Basic information

2001/0111(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Union citizenship: free movement and residence for citizens and their families within the Member States' territory **Subject** 2.20 Free movement of persons	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	SANTINI Giacomo (PPE-DE)	11/09/2002

Former committee responsible	Former rapporteur	Appointed
LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	SANTINI Giacomo (PPE-DE)	11/09/2002

Former committee for opinion	Former rapporteur for opinion	Appointed
JURI Legal Affairs and Internal Market	MEDINA ORTEGA Manuel (PSE)	11/09/2001
EMPL Employment and Social Affairs	The committee decided not to give an opinion.	
CULT Culture, Youth, Education, Media and Sport	APARICIO SÁNCHEZ Pedro (PSE)	18/09/2001
FEMM Women's Rights and Equal Opportunities	KARAMANOU Anna (PSE)	03/12/2002
PETI Petitions	KESSLER Margot (PSE)	13/09/2001

Council of the European Union

Council configuration	Meetings	Date
Competitiveness (Internal Market, Industry, Research and Space)	2525	2003-09-22
Competitiveness (Internal Market, Industry, Research and Space)	2462	2002-11-14
Competitiveness (Internal Market, Industry, Research and Space)	2510	2003-05-19

	Competitiveness (Internal Market, Industry, Research and Space)	2371	2001-09-27
	Transport, Telecommunications and Energy	2551	2003-12-05

European Commission	Commission DG	Commissioner
	Justice and Consumers	

Key events

Date	Event	Reference	Summary
23/05/2001	Legislative proposal published	COM(2001)0257	Summary
03/09/2001	Committee referral announced in Parliament, 1st reading		
27/09/2001	Debate in Council		
14/11/2002	Debate in Council		
21/01/2003	Vote in committee, 1st reading		Summary
21/01/2003	Committee report tabled for plenary, 1st reading	A5-0009/2003	
11/02/2003	Decision by Parliament, 1st reading	T5-0040/2003	Summary
11/02/2003	Debate in Parliament		
15/04/2003	Modified legislative proposal published	COM(2003)0199	Summary
19/05/2003	Debate in Council		
05/12/2003	Council position published	13263/3/2003	Summary
15/01/2004	Committee referral announced in Parliament, 2nd reading		
19/02/2004	Vote in committee, 2nd reading		Summary
19/02/2004	Committee recommendation tabled for plenary, 2nd reading	A5-0090/2004	
08/03/2004	Debate in Parliament		
10/03/2004	Decision by Parliament, 2nd reading	T5-0160/2004	Summary
10/03/2004	Results of vote in Parliament		
31/03/2004	Final act signed		
29/04/2004	End of procedure in Parliament		
30/04/2004	Final act published in Official Journal		

Technical information

Procedure reference	2001/0111(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation

Legal basis	EC Treaty (after Amsterdam) EC 012 EC Treaty (after Amsterdam) EC 052 EC Treaty (after Amsterdam) EC 040 EC Treaty (after Amsterdam) EC 018
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/5/19226

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0009/2003	21/01/2003	
Text adopted by Parliament, 1st reading/single reading		T5-0040/2003 OJ C 043 19.02.2004, p. 0017-0042 E	11/02/2003	Summary
Committee recommendation tabled for plenary, 2nd reading		A5-0090/2004	19/02/2004	
Text adopted by Parliament, 2nd reading		T5-0160/2004 OJ C 102 28.04.2004, p. 0518-0571 E	10/03/2004	Summary

Council of the EU

Document type	Reference	Date	Summary
Council statement on its position	14067/2003	29/10/2003	
Council position	13263/3/2003 OJ C 054 02.03.2004, p. 0012-0032 E	05/12/2003	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2001)0257 OJ C 270 25.09.2001, p. 0150 E	23/05/2001	Summary
Modified legislative proposal	COM(2003)0199	15/04/2003	Summary
Commission communication on Council's position	SEC(2003)1293	30/12/2003	Summary
Non-legislative basic document	COM(2008)0840	10/12/2008	
Follow-up document	COM(2009)0313	02/07/2009	Summary
Follow-up document	C(2010)5559	16/08/2010	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
CofR	Committee of the Regions: opinion	CDR0287/2001 OJ C 192 12.08.2002, p. 0017	13/03/2002	
EESC	Economic and Social Committee: opinion, report	CES0522/2002 OJ C 149 21.06.2002, p. 0046	24/04/2002	

