Free movement of persons: right of residence (direct. 90/364/EEC, 90/365/EEC, 93/96/EC, 64 /221/EEC)

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PURPOSE : to present he second Commission report in the implementation of Directives 90/364, 90/365 and 93/96 (right of residence). CONTENT :this is the second report on the implementation of the three Directives on the right of residence of Union citizens and their family members, of whatever nationality, who are not economically active in the host Member State, covering the period 1999-2002. First of all, a series of judgements given by the Court of Justice have established or confirmed a number of very important principles for implementation of the three Directives, in particular: - students do not have to prove that they have sufficient resources of a given amount; a mere statement to that effect is enough; - Member States may not restrict the permissible forms of evidence of sufficient resources or sickness insurance, nor require certain documents to be delivered or countersigned by the authority of another Member State; - beneficiaries of the three Directives are covered by the principle of non-discrimination and are entitled to non-contributory social assistance benefits such as minimum subsistence, except if expressly provided otherwise; - where beneficiaries of the three Directives apply for social assistance in the host Member State, that State may not automatically terminate their right of residence but must show solidarity when they face temporary difficulties; - irregular entry or failure to hold the valid visa required by Community law do not provide the Member States with grounds for refusing to issue a residence card to third-country nationals who are members of the family of a Union citizen within the meaning of Community law; - Article 18 of the EC Treaty, which sanctions the freedom of movement and residence of Union citizens, has direct effect, but the limitations and conditions remain applicable; - the provisions concerning free movement of persons must be interpreted in the light of the requirement of respect for family life provided for by Article 8 of the European Convention on Human Rights (ECHR); consequently, a parent, irrespective of nationality, who has custody of children enjoying the right of residence in the host country under Article 12 of Regulation 1612/68 also has the right of residence on this basis, even if the parents have meanwhile divorced or the parent who has Union citizen status is no longer a migrant worker in the host Member State. The report states that 12 years after the adoption of the three Directives on the right of residence of those who are not economically active and a few years after their transposal into national law, their application is basically satisfactory, as the declining number of complaints received by the Commission shows. But there are still individual cases of incorrect application. They are due mainly to misinterpretation and to administrative practices based on such misinterpretations by national administrative authorities, in particular the immigration police, who are often short of personnel with training in Community law to implement the relevant provisions with the flexibility that the spirit of the Directives requires. The Commission is available to provide both national authorities and Union citizens with the assistance and information they need. Any Union citizen can, by simple letter, ask the Commission to intervene if he has problems connected with application of the Directives. Intervention by the Commission has the advantage of being free for the citizen and effective because of the importance attached to it by the national authorities. But, in the absence of direct contact with the national authorities involved in an individual case and the constraints imposed by infringement proceedings, intervention by the Commission takes time, whereas the situation might need a rapid solution. However, there are systems such as the "SOLVIT" network to help Union citizens find a rapid solution to a specific problem, or the citizens' advice service to provide useful information. Lastly, the Commission proposal of 29 June 2001 for a new Council and Parliament Directive on the right of residence, which will replace the various legal instruments currently in force, if the Council and the European parliament adopt it, demonstrates the Commission's political will to solve the problems resulting from the three Directives: - by extending the right of residence without condition or formality from three to six months; - for stays of more than six months, by replacing the residence card by a registration and proof of sufficient resources and health-care

insurance by a simple declaration, as is currently the case for students with regard to sufficient resources; and - by introducing a permanent residence right acquired after four years' residence in the host Member State, which abolishes the conditions for the right of residence and means that beneficiaries are permanently treated in the same way as nationals for social security purposes.