



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a
COUNCIL DIRECTIVE
on the right of third-country nationals to travel in the Community

(presented by the Commission)

Introduction

In its work programme for 1995 the Commission announced its intention of presenting three additional proposals with a view to attaining the objective set out in Article 7a of the EC Treaty in the field of the free movement of persons.

On 12 July 1995, the Commission has adopted the three proposals *en bloc*; they round off the body of legislation aimed at ending controls on persons at the Union's internal borders. Together with the other measures already adopted or still being discussed, their adoption by the Council will enable that objective to be attained without restriction.

This step constitutes a clear and unconditional obligation on the part of the Union stemming from Article 7a. In putting forward the proposals the Commission is also paying due regard to the legitimate expectations of the European Parliament and citizens of the Union.

Seven Member States (B, D, E, F, L, NL and P) have committed themselves to implementing the Schengen Agreement irreversibly with effect from 26 March 1995. Despite a few "teething troubles" which have led one Member State to apply a safeguard clause, the mechanism is working satisfactorily overall. The Member States have found that Schengen has not operated at the expense of security; indeed most of them reckon that the level of security inside the frontier-free area has increased as a result of the flanking measures taken. Schengen thus shows that an area can be created in which people are both free and safe.

The three proposals in question, of which this is one, are as follows:

1. A proposal for a Directive on the practical application of the principle of the elimination of controls on persons: it is based on Article 100 of the EC Treaty, requiring the unanimous approval of the Council. The Directive would provide final confirmation that controls at internal borders have indeed been eliminated.

It would take effect only when the flanking measures were themselves in force. These flanking measures are considered essential to maintaining a high level of security within the area without internal borders and the Commission would like them to be implemented as soon as possible. They include the Dublin Convention determining the State responsible for examining applications for asylum lodged in one of the Member States, the draft External Frontiers Convention, the proposal for a Regulation determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States, the Council Regulation laying down a uniform format for visas and the draft Convention on a European Information System.

2. A proposal for a Directive adapting the secondary legislation on the free movement of citizens of the Union (and their families). This proposal is based on Articles 49, 54(2) and 63(2) of the EC Treaty; it would amend the existing secondary legislation to take account of the ending of controls at internal borders required by the Directive referred to at 1. The practical effectiveness of the proposal is therefore dependent on that Directive's entry into force.
3. A proposal for a Directive giving nationals of non-member countries who are lawfully in the territory of one Member State the right to travel for a brief stay in the territory of any other Member State, an entitlement known as the "right to travel". This proposal is based on Article 100 of the EC Treaty. It is the last of the measures accompanying the ending of controls on persons for which a proposal has still to be put forward at Union level. It would also be a considerable step forward in the treatment of non-Union nationals who are lawfully resident in a Member State and who wish to travel in the Community, and of non-Community members of the families of Union nationals.

The proposal would not affect the first entry into the Community of a non-Union national or the decision of a Member State to authorize him to remain in its territory for a long stay. Nor would it affect *a fortiori* Member States' decisions regarding access to the labour market or to self-employed activity.

Like other flanking measures (e.g. the Dublin Convention, for which the ratification process will shortly be completed), this "right to travel" Directive could be applied before controls on persons at internal borders were abolished.

EXPLANATORY MEMORANDUM

I. General

A. The right to travel

(a) The internal market and the "right to travel"

1. As stated in Article 7a of the EC Treaty, the Community is to adopt measures with the aim of progressively establishing the internal market. The internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty.
2. One of the essential aspects of any internal market is the right of any person lawfully in that market to move freely to any point therein in order to obtain goods or receive services there. In other words, an internal market such as the Community cannot function properly if the movement of persons within it is hampered; it will be unable to offer all the economic benefits that can be expected of the integration of national markets into a large single market if some people are prevented from, or have difficulty in, moving in that market.

This is true in a physical sense, e.g. where means of transport are deficient. That is one of the reasons why the Treaty on European Union supplements the EC Treaty with provisions on the development of trans-European networks.

But the economic disadvantages are just as tangible when the obstacles to movement within the internal market stem from legal disparities which lead to the introduction of procedures and controls which in turn prevent or impede the movement of persons.