Additional information		
Source	Document	Date
European Commission	EUR-Lex	

Final act	
Directive 2004/0038 OJ L 229 29.06.2004, p. 0035-0048	Summary

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

2001/0111(COD) - 10/03/2004 - Text adopted by Parliament, 2nd reading

The European Parliament adopted the resolution drafted by Giacomo SANTINI (EPP-ED, I) and approved the common position.

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

2001/0111(COD) - 02/07/2009 - Follow-up document

This report proposes a set of guidelines in order to improve the transposition and 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.

To recall, on 10 December 2008, the Commission adopted its report on the application of Directive 2004/38/EC which presented a comprehensive overview of how the Directive is transposed into national law and how it is applied in everyday life.

The report concluded that the overall transposition of the Directive was rather disappointing, particularly as regards Chapter VI (which provides for the right of Member States to restrict the right of EU citizens and their family members on grounds of public policy or public security) and Article 35 (which authorises Member States to adopt measures to prevent abuse and fraud, such as marriages of convenience).

The Commission announced in the report its intention to offer **information and assistance** to both Member States and EU citizens by issuing guidelines in the first half of 2009 on the issues identified as problematic in transposition or application. This intention was welcomed by the Council and by the European Parliament. The guidelines state the views of the Commission and are without prejudice to the case-law of the Court of Justice and its development.

This Communication aims to provide guidance to Member States on how to apply Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States correctly, with the objective of bringing a **real improvement** for all EU citizens and of making the EU an area of security, freedom and justice.

The report also identified **frequent problems relating to the right of entry and residence of third country family members of EU citizens**, and to requirements to submit with the applications for residence additional documents not foreseen in the Directive. The Commission announced in the report that it will step up its efforts to ensure that the Directive is correctly transposed and implemented. In order to achieve this objective, the Commission will continue to inform citizens about their rights under the Directive, in particular by distributing a **simplified guide for EU citizens and by making the best use of the Internet**. Moreover, the Commission will meet Member States bilaterally to discuss issues of implementation and application and will use fully its powers under the Treaty.

The free movement of citizens constitutes one of the fundamental freedoms of the internal market and is at the heart of the European project. Directive 2004/38/EC codified and reviewed the existing Community instruments in order to simplify and strengthen the right of free movement and residence for Union citizens and their family members. As a general remark, the Commission recalls that the Directive must be **interpreted and applied in accordance with fundamental rights,** in particular the right to respect for private and family life, the principle of non-discrimination, the rights of the child and the right to an effective remedy as guaranteed in the European Convention of Human Rights (ECHR) and as reflected in the EU Charter of Fundamental Rights.

The freedom of movement of persons is one of the foundations of the EU. Consequently derogations from that principle must be interpreted strictly. However, the right of free movement within the EU is not unlimited and carries with it obligations on the part of its beneficiaries, which implies to obey the laws of their host country.

