

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(89) 275 final - SYN 199 - SYN 200

Brussels, 26 June 1989

Proposal for a
COUNCIL DIRECTIVE
on the right of residence for students COM(89) 275 final - SYN 199

Proposal for a
COUNCIL DIRECTIVE
on the right of residence for employees and
self-employed persons who have ceased
their occupational activity COM(89) 275 final - SYN 200

Proposal for a
COUNCIL DIRECTIVE
on the right of residence

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. At their meeting in Paris on 9-10 December 1974, the Heads of State and Government recommended that Member States' citizens should be granted special rights as Community nationals.

The European Parliament, in its resolution of 11 November 1977 (the SCELBA report) listed these special rights, which included the general right of residence. Consequently, the Commission submitted a proposal for a directive on the right of residence of nationals of the Member States on the territory of another Member State (COM(79)215).¹

The objective of this proposal was to complete Community law in this area by extending the right of residence to those European citizens who do not as yet have that right on the basis of existing Community law (EEC Treaty Articles 48-66; Regulations Nos 1612/68 and 1251/70 and Directives 68/360, 73/148 and 75/34).

The Commission notes that after ten years of discussions, the Member States are still unable to reach unanimity on the proposal for a directive. Indeed, at the Council meeting on the internal market on 13 April 1989, the Ministers came to the conclusion that, failing any new contributions, any further discussion would be doomed to failure. The Commission undertook to try to introduce new elements into the discussion which were presented in its communication of 28 April 1989 to the Council on the general right of residence (COM(89)237).

¹ OJ C 207, 17.8.1979, p. 14; this proposal was amended by COM(80)358, OJ C 188, 25.7.1980, p. 7; COM(80)649, OJ C 292, 11.11.1980, p. 3; COM(85)292, OJ C 171, 10.7.1985, p. 8.

The discussions at the Council meeting on the internal market on 3 May 1989 showed that the legal framework on which the discussions were based (a proposal for a directive based on Article 235 of the Treaty) was no longer the appropriate framework to enable the Council to reach positive conclusions regarding the various categories of persons covered by the proposal for a directive. Moreover, it would remain open to objections by certain Member States. Therefore, on 3 May 1989, the Commission withdrew the 1979 proposal and announced that it would present three new proposals the provisions and legal basis of which would correspond more closely to the specific situation of each category covered. The Commission stressed that the proposed new legal basis would make it possible for Parliament, through the cooperation procedure, to play a strong role in the decision-making process on this question.

2. The need to make arrangements for the right of residence for all Community nationals has become still more pressing with the prospect of the completion of the internal market. It would be politically unacceptable to create an area without frontiers in which, according to the Single European Act, the free movement of persons is guaranteed (EEC Treaty, Article 8a) without allowing the beneficiaries of that right to reside where they wish in the Community.

The implications of the common market and the expectations of European citizens make Community action necessary. The ad hoc Committee on a People's Europe (the Adonnino Committee) has presented this right as an essential element: the European Council held in Brussels on 29-30 March 1985 approved the proposals in this report. The European Council in The Hague on 26-27 June 1986 expressed its concern at the delay and called on the Council to give special attention to implementing the Adonnino report and to produce results, notably with regard to the right of residence. The European Council held in London on 5-6 December 1986 repeated its request that decisions be taken to speed up

the creation of a people's Europe, giving individuals greater freedom of movement. The European Council held in Hanover on 27-28 June 1988 again emphasized the importance of a people's Europe.

3. As the Adonnino Report already indicated, the right of residence should be granted provided the beneficiaries are properly covered in terms of sickness insurance and do not require social security cover in the host country. These two vital and sufficient conditions were observed by the Commission in its communication of 28 April 1989 and they today form the basis of the new proposals. Naturally, the Member States are free to impose conditions other than those laid down in the Directives or to grant the right of residence without imposing any conditions or to impose only one of them.

Since the persons concerned are in different circumstances, it is by enunciating these two conditions that a distinction may be drawn between these three categories: students, pensioners and other persons for whom rules governing the right of residence have not yet been issued. These conditions are set out in Article 1 of each proposal for a Directive.

