

Procedure file

Basic information		
INI - Own-initiative procedure	2008/2184(INI)	Procedure completed
Application of Directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the territory of the Member States		
Subject 2.20 Free movement of persons 2.20.01 Freedom of movement, right of residence, identity checks		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	LIBE Civil Liberties, Justice and Home Affairs		31/01/2008
		ALDE VĂLEAN Adina-loana	
	Committee for opinion	Rapporteur for opinion	Appointed
	JURI Legal Affairs		22/09/2008
		Verts/ALE FRASSONI Monica	
Council of the European Union	Council configuration	Meeting	Date
	Justice and Home Affairs (JHA)	2927	26/02/2009
	Justice and Home Affairs (JHA)	2908	27/11/2008
European Commission	Commission DG	Commissioner	
	Justice and Consumers	BARROT Jacques	

Key events			
04/09/2008	Committee referral announced in Parliament		
27/11/2008	Resolution/conclusions adopted by Council		Summary
10/12/2008	Non-legislative basic document published	COM(2008)0840	Summary
26/02/2009	Debate in Council	2927	Summary
16/03/2009	Vote in committee		Summary
24/03/2009	Committee report tabled for plenary	A6-0186/2009	
01/04/2009	Debate in Parliament		
02/04/2009	Results of vote in Parliament		

02/04/2009	Decision by Parliament	T6-0203/2009	Summary
02/04/2009	End of procedure in Parliament		

Technical information

Procedure reference	2008/2184(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Implementation
Legal basis	Rules of Procedure EP 54; Rules of Procedure EP 54-p4
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/6/65409

Documentation gateway

Non-legislative basic document		COM(2008)0840	10/12/2008	EC	Summary
Committee draft report		PE418.397	26/01/2009	EP	
Committee opinion	JURI	PE418.257	13/02/2009	EP	
Amendments tabled in committee		PE420.171	18/02/2009	EP	
Committee report tabled for plenary, single reading		A6-0186/2009	24/03/2009	EP	
Text adopted by Parliament, single reading		T6-0203/2009	02/04/2009	EP	Summary
Commission response to text adopted in plenary		SP(2009)3508/5	13/10/2009	EC	

Application of Directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the territory of the Member States

The Council adopted conclusions assessing the implementation of the global approach to the migration issue and the partnership with countries of origin and transit.

The Council reaffirmed that the Global Approach remains wholly relevant and that the guidelines remain valid, particularly as regards the three components of the global approach (good organisation of legal migration; the effective prevention of and fight against illegal immigration; and the strengthening of the relationship between migration and development). However, the Council notes that the implementation of the Global Approach has yet to face some challenges, linked in particular to:

- the limitations of the various partners' administrative and technical capacity;
- the time needed to develop initiatives and to obtain concrete results in this sensitive area;
- the coordination required between the competent administrations on both sides;
- the complexity of the financial tools;
- the need to improve the coordination with overall external relations with the interested country or the region in question.

The Council stresses that the Global Approach has already been reflected in several concrete and positive initiatives promoting a better understanding of all aspects of migration and new forms of dialogue and cooperation. It offers a common policy framework which makes it possible to improve the integration of migration issues into the European Union's external relations, on the basis of an effective and balanced partnership with third countries. This reference framework governs the European Union's constructive dialogue on migration issues with other regional groupings (including Africa, the Mediterranean and the east and southeast of the European Union).

The Council concludes that the success of the Global Approach in practice calls for more coordination and consistency between policies, particularly in the relationship with the external relations of the European Union and with development policies, sustained political commitment, and expanded and improved capacities to act.

Application of Directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the territory of the Member States

PURPOSE: to present a Commission report on the 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.

CONTENT: this report is submitted pursuant to Article 39(1) of Directive 2004/38/EC. Its purpose is to present a comprehensive overview of how Directive 2004/38/EC is transposed into national law and how it is applied in everyday life. The Directive is fundamental not only for more than 8 million³ EU citizens who reside in another Member State and their family members, but also for the millions of EU citizens travelling every year inside the EU.

The overall transposition of Directive 2004/38/EC is rather disappointing. Not one Member State has transposed the Directive effectively and correctly in its entirety. Not one Article of the Directive has been transposed effectively and correctly by all Member States. On the other hand, Member States in some areas adopted transposition measures that are more favourable to EU citizens and their family members than required by the Directive itself. Although in Cyprus, Greece, Finland, Luxembourg, Malta, Portugal and Spain the problems of compliance are linked only to some provisions of the Directive, considerable parts and crucial provisions of the Directive have been incorrectly transposed in most Member States.