3. As the Commission has stated on numerous occasions, for instance in its Communication of 8 May 1992 on the abolition of border controls⁽¹⁾, the completion of the internal market, an area without internal frontiers, presupposes also the abolition of all controls at internal frontiers, whatever their form and whatever their justification. It is clear from the definition of the internal market that this objective must be attained in relation to all persons, whatever their nationality: any other interpretation would deprive Article 7a of the Treaty of any practical effectiveness.
4. The completion of the internal market requires therefore that, in principle, all persons who are lawfully in one part of that market should have the right to move to other parts, and that such movements should not be subject to controls when the internal frontiers of the market are crossed.

⁽¹⁾ SEC(92) 877 final.

(b) Citizens of the Union

5. As regards Union citizens, Article 8a of the EC Treaty provides that they are to have the right to move and reside freely within the territory of the Member States, subject to the limitations laid down by Community law. These rights are conferred on them in their capacity as citizens of the Union and do not depend on the exercise of an economic activity. Thus, the Treaty on European Union sanctions a state of affairs which had obtained ever since Directive 90/364/EEC on the right of residence was adopted by the Council on 28 June 1990.

As regards more particularly entry into, and short stays in, the territory of another Member State, the Court of Justice has held that "nationals of the Member States of the Community generally have the right to enter the territory of the other Member States in the exercise of the various freedoms recognized by the Treaty and in particular the freedom to provide services which, according to now settled case-law, is enjoyed both by providers and by recipients of services"⁽²⁾.

6. Subject to the public policy exception, Union citizens therefore now no longer encounter any obstacle to their movements within the Community other than checks on persons at internal frontiers; although they are still sometimes subjected to controls when they cross an internal frontier, they have the right to cross is merely on production of a valid identity card or passport (Article 3 of Directive 73/148/EEC), and they must indicate (furnishing proof, if necessary) to the authorities in the host Member State the grounds on which they are staying in that State's territory only if and when they apply for a residence permit, i.e. when they intend to take up residence in the host Member State. As long as they are staying temporarily, as tourists, in the territory of another Member State, they are not subject to any formality⁽³⁾.

The freedom of Union citizens to move within the internal market is therefore at present restricted only by the continued existence of controls on persons at internal frontiers.

(c) Third-country nationals

7. The position is different in the case of third-country nationals. Not only are they subjected, like Union citizens, on crossing an internal Community frontier to controls by the Member States, but, more fundamentally, their right of entry and residence, even for a short period, in the territory of the Member States is currently governed by Member States' domestic laws, which are neither harmonized nor coordinated.

⁽²⁾ Case C-68/69, Commission v Netherlands [1991] ECR I-2637, paragraph 10.

⁽³⁾ With the exception, where appropriate, of a declaration of arrival (third subparagraph of Article 4(2) of Directive 73/148/EEC).

The upshot is that a third-country national who is lawfully in the territory of one Member State can travel to a point in the internal market situated in another Member State only under the conditions and in accordance with the procedures laid down by that other Member State⁽⁴⁾. In particular, the nationals of a large number of third countries are required to obtain in advance a visa from the authorities in each of the Member States they intend to visit or through which they intend to pass.

Union citizens' family members who are not nationals of a Member State enjoy the same right of entry and residence as those citizens, but it is a derived right; the right is thus restricted to family members from third countries who are related to a citizen who is exercising his right of free movement. Moreover, in accordance with the secondary Community legislation on the free movement of persons, such family members may, owing to their nationality, be subject to a visa requirement.

8. This state of affairs will not be altered by the entry into force of the Regulation determining the third countries whose nationals must be in possession of a visa (hereinafter called the "visa Regulation") or of the Convention on controls on persons crossing the external frontiers of the Member States (hereinafter called the "External Frontiers Convention"), for which the Commission presented proposals on 10 December 1993⁽⁵⁾, as these instruments concern only the crossing of Member States' external frontiers.

Nevertheless, the said instruments contain two principles which are very important, as models, as far as the present proposal is concerned. First, they will lay down the principle of equivalence between residence permits issued by Member States and visas; according to this principle, a third-country national in possession of a residence permit issued by a Member State may cross the Member States' external frontiers on the strength of that permit; he will no longer be required to apply for a visa in order to cross those frontiers. Second, they will lay down the principle of mutual recognition of visas; according to this principle, a third-country national in possession of a visa issued by a Member State will be authorized to cross the external frontiers of the other Member States on the strength of that visa; this principle will, of course, apply only to visas issued in accordance with the harmonized criteria applicable to the issue of visas, that is to say to visas valid for the whole Community.

Hence a third-country national who needs a visa to cross an external frontier of a Member State will be able to cross that frontier - if the other entry conditions are met - on the strength of a residence permit or a visa issued by another Member State.