(a) The three proposals for directives allow the Member States to subject the right of residence to the condition that the beneficiaries are members of a sickness insurance scheme.

The proposal for a Directive confirms that under Article 7 of the Treaty students are entitled to become members of the sickness insurance scheme, if there is one, in the host country under the same conditions as national students. If there is no such possibility, they would be required to subscribe to a private insurance scheme unless they are covered by the sickness insurance scheme in the country of origin.

After cessation of their occupational activity, most employees and self-employed persons continue to be covered by the sickness insurance

scheme in the country from which their pension is due; Regulation (EEC) No 1408/71 provides that sickness insurance benefits shall be paid in the country of residence or temporary stay by the institution responsible for payment in the country where the person is insured.

Lastly, if other persons are not covered by sickness insurance at the time when they apply for right of residence they will be required to become members of the sickness insurance scheme in the host member country, or, where there is no such possibility, to subscribe to a private insurance scheme in the host Member State or the state of origin.

(b) The condition that those concerned should not become the responsibility of the social security system of the host country should be more clearly spelt out.

Students should be granted the right of residence on the basis of registration with an educational establishment where they receive vocational or professional training. The social security system should intervene only in exceptional cases for which there could be no grounds for imposing additional conditions; should, however, the social security system of the host country have to intervene on behalf of the student, the benefit should be granted in accordance with the rules of the host country, but the country of origin should bear the cost. If the Member State has granted the right of residence to the student without conditions Article 1(3) may not be invoked.

Persons receiving a pension or allowance, should be given the right of residence on provision of proof concerning such pension or allowance. The likelihood of this category requiring support from the social security system is minimal, since they have a stable income.

In the case of other persons, the host countries should have the right to require proof that they have adequate means of support. The level of the amount of which they should provide evidence should be established by the

Member States in the light of the objective: to ensure that such persons do not become the responsibility of the social security system of the host country.

4. To give effect to the right of residence for beneficiaries, measures should be adopted organizing administrative procedures to ensure full enjoyment of this right. For this purpose it would seem appropriate to refer to the procedures laid down for workers in paid employment. Article 2(2) of each proposal for a directive refers to existing Community law, in particular to:

- Council Directive 68/360/EEC of 15 October 1968 on the elimination of restrictions on the movement and residence of workers of the Member States and members of their family within the Community, in particular Articles 2 (right to leave), 3 (right of entry), 6 (validity of the residence permit), 9 (free issue of documents), and 10 (derogation on grounds of public order);
- Council Regulation (EEC) No 1612/68 of 15 October 1968 on the freedom of movement for workers within the Community, in particular Article 11 (access to the labour market of members of the family);
- Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures for foreigners with respect to movement and residence on the grounds of public order, public safety and public health.

Article 2(1) of each proposal for a directive lays down rules regarding the type of document which must be issued to beneficiaries of the directive. With respect to students, however, to prevent abuse, renewal of the residence permit will be conditional on the agreement of the country of origin if the latter has been required to reimburse social security costs disbursed by the host country during the previous academic year.

5. The legal bases for the three proposals for directives depend on the category of person covered. The starting point for the three proposals for directives is Article 3(c) of the EEC Treaty, which states that one

of the Community's aims is to abolish obstacles to the free movement of persons. With the entry into force of the Single European Act it becomes still more pressing to achieve this goal, since Article 8(a) of the Treaty provides for the establishment before 31 December 1992 of the internal market comprising an area without internal frontiers in which the free movement of persons is ensured.

With respect to students, rulings of the Court of Justice make it clear that Articles 128 and 7 of the Treaty prohibit any discrimination between nationals of Member States with regard to access to vocational or professional training in the Community. Equal access to such training presupposes the possibility of being present on the territory of the Member State where the instruction is given and consequently the need for rules to ensure equal treatment. Needless to say this proposal for a Directive does not concern students whose right of residence derives from the fact that they are or have been effectively engaged in economic activities or are members of a migrant worker's family (for example, see Article 12 of Regulation (EEC) No 1612/68). This proposal for a directive is therefore based on Article 7 of the Treaty.

