

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 European Parliament adopted by 500 votes to 104, with 55 abstentions, a resolution 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.

The Parliament recalls, firstly, 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, the Parliament notes 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. It therefore calls for efforts to be made in terms of the application and implementation of this fundamental text.

Application of Directive 2004/38/EC: the Parliament calls 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.** It notes 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.

Avoid overly restrictive interpretation of the Directive: of the measures that it considers most important, Parliament calls for the improved implementation of Articles 2 and 3 of Directive 2004/38/EC to apply 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. Parliament considers that it is necessary to **recognise freedom of movement to all Union citizens without imposing the recognition of same-sex marriages.** In this regard, the plenary points to the sometimes very restrictive interpretation by Member States of the notion of 'family members' (Article 2), of "any other family member" and of "partner" (Article 3), particularly in relation to same sex partners.

The Parliament also calls on the Member States 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, the Parliament stresses 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.

The Parliament also calls for the **repeal 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, Parliament calls 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, the Parliament considers that the 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, it supports the approach proposed by the Commission based on continuous and comprehensive monitoring of the implementation of Directive 2004/38/EC and calls on the Commission to develop a consistent, effective and transparent enforcement policy ensuring the application of rights of free movement.

It also calls on the Commission to develop, by mid-2009, **guidelines** laying down common criteria for the interpretation of the Directive.

Proceedings to be brought against Member States: the Parliament invites the Commission to bring proceedings against Member States whose laws or practices do not comply with the Directive. It also calls on it 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.