⁽⁴⁾ With the exception of the rules in force in the Benelux countries: a third-country national in possession of a residence permit or a visa issued by the authorities in one of the Benelux countries is entitled to enter the territory of the other two countries without completing any prior formalities.
The same solution is provided for in Articles 19 to 21 of the Convention implementing the Schengen Agreement of 19 June 1990.

⁽⁵⁾ OJ No C 11, 15.1.1994, pp. 6 and 15.

9. In the case of travel within the Community, whether by third-country nationals who have entered a Member State on the strength of a visa and who wish, during their stay in that State, to pay a short visit to another Member State, or by third-country nationals who live in a Member State with a residence permit and who wish to visit another Member State of the Community, a comparable measure is lacking.

If this situation remains unchanged, a person who is a national of a third country for which the Member State he intends to visit requires a visa will continue to be required prior to his departure to take the steps necessary to obtain a visa from the Member State concerned, even if he is lawfully resident in the territory of another Member State and even if he is a member of the family of a Union citizen⁽⁶⁾.

But this state of affairs is quite illogical: on the one hand, under the instruments referred to above, a person could enter the territory of a Member State on the strength of a residence permit or a visa issued by another Member State if he comes directly from a third country; on the other, that same person would not be entitled to enter the territory of the Member State in question if he was coming from another Member State of the Union in which he was lawfully present.

10. As a direct consequence of the disparity between national laws and the lack of coordination between them, some planned intra-Community trips are not made. The formalities, the need to go to an embassy or a consulate which may be a fair distance from one's home, the need in some cases to go in person, the expense and time involved, or quite simply the withholding of the visa, are so many reasons why intra-Community trips are not made. This applies in particular to brief visits to a neighbouring Member State.

Thus, one of the objectives of the internal market, namely that consumers should be able to obtain goods for their own use from wherever the terms seem to them to be the most favourable - an objective which has been translated into practice (with a few exceptions for certain products subject to excise duty) by the amendments made to the legislation on indirect taxation - has therefore not been achieved in its entirety. In view of the large number of third-country nationals lawfully resident in the Community, this situation is bound to have a strong economic impact.

The same applies, perhaps with even greater force, to the provision of services in the Community. Tourism is an example which springs immediately to mind: as it is often easier for a third-country national who lives in a Member State to visit his home country rather than another Member State, the tourism industry undoubtedly suffers as a result. By and large, the difficulties third-country nationals encounter when going to another Member State are an obstacle to the freedom of service providers established in that Member State to provide their services.

⁽⁶⁾ Article 3(2) of Directive 73/148/EEC; Community law currently provides only that visas are to be free of charge for members of the family of a Union citizen (Article 7(2) of Directive 73/148/EEC), and that Member States must afford such persons every facility for obtaining any necessary visas (Article 3(2) of Directive 73/148/EEC).

The current situation is also an obstacle to the provision of services by Community businesses employing third-country nationals. When such a business has the opportunity to provide a service in a Member State other than that in which it is established, it will either have to suffer the consequences of the visa requirement or abandon the idea of having the work carried out by those of its employees it would normally have sent; either way, it will come up against an obstacle to its freedom to provide services.

11. Lastly, as is generally acknowledged, the lack of coordination between Member States' laws on the entry of, and short stays by, third-country nationals in their territory is one of the main reasons why controls on persons at internal frontiers are being maintained for the time being in respect of such nationals and, consequently, in respect of Union citizens.

Quite apart from the economic cost resulting from this situation, the abolition of controls on all persons at internal frontiers is necessary in order to attain without restriction the objective provided for in Article 7a of the EC Treaty, namely the establishment of the internal market, an area without internal frontiers.

Above all, a system of controls and formalities is scarcely compatible with the free movement of services, which is temporary by definition and is affected whatever angle it is viewed from, as will be seen in section B below.

12. It is clear from all these considerations that coordination of Member States' laws so as to grant third-country nationals who are lawfully in a Member State the right to enter the territory of another Member State for a short stay, that is to say so as to give full effect to freedom of movement in the internal market, is a measure which is not only useful from the economic point of view, but also necessary from a legal standpoint.
13. In its Communication of 23 February 1994 to the Council and Parliament on immigration and asylum policies⁽⁷⁾, the Commission stated, at point 127, that:

"In its 1991 Communication⁽⁸⁾ the Commission also expressed as its opinion that the logic of the internal market implied the elimination of the condition of nationality for the exercise of certain rights. A first step in this respect would be to enable third country nationals to move freely around within the Union on the basis of their residence permit, which would replace any existing visa requirement. The Schengen Agreement provides such a right of free circulation, but is applicable to the Schengen countries only. The Commission believes that this right should also be ensured for the Union as a whole. In this respect, on the one hand, as far as the crossing of external frontiers is concerned it has proposed giving residence permits of third country nationals legally resident in one of the Member States the equivalent value to a visa. This proposal has been included in the draft Convention on the crossing of the external frontiers of the Member States which it has submitted to the Council. On the other hand, in order to allow third country citizens legally resident in a Member State to circulate freely within the Union for short-stay periods, the Commission intends to come forward with a proposal which would allow them to enter the territory of another Member State without

⁽⁷⁾ COM(94) 23 final.

⁽⁸⁾ Communication on immigration (SEC(91) 1857 final).

a visa, even in cases where the Member State concerned would otherwise require one for nationals of the third countries in question".

14. The present proposal takes due account of the proposal for an External Frontiers Convention and of the proposal for a visa Regulation presented by the Commission, in which the external aspect of the right to travel is already dealt with. The right to travel will thus henceforth be governed by three instruments, a situation stemming from the division of competences between the EC Treaty as amended by the Treaty on European Union and Title VI of the latter Treaty.

These three instruments will accordingly have to be interpreted and applied in a consistent manner.

B. Legal basis

15. As the Court of Justice has held⁽⁹⁾, the choice of legal basis for a Community instrument must be founded notably on the instrument's purpose and content.

It is clear from what is said above that the purpose of the proposed Directive is to complete the internal market, an area without internal frontiers, and in particular to facilitate the movement of goods, services and persons and to remove one of the reasons for maintaining controls on persons at internal frontiers.

The content of the proposed Directive consists of harmonization of Member States' laws on entry into, and short stays in, their territory by third-country nationals by granting third-country nationals who are already lawfully in the territory of a Member State the right - under certain conditions - to travel for a short period in their territory, that is to say by granting them freedom to travel in the Community.

16. The achievement of the objectives set out in Article 7a of the EC Treaty is effected in principle, subject to more specific provisions, on the basis of Article 100a of that Treaty. However, by virtue of the exceptions in Article 100a(2), that article cannot serve as a basis for the proposed Directive because it includes provisions on the free movement of persons.

Since Article 100a EC operates by way of derogation from Article 100 EC, and in the absence of other, more specific Treaty provisions (see points 17 et seq.), the proposed Directive must be based on Article 100.

Its purpose is to harmonize and coordinate Member States' laws on the subject, and these, as explained above, directly affect the functioning of the common market.

⁽⁹⁾ Case C-300/89, Commission v Council [1991] ECR I-2867.

17. The second paragraph of Article 59 EC cannot form the general legal basis of the proposed Directive. It enables the Council, acting by a qualified majority, to extend the Community provisions on the free movement of services to service providers who are third-country nationals established in the Community. The present proposal does not cover such a situation since the right to travel is being granted independently of the exercise of an economic activity. Nevertheless, it is clear that, in facilitating the movement of third-country nationals within the Union, the aim is also indirectly to remove obstacles to the free movement of services within the Union stemming from a system of controls on persons. As the Court of Justice has stated⁽¹⁰⁾, in order to enable services to be provided, either the provider can go to the recipient or else the recipient can come to the provider; although it is not expressly mentioned in Article 60 EC, the latter case is the "necessary complement" of the freedom of the service provider. According to the Court's settled case-law, both service providers and service recipients are to benefit from the free movement of services.

It can be deduced from this that, if the Community legislator has the power - acting by a qualified majority - to extend the provisions on the movement of services to service providers who are third-country nationals established in the Community (second paragraph of Article 59 EC), he also has the power to extend them to service recipients. The full extension of the free movement of services to service recipients who are third-country nationals would, moreover, remove an obstacle to the freedom to provide services of Union citizens established in the other Member States.

As the free movement of services is one of the four freedoms underlying the common market, such a measure can be based - in the absence of a specific provision - on Article 100 EC.

18. The removal of obstacles to the freedom to provide services by businesses employing third-country nationals⁽¹¹⁾ can be effected by means of a directive based on Article 63(2) EC because, unlike the situation envisaged in the second paragraph of Article 59 EC, it is a measure whose object is to remove an obstacle in the way of a service provider already covered by the first paragraph of Article 59. However, since the situation of businesses employing foreign labour is only one of the situations covered by the present proposal and since, important though it may be, it is certainly not the most important, the Commission considers that it is more advisable to deal with this situation in a horizontal measure, together with the other situations involved.
19. With a view to enabling Union citizens to move freely, members of their families have also had conferred on them by secondary legislation a right of entry and residence. This is a dependent right, i.e. the family members enjoy it when the Union citizen to whom they are related exercises his right of free movement.