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

2001/0111(COD) - 11/02/2003 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution by 269 votes to 225 with 46 abstentions, making several amendments to the Commission's proposal. (Please refer to the document dated 21/01/03.) The rapporteur is Giacomo SANTINI (EPP-ED, Italy). Parliament also made the following amendments: - on the question of expulsion on the grounds of public order or public security, the scope for such measures must be limited, and take into account the length of stay, the impact on the Union citizen and his family members, the links with the country of origin and the seriousness of the threat to public policy and public security; - where a short-stay visa is required by a family member who is not a national of a Member State, such visas must be issued no later than one week of the submission of the application; - for stays of longer than two years (rather than six months) the host Member State may require Union citizens to register with the authorities if a similar requirement applies to its own nationals; - family members must not be refused a residence card solely on the grounds that their visas have expired prior to the application for a residence card; - the validity of the residence card will not be affected by absences for such matters as study or training, provided that they do not exceed one year; - Member States must notify the Commission of all decisions to expel Union citizens or members of their family; - medical examinations may be required not later than six months after the date of arrival; - disease occurring six months after arrival must not be grounds for expulsion; - not more than two years after the date of final decision ordering expulsion, persons expelled may submit a new application for leave to enter; - a report on the application of the directive must be submitted by 1 July 2007.

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.

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.

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

2001/0111(COD) - 23/05/2001 - Legislative proposal

PURPOSE : to enhance the Union's citizens' rights of movements and residence. CONTENT : firstly, it should be noted that the right of Union citizens and their families to move and reside freely in the territory of the Member States needs enhancing. These rights are becoming an integral part of the legal heritage of every citizen of the European Union and should be formalised in a common corpus of legislation to harmonise the legal status of all Community citizens in the Member States, irrespective of whether they pursue a gainful activity or not. Therefore, a fresh look needs to be taken at the arrangements for Union citizens to exercise these rights with a view to producing a single set of rules governing freedom of movement within the measning of Articles 17 and 18 of the EC Treaty. The Directive is being proposed in the context of the new legal and political environment established by citizenship of the Union. The basic concept is as follows: - Union citizens should, mutatis mutandis, be able to move between Member States on similar terms as nationals of a Member State moving around or changing their place of residence or job in their own country. Any additional administrative or legal obligations should be kept to be bare minimum required by the fact that the person in question is a "non-national". This proposal

serves several purposes: first of all, it takes the form of a single instrument in the interests of reader-friendliness and clarity; then, it streamlines the arrangements for exercising freedom of movement, which, depending on the level integration in the host Member States, range from extending the right of residence without formalities to six months, to removing any conditions or differential treatment and to putting non-nationals on an equal footing with nationals after four years of residence in the host Member State; finally, it tightens up the definitions of restrictions on the right of residence. Furthermore, this proposal considerably facilitates the right to free movement and residence of family members of a Union citizen, irrespective of nationality. Moreover, the right of entry of residence for Union citizens is currently governed by a complex corpus of legislation, comprising two regulations and nine directives. These instruments have different parts of the EC Treaty as their legal bases and are specific to different categories of people. This proposal brings these categories together in a single legislative instrument. For those in work, whether in paid employment or self-employed, the only condition on their right of residence will continue to be that they engage in gainful activity, which is to be proved simply by their making a bona fide declaration to that effect. For people not in work and students, the right of residence will, for the first four years of residence in the host Member State, continue to be subject to their having sufficient resources and sickness insurance. However, requirements have been relaxed and evidence that the two conditions are met is replaced by a simple bona fide declaration. During the first four years of residence, the residence card for Union citizens is abolished and replaced by entry in thepopulation register, certified by an attestation to that effect issued forthwith. This attestation, together with the possession of an identity card from the country of origin or a valid passport, is enough to exercise the right to residence and meets the requirements of the host Member State whereby it is informed of population movements within its territory. In view of the above, the proposal first extends the period of non-nationals can stay in another Member State with just a valid identity card or passport without having to go through any particular formalities. The extension of the current three-month period to six-months is intended to cater for the modern, high mobility lifestyles, we are witnessing in Member States. In addition, this proposal for a Directive also specifically takes into account the situation of the family members of Union citizens. While it is true that the right of movement and residence of family members of Union citizens is not explicitly referred to by the Treaty, the right does flow from the right to preserve family unity, which is intrinsically connected with the right to the protection of family life, a fundamental right forming part of the the common constitutional traditions of Member States, which are protected by Community law and incorporated in the Charter on Fundamental Rights of the European Union. This proposal for a Directive drastically simplifies the formalities for Union citizens and their familt members to exercise the right of residence, cutting them back to the bare essentials. The proposal also eliminates any possibility of negatice influence in connection wiht family unification. Under Community law as it stands, the right of residence in the host Member State may be taken away from divorced spouses and from children who are no longer minors or dependent on a Union citizen, regardless of their nationality. Lastly, the Treaty allows the right of free movement and residence to be refused on grounds of public policy, public security ands public health. The proposal is based on the interpretation which the Court of Justice gives to the concept of public order and introduces new provisions drawing on the concept of fundamental rights which will provide Union citizens and their family members with greater safeguards in dealings with both administrative authorities and the courts concerning decisions restricting their fundamental right of movement and residence; this protection is absolute for minors who have family ties in the host country and people who have acquired a right of permanent residence.