Articles 48 and 52 of the Treaty provide for the free movement of workers in paid employment and of self-employed workers, which implies a right of residence in the Member State in which they spend their working life. Working life does not consist solely of periods of economic activity. Just as working life is not interrupted by periods of holiday or unemployment, it should not be considered to cease at the time of retirement. Thus the right of residence should be accorded not only during the active part of a working life but also during the inactive part.

For a number of people, this right is already given effect by Commission Regulation (EEC) No 1251/70 of 29 June 1970 and Council Directive 75/34/EEC of 17 December 1974, which recognize the right to remain. The right of

residence during the inactive part of a working life should also be granted to workers in paid employment and self-employed workers who have not exercised the right of freedom of movement during active periods of their working life, or who have exercised this right during an active period of their working life but in a Member State other than the one in which they wish to take up residence. Community law already takes account of this situation: recipients of cash benefits for invalidity, old age or survivors' benefits, or of a pension in respect of an industrial accident or disease, are entitled to continue to receive such benefits and income when resident on the territory of a Member State other than the one where the institution responsible for payment is located. This right is accorded regardless of whether or not they worked in the host Member State. The proposal for a directive on the right of residence for employees and self-employed persons who have ceased their occupational activity is thus based on Articles 49 and 54 of the Treaty.

The last category includes Community nationals who do not pursue an economic activity in the Community, or who do not receive a pension or allowance. Article 3(c) and Article 8(a) clearly state all persons must enjoy freedom of movement within the Community. Nationals of Member States to whom rules governing the right of residence have not yet been issued and who are not covered by the other two proposals for directives, must be able to apply for the right of residence under the third proposal for a Directive. The latter is based on Article 100 of the Treaty which provides that the Council shall issue directives for the approximation of such provisions in the Member States as directly affect the establishment or functioning of the common market. Establishing the common market is one of the Community's tasks, set out in Article 2 of the Treaty, and the abolition of obstacles to freedom of movement for persons is specifically listed in the action set out in Article 3(c) which must be undertaken to implement Article 2. The aim of the proposal for the Directive in question is to align national provisions laying down conditions governing right of residence for certain categories of persons, since these differences

certainly constitute a direct obstacle to freedom of movement for persons.

II

(Preparatory Acts)

COMMISSION

Proposal for a Council Directive on the right of residence for students

COM(89) 275 final — SYN 199

(Submitted by the Commission on 26 June 1989)

(89/C 191/02)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, in particular the second paragraph of Article 7 thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas Article 3c of the Treaty lays down that the activities of the Community shall include the abolition, as between Member States, of obstacles to freedom of movement for persons;

Whereas Article 8a lays down that the internal market must be established by 31 December 1992; whereas the internal market is to comprise an area without internal frontiers in which the freedom of movement for persons is ensured;

Whereas, as the Court of Justice has ruled, Articles 128 and 7 of the EEC Treaty prohibit any discrimination between nationals of the Member States as regards access to vocational and professional training in the Community;

Whereas equal access to vocational and professional training presupposes being present on the territory of the Member State where the training is given and consequently implies the need to lay down rules ensuring equal treatment;

Whereas students are only rarely beneficiaires of social assistance; whereas, however, the costs of social assistance granted in the host Member State to a student who has no legal connection with that Member State other than the mere fact that he or she has gone there to undergo vocational or professional training, should not be borne by that State but by the Member State from which he or she comes;

Whereas it is necessary for the Member States to adopt the administrative measures to facilitate residence without discrimination;

Whereas the exercise of the right of residence becomes a genuine possibility only if it is granted to the spouse and dependent children;

Whereas the beneficiaries of this Directive should be covered by the same administrative arrangements as those laid down in particular in Regulation (EEC) No 1612/68 of the Council⁽¹⁾, Directive 68/360/EEC of the Council⁽²⁾, and Directive 64/221/EEC of the Council⁽³⁾;

Whereas this Directive does not apply to students who enjoy the right of residence by virtue of the fact that they are or have been effectively engaged in economic activities or are members of the family of a migrant worker,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Member States shall adopt the necessary measures to facilitate exercise of the right of residence to ensure access to vocational training without discrimination. Accordingly, they shall recognize the right of residence of any student who is a national of a Member State and who does not enjoy this right under another Community measure, and of the student's spouse and dependent children, provided the student is enrolled in an educational establishment for the purpose of following vocational or professional training courses there and that they are covered by a sickness insurance scheme.

