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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The Committee on Civil Liberties, Justice and Home Affairs adopted the own-initiative report drawn up by Adina-Ioana VLEAN (ALDE, RO) 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, recalling that, as of 1 January 2006, there were approximately 8.2 million Union citizens exercising their right to reside in another Member State and that millions of Union citizens travel every year inside the Union.

However, MEPs note that there are weaknesses in relation to the transposition in the Member States of Directive 2004/38/EC, which provides that Union citizens can move freely all over the Union. They therefore call for efforts to be made in terms of the application and implementation of this fundamental text.

Application of Directive 2004/38/EC: MEPs call on the Member States to respect the spirit and the letter of Article 18 of the EC Treaty and Article 45 of the Charter of Fundamental Rights granting Union citizens the fundamental right to free movement, by **implementing Directive 2004/38/EC fully and as a matter of urgency**. They note that several provisions in the legislation of most Member States run counter to the letter and the spirit of the Directive, undermining rights of free movement and Union citizenship, and they point out that national administrative practices very often constitute significant obstacles to the exercise by citizens of their rights.

MEPs call for a series of measures to be taken, including full implementation of Article 2 and Article 3 of Directive 2004/38/EC not only to different sex spouses, but also to the registered partner, **including same-sex couples recognised by a Member State**, on the basis of the principles of mutual recognition, equality and non-discrimination. According to MEPs, it is necessary to recognise freedom of movement to all Union citizens without imposing the recognition of same-sex marriages.

Member States are also called upon to:

- not place unjustified administrative burdens on Union citizens and their family members, including third-country family members, that are not expressly provided for in Directive 2004/38/EC, as these are an unjustified obstacle to the exercise of the freedom of movement;
- facilitate the entry of third-country family members of Union citizens, in order to allow them to lead a normal family life in the host Member State;
- adopt the same format for personal identity documents for their nationals and for Union citizens from other Member States.

The Commission is also called upon to assess carefully that the laws and practices of Member States do not infringe the rights conferred on Union citizens by the EC Treaty and the Directive (by imposing, for example, the notions of "sufficient resources", "unreasonable burden on the social assistance system of the host State", "(serious/imperative) grounds of public policy and public security", etc.). Moreover, MEPs stress the need to implement the directive **without discrimination** in relation to certain ethnic

communities and for measures taken on grounds of public policy or public security to comply with the principle of proportionality and to be based exclusively on the personal conduct of the individual concerned.

MEPs also call for the **repeal or revision of the transitional arrangements**, which currently still provide for restrictions on the free movement of workers, of nationals of the Member States that joined the EU on 1 May 2004 and on 1 January 2007.

Overall, MEPs call on the Council to **define a strategy to ensure the free movement of Union citizens and workers** and their access to the labour market in host Member States. They call on the Commission and the Member States to review the limitations, restrictions and current time periods provided for in Directive 2004/38/EC to enjoy freedom of movement rights.

Methodology to ensure implementation: in general, MEPs consider that unsatisfactory transposition of Directive 2004/38/EC demonstrates that the Commission has been unable to secure coherent and timely compliance with the Directive by Member States and to handle the large number of complaints from citizens in relation to the application of the Directive. However, they support the approach proposed by the Commission based on continuous and comprehensive monitoring of the implementation of Directive 2004/38/EC and call on the Commission to develop a consistent, effective and transparent enforcement policy ensuring the application of rights of free movement.

MEPs call on the Commission to develop guidelines with common criteria in relation to the minimum amount regarded as "sufficient resources" and to clarify on which basis Member States should take into account "the personal situation of the person concerned" under Article 8(4) of Directive 2004/38/EC. Moreover, these guidelines should include a uniform interpretation mechanism of the normative categories of "public policy", "public security" and "public health", and to clarify how taking account of considerations such as residence period, age, state of health, family and economic situation, social and cultural integration, and links with the country of origin, are relevant for the expulsion decision provided for in Directive 2004/38/EC.

MEPs call on the Member States to start procedures to implement the Commission's guidelines by the **end of 2009**.

The Commission is also called upon to:

- bring forward a Code of Conduct for the repatriation of mortal remains of Union citizens;
- increase funds and to set up a specific budget line for supporting national and local projects aimed at the integration of Union citizens and their family members;
- set, with regard to the free movement of people, a mutual evaluation system to be carried out by teams composed of experts designated by the Member States and by Parliament, assisted by the Commission and the Council, based on on-the-spot visits;
- require from Member States periodic reports including statistical data in relation to freedom of movement, for instance on the number of occasions when entry and residence rights were denied;
- verify the existence in Member States of systems for processing personal data specific to Union citizens who are not nationals of that Member State and whether they contain only those data necessary for applying Directive 2004/38/EC.

Member States are called upon to:

- assist their nationals residing in other Member States by offering at their consular and diplomatic missions all necessary information on freedom of movement;
- inform their citizens of their rights in relation to free movement via information and assistance offices at national level.