Union citizenship: free movement and residence for citizens and their families within the Member States' territory

2001/0111(COD) - 29/04/2004 - Final act

PURPOSE : to simplify and enhance the Union's citizens' rights of movements and residence. LEGISLATIVE ACT : Directive 2004/38/EC of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360 /EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC. CONTENT : This Directive drastically simplifies the formalities for Union citizens and their family members to exercise the right of residence, cutting them back to the bare essentials. It lays down: - the conditions governing the exercise of the right of free movement and residence within the territory of the Member States by Union citizens and their family members; - the right of permanent residence in the territory of the Member States for Union citizens and their family members; - the limits placed on the rights set out above on grounds of public policy, public security or public health. The main points are as follows: - the definition of "family member" also includes the registered partner if the legislation of the host Member State treats registered partnership as equivalent to marriage; - Union citizens have the right of residence in the host Member State for a period not exceeding three months without being subject to any conditions or any formalities other than the requirement to hold a valid identity card or passport, without prejudice to a more favourable treatment applicable to job-seekers as recognised by the case-law of the Court of Justice; - the right of residence for Union citizens and their family members for periods in excess of three months is subject to conditions. For periods of residence of longer than three months, Member States may require Union citizens to register with the competent authorities in the place of residence, attested by a registration certificate issued to that effect; - for people not in work and students, the right of residence is subject to their having sufficient resources and sickness insurance. Evidence that the two conditions are met is given by a simple bona fide declaration. Member States may not lay down a fixed amount which they regard as "sufficient resources", but they must take into account the personal situation of the person concerned. In all cases this amount must not be higher than the threshold below which nationals of the host Member State become eligible for social assistance, or, where this criterion is not applicable, higher than the minimum social security pension paid by the host Member State; - the requirement for a residence card is restricted to family members of Union citizens who are not nationals of a Member State for periods of residence of longer than three months; - a right of permanent residence is be laid down for all Union citizens and their family members who have resided in the host Member State in compliance with the conditions laid down in this Directive during a continuous period of five years without becoming subject to an expulsion measure. The right of permanent residence, once obtained, may not be subject to any conditions; - it is left to the host Member State to decide whether it will grant social assistance during the first three months of residence, or for a longer period in the case of job-seekers, to Union citizens other than those who are workers or self-employed persons or who retain that status or their family members, or maintenance assistance for studies, including vocational training, prior to acquisition of the right of permanent residence, to these same persons; - only in exceptional circumstances, where there are imperative grounds of public security, may an expulsion measure be taken against Union citizens who have resided for many years in the territory of the host Member State, in particular when they were born and have resided there throughout their life. In addition, such exceptional circumstances must also apply to an expulsion measure taken against minors, in order to protect their links with their family; - the right of Union citizens and their family members who have been excluded from the territory of a Member State to submit a fresh application after a reasonable period, and in any event after a three year period from enforcement of the final exclusion order, is confirmed. ENTRY INTO FORCE : 30 /04/04. DATE OF TRANSPOSITION : 30/04/06.