2. Nationals of Member States who plan to follow vocational training courses and members of their family shall be entitled to become members of the sickness insurance scheme of the host country under the same conditions as nationals.

⁽¹⁾ OJ No L 257, 19. 10. 1968, p. 2.

⁽²⁾ OJ No L 257, 19. 10. 1968, p. 13.

⁽³⁾ OJ No 56, 4. 4. 1964, p. 850/64.

3. Where the social security system of the host Member State has to intervene on behalf of a student referred to in paragraph 1, the benefit shall be granted in accordance with the rules of that State. At the request of the host Member State, the Member State of origin shall reimburse the amount of benefit granted. For the purposes of this Directive, 'Member State of origin' shall mean that State in which the student had his or her principal residence before seeking the right of residence in a Member State on the basis of this Directive.

Article 2

1. Right of residence shall be established by means of the issue of a document known as a 'European Communities residence permit' whose validity may be limited to the duration of the course of studies in question. The residence permit shall be renewed annually, subject to the third subparagraph. Where a member of the family does not hold the nationality of a Member State, he or she shall be issued with a residence permit with the same validity as that issued to the national on whom he or she depends.

For the purpose of issuing the residence permit, the Member State may require only that the applicant present an identity document and provide proof that he or she meets the conditions laid down in Article 1 (1).

Where a Member State has sought reimbursement of social assistance costs under Article 1 (3), the residence permit may be renewed only with the prior agreement of the Member State of origin.

2. Articles 2, 3, 9 and 10 of Directive 68/360/EEC, Article 11 of Regulation (EEC) No 1612/68 and Articles 2 to 9 of Directive 64/221/EEC shall apply to beneficiaries of this Directive.

Article 3

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1990. They shall immediately communicate the measures taken to the Commission.

The provisions adopted pursuant to the first paragraph shall make express reference to this Directive.

Article 4

This Directive is addressed to the Member States.

Proposal for a Council Directive on the right of residence for employees and self-employed persons who have ceased their occupational activity

COM(89) 275 final — SYN 200

(Submitted by the Commission on 26 June 1989)

(89/C 191/03)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, in particular Articles 49 and 54 thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas Article 3c of the Treaty lays down that the activities of the Community shall include the abolition, as between Member States, of obstacles to freedom of movement for persons;

Whereas Article 8a lays down that the internal market must be established by 31 December 1992; whereas the internal market comprises an area without internal frontiers in which freedom of movement for persons is ensured;

Whereas Articles 48 and 52 of the EEC Treaty provide for freedom of movement for workers and self-employed persons, which implies the right of residence in the Member State in which they pursue their occupational activity; whereas this right of residence should be granted not only during the active part of their working life, but also during the non-active part, even if they have not exercised their right to freedom of movement during the first part of their working life;

Whereas pursuant to Article 10 of Regulation (EEC) No 1408/71 of the Council ⁽¹⁾, as amended by Regulation (EEC) No 1390/81 ⁽²⁾, recipients of invalidity, or old age cash benefits or pensions for accidents at work or occupational diseases are entitled to continue to receive these benefits and pensions even if they reside in the territory of a Member State other than that in which the institution responsible for payment is situated;

Whereas the exercise of this right becomes a genuine possibility only if it is also granted to members of the family;

Whereas the beneficiaries of this Directive should be covered by the same administrative arrangements as those laid down in particular by Regulation (EEC) No 1612/68 of the Council ⁽³⁾, Directive 68/360/EEC of the Council ⁽⁴⁾ and Directive 64/221/EEC of the Council ⁽⁵⁾,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Member States shall grant the right of residence to nationals of Member States who have pursued an activity in the Community as an employee or self-employed person, and to members of their family as defined in Article 10 (1) of Regulation (EEC) No 1612/68, provided that they are recipients of an invalidity pension, or old age benefits, or of a pension in respect of an industrial accident or disease, and are covered by a sickness insurance scheme.

⁽¹⁾ OJ No L 149, 5. 7. 1971, p. 2.

