linked only to some provisions of the Directive, considerable parts and crucial provisions of the Directive have been incorrectly transposed in most Member States.

With regard to the **right of residence**, Finland and the UK made the right of residence of third country family members conditional upon their prior lawful residence in another Member State. 7 Member States adopted the same interpretation through administrative guidelines. The application of this additional requirement, not provided for in the Directive, resulted in a high number of complaints. Following the *Metock* case in 2008, the Court of Justice ruled that the requirement of lawful prior residence is contrary to the Directive. This judgment caused considerable controversy in some Member States, notably in Denmark

With regard to the **right of entry**, the report notes that the transposition of Article 5(2) is often incorrect and/or incomplete, and the legislative shortcomings result in frequent violations of the rights of family members, notably those who are third country nationals. Only 7 Member States have introduced specific facilities for family members to acquire an entry visa in their legislation. 5 Member States do not provide for the visa exemption for family members holding a residence card issued by another Member State.

Additional practical problems encountered by **third country family members** are caused by the failure to differentiate between third country nationals and third country family members of EU citizens, who enjoy certain rights under the Directive. The latter are still often required to submit a range of documents with their application for an entry visa, such as a proof of accommodation, sufficient resources, and an invitation letter or return ticket.

With regard to **administrative formalities** for third country family members, most of the transposition concerns relate to the residence card issued to third country family members, their validity and supporting documents to be submitted with an application. A serious problem is that in a number of Member States

the residence card is not called "Residence card of a family member of a Union citizen", as required by Article 10. Family members concerned may find it difficult to prove that their situation falls under the Directive and not under the more restrictive national rules on aliens.

The transposition of **procedural safeguards** is not satisfactory.

Practical application: in the thirty months since the Directive has been applicable, the Commission has received more than 1800 individual complaints, 40 questions from the Parliament and 33 petitions on its application. It has registered 115 complaints and opened five infringement cases for incorrect application of the Directive. The problems revealing persistent violation of the core rights of EU citizens are mostly related to:

- the right of entry and residence of third country family members (problems with entry visas or when crossing the border, conditions attached to the right of residence not foreseen in the Directive and delayed issue of residence cards);
- the requirement for EU citizens to submit with the applications for residence additional documents not foreseen in the Directive.

The Commission will **step up its efforts** to ensure that the Directive is correctly transposed and implemented across the EU. It will launch infringement proceedings when necessary. Priority will be given to the most serious problems identified above with regard to the Commission's assessment of practical application. The Commission will also continue working at technical level with the Member States. It intends to issue guidelines in 2009 on a number of issues identified as problematic in transposition or application, such as expulsions and fight against abuse.

The Commission will continue to treat provision of information on the Directive as a priority and will continue to distribute a simplified guide for EU citizens, making the best use of the Internet, mainly through Your Europe portal, the creation of an article on Wikipedia on the right of free movement and simple 'factsheets' explaining citizens' rights.

The Commission will encourage and support Member States to launch awareness-raising campaigns to inform EU citizens of their rights under the Directive. The group of experts will examine and disseminate best practice to this effect. The Commission will not propose amendments to the Directive. The latter must be implemented by Member States more effectively.