

CONST/003

Brussels, 4 April 2002

OPINION

of the

Committee of the Regions

of 13 March 2002

on the

Proposal for a European Parliament and Council Directive

on the right of citizens of the Union and their family members to move and reside freely

within the territory of the Member States

(COM(2001) 257 final - 2001/0111 (COD))

The Committee of the Regions

HAVING REGARD TO the Proposal for a European Parliament and Council Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (COM(2001) 257 final - 2001/0111 (COD));

HAVING REGARD TO the decision of the Council of 30 August 2001, under the first paragraph of Article 265 of the Treaty establishing the European Community, to consult the Committee on this matter;

HAVING REGARD TO the decision of the Bureau of the Committee of the Regions of 12 June 2001 to instruct Commission 7 - Education, Vocational Training, Culture, Youth, Sport and Citizens' Rights - to draw up the relevant opinion;

HAVING REGARD TO the Draft Opinion (CdR 287/2001 rev. 2) unanimously adopted by Commission 7 on 30 November 2001 (Rapporteur: **Mr Roberto Pella, Mayor of Valdengo** (I-PPE))

adopted the following opinion at its 43rd plenary session of 13 March 2002 :

1. **The views of the Committee of the Regions**

1. The Committee welcomes the draft directive presented by the Commission, which aims to strengthen the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.
2. More specifically, it believes it is necessary to establish a single legislative instrument, bringing together and supplementing the present items of Community legislation, which include two regulations and nine directives.
3. The most positive aspect of the proposal is that it removes the inconsistencies in the current legislation arising from the fact that the two regulations and nine directives mentioned above have different parts of the EC Treaty as their legal bases and are specific to different categories of people.
4. The Committee believes that the new measures put forward are essential if European citizenship is to become a reality, and if the Union's different national identities - which in their essential cultural diversity are a source of wealth - are to be integrated.
5. The main objectives of the proposed measures are:
 - to make the terms of free movement more flexible;
 - to extend the right to residence without formalities to six months;
 - to guarantee the right of permanent residence after four years of residence in the host country;
 - to make it easier for the family members of EU citizens to exercise the right of free movement and residence, whatever their citizenship;
 - to precisely define the limitations on the right of residence.
6. The draft directive offers comprehensive protection for the right of free movement, since it applies to all EU citizens travelling to or staying in another Member State, together with their family members travelling with them or joining them later, regardless of nationality: there are no stipulations regarding the purpose of the journey or stay.
7. The Committee unconditionally endorses the extension from three to six months of the right to residence without formalities, in line with Article 40 of the EC Treaty, which provides for abolishing administrative procedures and practices which might hamper the free movement of workers.
8. The Committee welcomes the fact that the draft directive makes a residence card compulsory only for citizens of third countries and their families. For EU citizens, the residence card thus has a purely declaratory value, proving a pre-existing right, and so is not constitutive of their right of residence. The fact that they are not obliged to acquire a residence card is also a definite advantage in terms of simplifying administrative procedures.
9. The Committee welcomes the full recognition of the legal validity of self-certification, which is already applied in many Member States.
10. The Committee notes that this provides an effective response to the demand for mobility on the present-day labour market, where forms of employment are increasingly flexible and often temporary.
11. The Committee appreciates the care taken to safeguard the legitimate right of all

Member States, as recognised by the Court of Justice, to keep track of people's movement on their own territory. Compulsory registration with the appropriate authorities in the place of residence is retained.