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

2001/0111(COD) - 15/04/2003 - Modified legislative proposal

The European Parliament adopted 82 amendments. Most have been accepted by the Commission and concern the following: - "family member" includes a registered partner or someone in a duly attested durable relationship if the host State recognises the situation of unmarried couples; - other family members have the right of entry and residence where there are serious health or humanitarian grounds for doing so; - a visa must be issued no later than one week after the submission of the application and must be free of charge; - family members may not be refused a residence card solely on the grounds that their visa has expired prior to the submission of an application for a card; - the validity of the card will not be affected by temporary absences not exceeding 6 months or by longer absences under certain circumstances; - divorce will not affect residence rights if the marriage or partnership has lasted at least two years; - family members must be resident for a continuous period of four years to acquire the right of permanent residence, if they are not nationals of a Member State; - Member States must inform the commission of any decision to remove a Union citizen or their family members; - Member States may require a medical examination within six months of the date of arrival; - the Directive will apply from 01/07/05. A report will be submitted no later than 01/07/08. The Commission did not accept several amendments. Amongst those rejected was the amendment recognising the same sex spouse and registered partner in accordance with the legislation of the home Member State, and non-married partners in accordance with the practice of the home or host Member State. The Commission feels that harmonisation of the conditions of residence of Union citizens in Member States of which they are not nationals must not result in the imposition on certain Member States of amendments to family law legislation. This is an area that does not fall within the Community's legislative jurisdiction. Couples from other Member States must be treated in the same way as the nationals of the host Member State.

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

2001/0111(COD) - 30/12/2003 - Commission communication on Council's position

The Commission has accepted the common position which, although less ambitious than the Commission's original proposal as amended following Parliament's opinion, strikes a balance between the positions of the Member States and marks a major step forward in terms of freedom of movement and residence in relation to the existing situation. The Commission considers that the text represents a fair, balanced compromise, enabling Union citizens' rights to be strengthened in matters of freedom of movement and residence. - With respect to the definition of the family, the Commission has accepted the approach proposed by the Council. While it is true that the definition of Article 2(2)(b) is more limited than the text of the amended proposal, it must be considered that the content of Article 3 has been extended to include any type of durable relationship. The Commission considers that the concept of durable relationship may cover different situations: same-sex marriage, registered partnership, legal cohabitation and common-law marriage. - Regarding the extension up to six months of the unconditional right of residence, in order to resolve these difficulties, the Commission has

agreed to revert to the current "acquis", which lays down a period of three months that is not subject to conditions or formalities. However, the Commission has expressly undertaken to examine the possibility of proposing an extension to six months in the report that it will present two years after the directive enters into force. - On the question of the expulsion of a person having recourse to social assistance in the host Member State, the new recital 16 further clarifies the concept of unreasonable burden, which could potentially lead to the expulsion of the person who has obtained social assistance without being entitled to it. - The rules concerning procedural guarantees have been transferred to a specific article, Article 15, without the content having been changed. The Commission endorses this approach, which clarifies the conditions in which the Union citizen's right of residence is lost, while respecting the current "acquis" and the case-law of the Court of Justice on the subject. It also considers that the division into two articles makes the text clearer and more coherent.