With regard to the right of residence, Finland and the UK made the right of residence of third country family members conditional upon their prior lawful residence in another Member State. 7 Member States adopted the same interpretation through administrative guidelines. The application of this additional requirement, not provided for in the Directive, resulted in a high number of complaints. Following the Metock case in 2008, the Court of Justice ruled that the requirement of lawful prior residence is contrary to the Directive. This judgment caused considerable controversy in some Member States, notably in Denmark

With regard to the right of entry, the report notes that the transposition of Article 5(2) is often incorrect and/or incomplete, and the legislative shortcomings result in frequent violations of the rights of family members, notably those who are third country nationals. Only 7 Member States have introduced specific facilities for family members to acquire an entry visa in their legislation. 5 Member States do not provide for the visa exemption for family members holding a residence card issued by another Member State.

Additional practical problems encountered by third country family members are caused by the failure to differentiate between third country nationals and third country family members of EU citizens, who enjoy certain rights under the Directive. The latter are still often required to submit a range of documents with their application for an entry visa, such as a proof of accommodation, sufficient resources, and an invitation letter or return ticket.

With regard to administrative formalities for third country family members, most of the transposition concerns relate to the residence card issued to third country family members, their validity and supporting documents to be submitted with an application. A serious problem is that in a number of Member States the residence card is not called "Residence card of a family member of a Union citizen", as required by Article 10. Family members concerned may find it difficult to prove that their situation falls under the Directive and not under the more restrictive national rules on aliens.

The transposition of procedural safeguards is not satisfactory.

Practical application: in the thirty months since the Directive has been applicable, the Commission has received more than 1800 individual complaints, 40 questions from the Parliament and 33 petitions on its application. It has registered 115 complaints and opened five infringement cases for incorrect application of the Directive. The problems revealing persistent violation of the core rights of EU citizens are mostly related to:

- the right of entry and residence of third country family members (problems with entry visas or when crossing the border, conditions attached to the right of residence not foreseen in the Directive and delayed issue of residence cards);
- the requirement for EU citizens to submit with the applications for residence additional documents not foreseen in the Directive.

The Commission will step up its efforts to ensure that the Directive is correctly transposed and implemented across the EU. It will launch infringement proceedings when necessary. Priority will be given to the most serious problems identified above with regard to the Commission's assessment of practical application. The Commission will also continue working at technical level with the Member States. It intends to issue guidelines in 2009 on a number of issues identified as problematic in transposition or application, such as expulsions and fight against abuse.

The Commission will continue to treat provision of information on the Directive as a priority and will continue to distribute a simplified guide for EU citizens, making the best use of the Internet, mainly through Your Europe portal, the creation of an article on Wikipedia on the right of free movement and simple factsheets explaining citizens' rights.

The Commission will encourage and support Member States to launch awareness-raising campaigns to inform EU citizens of their rights under the Directive. The group of experts will examine and disseminate best practice to this effect. The Commission will not propose amendments to the Directive. The latter must be implemented by Member States more effectively.

Application of Directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the territory of the Member States

The Council took note of a report concerning the 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.

The report, drawn up by the Commission, presents an overview of how Directive 2004/38/EC is transposed into national law and how it is applied in everyday life. It also encourages Member States to launch awareness-raising campaigns to inform EU citizens of their rights under the Directive.

The Council welcomed in particular the Commission's intention to offer information and assistance to Member States as soon as possible by issuing guidelines on a number of issues, such as expulsions and the fight against abuse, in order to facilitate effective application of the Directive.

In November 2008, the Council adopted conclusions on abuses and misuses of the right to free movement of persons. In the conclusions, the Council left open the possibility of a more extensive examination of the issue after the Commission submitted a report on operation of the

Directive.

Moreover, these conclusions underlined the importance which EU Member States attach to protecting the right to free movement from the abuses created inter alia by illegal immigration.

Application of Directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the territory of the Member States

The Committee on Civil Liberties, Justice and Home Affairs adopted the own-initiative report drawn up by Adina-Ioana V?LEAN (ALDE, RO) on the 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, recalling that, as of 1 January 2006, there were approximately 8.2 million Union citizens exercising their right to reside in another Member State and that millions of Union citizens travel every year inside the Union.

However, MEPs note that there are weaknesses in relation to the transposition in the Member States of Directive 2004/38/EC, which provides that Union citizens can move freely all over the Union. They therefore call for efforts to be made in terms of the application and implementation of this fundamental text.

