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

2001/0111(COD) - 05/12/2003 - Council position

The Council's common position adopted by qualified majority retains, for the most part, the contents of the Commission's initial proposal, as amended by the modified proposal. It thus incorporates an important number of amendments adopted by the European Parliament in its first reading. Of these, the following deserve mention: - the facilitation of entry and residence for family members not covered by Article 2 in cases where there are serious health grounds for doing so; - the exemption of family members of an EU citizen who do not hold the nationality of a Member State from being subject to the obligation of an entry visa under the provisions of Regulation 539/2001/EC, - provision that the registration with the authorities does not constitute the right of residence but is merely an administrative formality, - provision that the validity of a residence permit is not affected by temporary absence (a maximum of twelve months) such as pregnancy or childbirth, - provision that breaks in residence must last for more than two years at a time if they are to affect the duration of the permanent residence card, - making the text more coherent with the content of the new Article 2 by introducing a reference to the termination of registered partnerships, - providing for certain difficult situations which would justify the maintaining of residence rights after divorce, annulment of marriage or the termination of a partnership, - eliminating the principle of exclusion of social assistance to inactive persons before they acquire the right to permanent residence. EU citizens may, however, be excluded from benefiting from social assistance for the first three months of their residence, - suspension of the enforcement of an expulsion decision pending the ruling of a judge on the interim (with exceptions for exclusion in the case where the expulsion is taking place following a legal decision or on serious grounds of public policy or public security). The Council, however, did not accept to take on board certain amendments contained in the Commission·s amended proposal. This concerns, in particular, the following amendments relating to: - integrating as family members the spouse or partner of the same sex (in fact, only two Member States recognize homosexual marriages); - prohibitions of all gender-related discrimination, - principle of a simple statement is sufficient to prove family relationship, - unlimited validity of the residence card, - notification to the Commission of any decision to remove Union citizens or their family members, -the entry into force of the Directive in July 2004. The main changes made in the common position concern: - the concept of family: the definition in Article 2(2)(b) hasbeen confined to registered partnership where the legislation of the host Member State regards this situation as equivalent to marriage. Unlike the Commission's amended proposal, it does not cover "de facto" durable relationships. This restriction is, however, offset by the addition of a new provision in Article 3 by which the Member States will have to facilitate the entry and residence of a partner in a durable relationship with the Union citizen having the primary right of residence; - other family members: as far as direct descendants and relatives in the ascending line of the Union citizen are concerned, the Council has decided to maintain the existing "acquis", by reintroducing conditions of age and dependency; - the common position has not accepted the extension of the period of residence without conditions to six months, preferring to maintain the existing "acquis" of three months; - the right to family unification for students has been limited to the core family, as in the existing "acquis". Nevertheless, the entry and residence of dependent ascendants will be facilitated on the basis of Article 3; - the common position has added that the residence card issued to family members of a Union citizen who are not nationals of a Member State could be valid for less than five years in order to correspond to the envisaged period of residence of the Union citizen, if this period is inferior to five years. - the common position has introduced the condition for family members who are not nationals of a Member state to have been residing in the host Member State for at least one year before the Union citizen's death in order to retain their right of residence; - another condition included in the common position foresees that family members retain their right of residence exclusively on a personal basis; - it has been provided for that an expulsion measure

cannot be the automatic consequence of recourse to the social assistance system, thus integrating in the text the case-law of the Court of Justice, - the period of continuous legal residence in the host Member State necessary for the acquisition of the right of permanent residence has been set at five years instead of the proposed four years, - the period of residence in the host Member State prior to the acquisition of the right of permanent residence has been set at two years, as in the existing acquis (Commission Regulation 1251/70) - the common position has specified that Member States are not obliged to grant maintenance aid for studies that consist in student grants or student loans to persons other than workers or self-employed, - the Council is almost unanimously against the absolute protection against expulsion, although it has accepted an increased protection for Union citizens who have been residing for a long period in the host Member State. Union citizens who are minor or who have resided in the host Member State for ten years may be expelled only on imperative grounds of publicsecurity, - the common position has introduced an exception to the principle of submitting one's defence in person, if the appearance may cause serious troubles to public policy or public security or when the appeal or review concerns a refusal of entry to the territory, - the period after which an application for lifting of an exclusion order may be submitted has been set at three years instead of the proposed two, - clarification that the assessment of whether there has been any change of circumstances since the expulsion decision was taken shall be made only if the expulsion order is enforced more than two years after it was issued, - a new clause was introduced to clarify that Member States may refuse, terminate or withdraw any right conferred by the Directive in the case of abuse of rights or fraud.