12. The Committee of the Regions has frequently voiced its long-standing demand for administrative procedures to be streamlined as far as possible, also with a view to relieving the bureaucratic pressure on local and regional authorities.
13. The Committee considers that a period of four years is sufficient to provide an acceptable level of integration for a Union citizen in the host country; it therefore welcomes the establishment of the right of permanent residence (a new concept introduced by the draft directive), to be conferred after four years of continuous residence.
14. The Committee is pleased at the central focus in the draft directive on the need to preserve family unity, and in particular the new definition of "family member", which covers not only spouses but also unmarried partners (not explicitly recognised under current legislation), together with both the descendants of a spouse/partner, regardless of whether or not they are minors or dependent, and their ascendants, whether or not they are dependent (current legislation only recognises them if dependent). The proposal for a directive is thus in line with the wider definition of "family" already recognised in some Member States, while still respecting the legislation of those countries that have not decided to apply this definition.
15. The proposal's intention to eliminate any negative effects concerning family reunification is to be welcomed. At present, divorced spouses and children who are no longer minors or dependent on the Union citizen may have the right of residence taken away from them, regardless of their nationality. This often has serious implications for third country nationals who are members of a Union citizen's family.
16. The proposal also acknowledges the central role of the family by aiming to provide a clearer definition of the circumstances under which the right of residence may be restricted on the grounds of public policy, public security and public health.
17. The draft directive also reinforces the right of family members of EU citizens to work in an employed or self-employed capacity in the host Member State, irrespective of their nationality.
18. Specific arrangements for residence by students and economically inactive persons are laid down. They must have sufficient economic resources and health insurance cover: this safeguards the host Member State's right not to have to support their social or health care expenses.
19. The proposal is based on the Court of Justice's interpretation of the concept of public policy, and introduces new provisions drawing on the area of fundamental rights in order to provide Union citizens with greater protection and enhanced safeguards in dealings with both administrative authorities and the courts concerning any decisions restricting their fundamental right of movement and residence.
20. Such protection is especially important for minors with family ties in the host Member State.

2. The Committee of the Regions' recommendations

The Committee of the Regions

1. commends the Commission on its proposal which not only provides a long-awaited single reference text, but also contains fundamental innovations protecting Union citizens' rights, especially with regard to family unity and the right to move and stay freely in any Member State;
2. particularly welcomes the further guarantees of free movement which the draft directive gives to categories of people whose movement is not adequately facilitated by existing legislation, such as researchers, artists and those involved in culture generally;
3. hopes that the clarity and comprehensive nature of the single text proposed will make it readily accessible to EU citizens, who experience considerable difficulty in interpreting the rules set out in the regulations and directives currently in force;
4. calls upon the Commission to seek cooperation with local and regional authorities in boosting awareness of the new European legislation, and to increase the involvement of EU citizens in defending their rights;
5. is convinced that the active involvement of local and regional authorities can also help provide an effective remedy to unfair administrative practices, whereby numerous documents, which are not in fact required under EU law, are often demanded;
6. strongly advocates self-certification on the part of EU citizens to provide evidence of certain personal circumstances. This practice, adopted in many EU Member States, speeds up administrative procedures significantly;
7. hopes that all the Member States will soon incorporate the practice of self-certification into their national legislation;
8. urges the Commission, in agreement with all the parties concerned, to deploy all means necessary to ensure that Member States transpose the new Community directive, as in the past there have been serious shortcomings in this area on the part of the Member States;
9. hopes that in the future, when the final adjustments are made to the legislation in force, particular attention will continue to be paid to the rights of third country nationals who belong to a Union citizen's family group. The principle of family unity is crucial;
10. recommends that the approach undertaken also be pursued in relation to instruments of secondary legislation, by drafting more easily understood single texts in order to provide EU citizens with a clearer picture of the legal framework;
11. calls on the Commission, in its moves to eliminate vocational barriers to the free movement of workers, to continue the process of approximating the laws, regulations and administrative provisions relating to education and training, with a view to the recognition of educational qualifications, coordination to enable students to continue their studies without interruption in another Member State, and closer alignment of the education systems of the various Member States;
12. urges that careful attention also be paid to the problem of supplementary pensions. If

movement of workers is to become a reality, an effective solution must be found to the problem of discrepancies between the Member States' pension schemes.

Brussels, 13 March 2002.

The President

of the

Committee of the Regions

The Secretary-General

of the

Committee of the Regions

Albert Bore

Vincenzo Falcone

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