Application of Directive 2004/38/EC: MEPs call on the Member States to respect the spirit and the letter of Article 18 of the EC Treaty and Article 45 of the Charter of Fundamental Rights granting Union citizens the fundamental right to free movement, by implementing Directive 2004/38/EC fully and as a matter of urgency. They note that several provisions in the legislation of most Member States run counter to the letter and the spirit of the Directive, undermining rights of free movement and Union citizenship, and they point out that national administrative practices very often constitute significant obstacles to the exercise by citizens of their rights.

MEPs call for a series of measures to be taken, including full implementation of Article 2 and Article 3 of Directive 2004/38/EC not only to different sex spouses, but also to the registered partner, including same-sex couples recognised by a Member State, on the basis of the principles of mutual recognition, equality and non-discrimination. According to MEPs, it is necessary to recognise freedom of movement to all Union citizens without imposing the recognition of same-sex marriages.

Member States are also called upon to:

- not place unjustified administrative burdens on Union citizens and their family members, including third-country family members, that are not expressly provided for in Directive 2004/38/EC, as these are an unjustified obstacle to the exercise of the freedom of movement;
- facilitate the entry of third-country family members of Union citizens, in order to allow them to lead a normal family life in the host Member State;
- adopt the same format for personal identity documents for their nationals and for Union citizens from other Member States.

The Commission is also called upon to assess carefully that the laws and practices of Member States do not infringe the rights conferred on Union citizens by the EC Treaty and the Directive (by imposing, for example, the notions of "sufficient resources", "unreasonable burden on the social assistance system of the host State", "(serious/imperative) grounds of public policy and public security", etc.). Moreover, MEPs stress the need to implement the directive without discrimination in relation to certain ethnic communities and for measures taken on grounds of public policy or public security to comply with the principle of proportionality and to be based exclusively on the personal conduct of the individual concerned.

MEPs also call for the repeal or revision of the transitional arrangements, which currently still provide for restrictions on the free movement of workers, of nationals of the Member States that joined the EU on 1 May 2004 and on 1 January 2007.

Overall, MEPs call on the Council to define a strategy to ensure the free movement of Union citizens and workers and their access to the labour market in host Member States. They call on the Commission and the Member States to review the limitations, restrictions and current time periods provided for in Directive 2004/38/EC to enjoy freedom of movement rights.

Methodology to ensure implementation: in general, MEPs consider that unsatisfactory transposition of Directive 2004/38/EC demonstrates that the Commission has been unable to secure coherent and timely compliance with the Directive by Member States and to handle the large number of complaints from citizens in relation to the application of the Directive. However, they support the approach proposed by the Commission based on continuous and comprehensive monitoring of the implementation of Directive 2004/38/EC and call on the Commission to develop a consistent, effective and transparent enforcement policy ensuring the application of rights of free movement.

MEPs call on the Commission to develop guidelines with common criteria in relation to the minimum amount regarded as "sufficient resources" and to clarify on which basis Member States should take into account "the personal situation of the person concerned" under Article 8(4) of Directive 2004/38/EC. Moreover, these guidelines should include a uniform interpretation mechanism of the normative categories of "public policy", "public security" and "public health", and to clarify how taking account of considerations such as residence period, age, state of health, family and economic situation, social and cultural integration, and links with the country of origin, are relevant for the expulsion decision provided for in Directive 2004/38/EC.

MEPs call on the Member States to start procedures to implement the Commission's guidelines by the end of 2009.

The Commission is also called upon to:

- bring forward a Code of Conduct for the repatriation of mortal remains of Union citizens;
- increase funds and to set up a specific budget line for supporting national and local projects aimed at the integration of Union citizens and their family members;
- set, with regard to the free movement of people, a mutual evaluation system to be carried out by teams composed of experts designated by the Member States and by Parliament, assisted by the Commission and the Council, based on on-the-spot visits;
- require from Member States periodic reports including statistical data in relation to freedom of movement, for instance on the number of occasions when entry and residence rights were denied;
- verify the existence in Member States of systems for processing personal data specific to Union citizens who are not nationals of that Member State and whether they contain only those data necessary for applying Directive 2004/38/EC.

Member States are called upon to:

- assist their nationals residing in other Member States by offering at their consular and diplomatic missions all necessary information on freedom of movement;
- inform their citizens of their rights in relation to free movement via information and assistance offices at national level.

Application of Directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the territory of the Member States

The European Parliament adopted by 500 votes to 104, with 55 abstentions, a resolution on the 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.