⁽²⁾ OJ No L 143, 29. 5. 1981, p. 1.

⁽³⁾ OJ No L 257, 19. 10. 1968, p. 2.

⁽⁴⁾ OJ No L 257, 19. 10. 1968, p. 13.

⁽⁵⁾ OJ No 56, 4. 4. 1964, p. 850/64.

Article 2

1. Right of residence shall be established by means of the issue of a document known as a 'European Communities residence permit' whose validity may be limited to five years and is renewable. Where a member of the family does not hold the nationality of a Member State, he or she shall be issued with a residence permit of the same validity as that issued to the national on whom he or she depends.

For the purpose of issuing the residence permit, the Member State may require only that the applicant present an identity document and provide proof that he or she meets the conditions laid down in Article 1.

2. Articles 2, 3, 6 (1) (a) and (2), 9 and 10 of Directive 68/360/EEC, Article 11 of Regulation (EEC) No 1612/68 and Articles 2 to 9 of Directive 64/221/EEC shall apply to the beneficiaries of this Directive.

Article 3

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1990. They shall immediately communicate the measures taken to the Commission and the other Member States.

The provisions adopted pursuant to the first paragraph shall make express reference to this Directive.

Article 4

This Directive is addressed to the Member States.

Proposal for a Council Directive on the right of residence

COM(89) 275 final

(Submitted by the Commission on 26 June 1989)

(89/C 191/04)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas Article 3c of the Treaty lays down that the activities of the Community shall include the abolition, as between Member States, of obstacles to freedom of movement for persons;

Whereas Article 8a lays down that the internal market must be established by 31 December 1992; whereas the internal market comprises an area without internal frontiers in which freedom of movement for persons is ensured;

Whereas national provisions on the right of residence for European citizens in Member States other than the one of which they are nationals should be harmonized to ensure such freedom of movement;

Whereas, as the *ad hoc* Committee on a People's Europe indicated in its report to the European Council in Brussels on 29 and 30 March 1985, it is vital to avoid migration flows resulting solely from financial considerations based on the fact that the social security and social assistance systems have not been harmonized; whereas a European citizen wishing to reside in a country other than his own should not constitute an unreasonable burden on the public finances of the host country; whereas, therefore, at the present stage in the development of the Community, conditions should be laid down for the exercise of the right of residence;

Whereas the exercise of this right becomes a genuine possibility only if it is also granted to members of the family;

Whereas the beneficiaries of this Directive should be covered by the same administrative arrangements as those laid down in particular in Regulation (EEC) No 1612/68 of the Council⁽¹⁾, Directive 68/360/EEC of the Council⁽²⁾, and Directive 64/221/EEC of the Council⁽³⁾,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Member States shall grant the right of residence to nationals of Member States who do not enjoy this right under other provisions of Community law, and to members of their families as defined in Article 10 (1) of Regulation (EEC) No 1612/68, provided that they and the members of their family are covered by sickness insurance and have sufficient resources to avoid becoming a burden on the social security system of the host Member State during their period of residence.

Article 2

1. Right of residence shall be established by means of the issue of a document known as a 'European Communities residence permit', whose validity may be limited to five years and is renewable. Where a member of the family does not hold the nationality of a Member State, he or she shall be issued with a residence permit with the same validity as that issued to the national on whom he or she depends.

For the purpose of issuing the residence permit, the Member State may require only that the applicant present an identity document and provide proof that he or she meets the conditions referred to in Article 1.

2. Articles 2, 3, 6 (1) (a) and (2), 9 and 10 of Directive 68/360/EEC; Article 11 of Regulation (EEC) No 1612/68 and Articles 2 to 9 of Directive 64/221/EEC shall apply to beneficiaries of this Directive.

⁽¹⁾ OJ No L 257, 19. 10. 1968, p. 2.

⁽²⁾ OJ No L 257, 19. 10. 1968, p. 13.

⁽³⁾ OJ No 56, 4. 4. 1964, p. 850/64.

Article 3

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1990. They shall immediately communicate the measures taken to the Commission.

The provisions adopted pursuant to the first paragraph shall make express reference to this Directive.

Article 4

This Directive is addressed to the Member States.