This right of entry and residence is conferred on family members whatever their nationality. However, under the secondary legislation in force, Member States may impose a visa requirement on family members who are third-country nationals.

⁽¹⁰⁾ Joined Cases 286/82 and 26/83, Luisi [1984] ECR 377, paragraph 10.

⁽¹¹⁾ Case C-43/93, Vander Elst v OMI [1994] ECR I-3803.

Abolition of the visa requirement for family members - by applying the principle of equivalence between residence permits and visas and by the mutual recognition of visas - removes an obstacle to the free movement of Union citizens themselves.

Since the situation of members of the families of Union citizens is just one of the situations covered by the present proposal and since the proposal also confers on them an independent right to travel, the Commission considers it appropriate to deal with this situation in a horizontal measure together with the other situations referred to here rather than have recourse to several separate instruments. In the case of family members, this would involve instruments based on Articles 8a, 49, 54(2) and 63(2).

20. Finally, Article 3 of the EC Treaty, as amended by the Treaty on European Union, provides that "... the activities of the Community shall include ... (t) measures in the spheres of ... tourism". As the Treaty has not provided for the powers of action needed to attain this Community objective, any measure to promote tourism in the Community - such as, in the present case, the grant of the right to travel in the Community to third-country nationals who are lawfully in the territory of a Member State - should be based on Article 235 EC. However, recourse to that Article as the legal basis for an instrument is justified only where no other provision of the Treaty confers on the Community institutions the necessary power to adopt the instrument in question⁽¹²⁾; as indicated above, the proposed Directive can be based on Article 100 EC.
21. It should be stressed that this proposal for a Directive concerns only entry into and movement in the territory of the Member States by persons who are already lawfully in the territory of a Member State. It concerns neither the first entry into the Community by a third-country national nor the decision of a Member State to authorize such a person to remain in its territory for a short or long stay, nor a fortiori national decisions on access to the labour market or to self-employed activities.
22. Because - as has been shown above - its content is covered by the powers of the Community, the proposal cannot form the subject-matter of a Council measure under Article K.3. According to Article B of the TEU the European Union sets itself the objective "to maintain in full the acquis communautaire and build on it ...". Article M of the TEU confirms this principle in that it provides that nothing in that Treaty affects the EC Treaty (subject to express amendments to the latter Treaty). Lastly, the principle that the Institutions cannot choose between Community law and the provisions of Title VI of the TEU but must exercise the Community's powers where they exist, is spelled out explicitly in Article K.1 ("and without prejudice to the powers of the European Community").

⁽¹²⁾ Case 45/86, Commission v Council [1987] ECR 1493, paragraph 13.

23. The Commission considers, therefore, that this proposal for a Directive, which seeks to grant to any person who is lawfully in a Member State the right to enter another Member State for a short stay and which should make it possible to abolish controls on such movements at internal frontiers, must be based on Article 100 EC.

C. Conclusion

24. It follows from the above that:

- Member States' laws must be coordinated with a view to granting third-country nationals who are lawfully in a Member State the right to enter the territory of other Member States for a short stay; this is one of the flanking measures needed to abolish controls on persons at internal frontiers;
- the approximation of laws relating to the internal aspect of the "right to travel" dealt with in this proposal is the necessary complement of the approximation of laws relating to its external aspect, for which a framework has already been provided in the form of the proposals for a visa Regulation and an External Frontiers Convention presented by the Commission;
- since Article 100 of the EC Treaty is the appropriate legal basis for this approximation of laws, this legislative initiative must take the form of a directive.

II. Commentary on the Articles

Article 1

25. Article 1(1) lays down the principle that Member States must grant third-country nationals the right to travel in the Community. It states that this right is to be granted only to persons whose presence in the territory of a Member State is lawful. Those who have entered the territory of the Member States of the Union illegally or who are living there illegally do not have the right to travel.

It is also stated that the right to travel is not an absolute right: it is granted only under the conditions laid down inter alia in Articles 3 and 4.

26. As a flanking measure backing up the abolition of controls at internal frontiers, the right to travel must be granted only to third-country nationals who do not already have a right of entry and residence (whether of short or long duration) in the territory of another Member State.