The Parliament recalls, firstly, that, as of 1 January 2006, there were approximately 8.2 million Union citizens exercising their right to reside in another Member State and that millions of Union citizens travel every year inside the Union.

However, the Parliament notes that there are weaknesses in relation to the transposition in the Member States of Directive 2004/38/EC, which provides that Union citizens can move freely all over the Union. It therefore calls for efforts to be made in terms of the application and implementation of this fundamental text.

Application of Directive 2004/38/EC: the Parliament calls on the Member States to respect the spirit and the letter of Article 18 of the EC Treaty and Article 45 of the Charter of Fundamental Rights granting Union citizens the fundamental right to free movement, by implementing Directive 2004/38/EC fully and as a matter of urgency. It notes that several provisions in the legislation of most Member States run counter to the letter and the spirit of the Directive, undermining rights of free movement and Union citizenship, and they point out that national administrative practices very often constitute significant obstacles to the exercise by citizens of their rights.

Avoid overly restrictive interpretation of the Directive: of the measures that it considers most important, Parliament calls for the improved implementation of Articles 2 and 3 of Directive 2004/38/EC to apply not only to different sex spouses, but also to the registered partner, including same-sex couples recognised by a Member State, on the basis of the principles of mutual recognition, equality and non-discrimination. Parliament considers that it is necessary to recognise freedom of movement to all Union citizens without imposing the recognition of same-sex marriages. In this regard, the plenary points to the sometimes very restrictive interpretation by Member States of the notion of "family members" (Article 2), of "any other family member" and of "partner" (Article 3), particularly in relation to same sex partners.

The Parliament also calls on the Member States to:

- not place unjustified administrative burdens on Union citizens and their family members, including third-country family members, that are not expressly provided for in Directive 2004/38/EC, as these are an unjustified obstacle to the exercise of the freedom of movement;
- facilitate the entry of third-country family members of Union citizens, in order to allow them to lead a normal family life in the host Member State;
- adopt the same format for personal identity documents for their nationals and for Union citizens from other Member States.

The Commission is also called upon to assess carefully that the laws and practices of Member States do not infringe the rights conferred on Union citizens by the EC Treaty and the Directive (by imposing, for example, the notions of "sufficient resources", "unreasonable burden on the social assistance system of the host State", "(serious/imperative) grounds of public policy and public security", etc.). Moreover, the Parliament stresses the need to implement the directive without discrimination in relation to certain ethnic communities and for measures taken on grounds of public policy or public security to comply with the principle of proportionality and to be based exclusively on the personal conduct of the individual concerned.

The Parliament also calls for the repeal of the transitional arrangements, which currently still provide for restrictions on the free movement of workers, of nationals of the Member States that joined the EU on 1 May 2004 and on 1 January 2007. Overall, Parliament calls on the Council to define a strategy to ensure the free movement of Union citizens and workers and their access to the labour market in host Member States. They call on the Commission and the Member States to review the limitations, restrictions and current time periods provided for in Directive 2004/38/EC to enjoy freedom of movement rights.

Methodology to ensure implementation: in general, the Parliament considers that the unsatisfactory transposition of Directive 2004/38/EC demonstrates that the Commission has been unable to secure coherent and timely compliance with the Directive by Member States and to handle the large number of complaints from citizens in relation to the application of the Directive. However, it supports the approach proposed by the Commission based on continuous and comprehensive monitoring of the implementation of Directive 2004/38/EC and calls on the Commission to develop a consistent, effective and transparent enforcement policy ensuring the application of rights of free movement.

It also calls on the Commission to develop, by mid-2009, guidelines laying down common criteria for the interpretation of the Directive.

Proceedings to be brought against Member States: the Parliament invites the Commission to bring proceedings against Member States whose laws or practices do not comply with the Directive. It also calls on it to:

- bring forward a Code of Conduct for the repatriation of mortal remains of Union citizens;
- increase funds and to set up a specific budget line for supporting national and local projects aimed at the integration of Union citizens and their family members;
- set, with regard to the free movement of people, a mutual evaluation system to be carried out by teams composed of experts designated by the Member States and by Parliament, assisted by the Commission and the Council, based on on-the-spot visits;
- require from Member States periodic reports including statistical data in relation to freedom of movement, for instance on the number of occasions when entry and residence rights were denied;
- verify the existence in Member States of systems for processing personal data specific to Union citizens who are not nationals of that Member State and whether they contain only those data necessary for applying Directive 2004/38/EC.

Member States are called upon to:

- assist their nationals residing in other Member States by offering at their consular and diplomatic missions all necessary information on freedom of movement;
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