Union citizens' family members, whatever their nationality, already have a right of entry and residence when they accompany the Union citizen to whom they are related; other third-country nationals are covered by agreements between the European Community and its Member States and third countries (e.g. the Agreement on the European Economic Area) which already confer on them, under the conditions laid down in the relevant instruments, a right of entry and residence.

Thus Article 1(2) provides that this Directive is without prejudice to rights of entry and residence already conferred on certain categories of third-country national.

Under this Directive, third-country nationals who are related to Union citizens will have an independent right of entry for a short stay. The family relationship is defined in Article 10 of Regulation (EEC) No 1612/68⁽¹³⁾.

Under Community law as it now stands, Member States may impose a visa requirement on family members who are third-country nationals. By the present proposal, in conjunction with such existing Community law, the Member States will no longer be able to impose a visa requirement on family members holding a residence permit issued by a Member State (see proposal for a Parliament and Council Directive amending Directives 68/360/EEC and 74/148/EEC, and in particular point 5 of the explanatory memorandum thereto).

27. Article 1(3) states that the right to travel does not affect the arrangements applying to long stays and to access to employment or the taking-up of self-employed activities by third-country nationals. According to the categories of third-country national concerned, these arrangements are determined either by Community law (e.g. for Union citizens' family members) or by domestic law.

Article 2

28. Point (1) of Article 2 defines "right to travel". It thus confirms that it is the right:

- to cross internal Community borders; the crossing of external borders is governed by the External Frontiers Convention and by the visa Regulation based on Article 100c of the Treaty;
- to pass through or remain in the territory of a Member State for a short stay; the concept of short stay is not defined more closely because the duration of the stay on the basis of the right to travel differs according to the categories of entitled person (see the comments on Articles 3 and 4).

This proposal does not therefore affect the conditions of entry and residence other than for a short stay by third-country nationals such as they are laid down by the Member States; nor does it affect Member States' provisions on access to employment and the taking-up of activities as self-employed persons (see Article 1(3)).

The above definition makes it clear that the right to travel is exercised without the persons concerned being required to obtain a visa from the Member State or States in which they wish to exercise the right. Thus:

- third-country nationals who hold a residence permit issued by a Member State will be able to exercise the right to travel on the basis of that permit (see Article 3(1));

⁽¹³⁾ OJ No L 257, 19.10.1968.

- persons who hold a visa issued by a Member State in accordance with the Regulation based on Article 100c will be able to visit another Member State on the basis of that visa (see Article 4(1)).
29. "Residence permit" means any document or authorization issued by the authorities in a Member State which permits a person to reside in that Member State. Owing to the existence of a variety of residence permits in the same Member State, point (2) of Article 2 provides that the documents on the basis of which the right to travel may be exercised are those appearing on the list to be notified under Article 3(4).
30. "Visa" means only visas which are valid throughout the Community. This is because not every visa necessarily confers the right to travel. The External Frontiers Convention provides for various types of visa depending on the extent of their territorial validity: there are visas valid for the whole Community; and there are visas whose territorial validity is limited to the territory of the Member State which issued them. Such a visa may be issued, say, for humanitarian reasons to a person who no longer meets the requirements for the issue of a uniform visa.

By its very nature, such a visa does not justify the granting by the other Member States of the right to travel.

The mutual recognition of visas applies only to visas valid throughout the Union, i.e. visas issued in accordance with the issue criteria harmonized by the External Frontiers Convention.

The same visas may therefore be used, applying the principle of the mutual recognition of visas, to cross both external and internal frontiers.

31. "Third-country national" is defined in negative terms as any person who is not a citizen of the Union within the meaning of Article 8(1) of the EC Treaty. The concept thus also covers stateless persons.

Article 3

32. Article 3 concerns the right to travel of third-country nationals who hold a residence permit issued by another Member State. Article 4 concerns the right to travel of persons resident in a third country who have entered the territory of the Union for a short stay on the basis of a passport bearing, if necessary, a visa.
33. Under Article 3(1) Member States are to grant the right to travel to persons who hold a residence permit.

Such persons may travel in the territories of the other Member States for a period of three months. This three-month period is a maximum. It may be shortened if the permit expires earlier, as the first indent of the second subparagraph of Article 3(1) provides that, when the right to travel is being exercised, the person concerned must be in possession of a valid residence permit.

In the draft External Frontiers Convention it is stipulated that the right to travel is conditional on the holding of a residence permit "the period of validity of which, at the time of entry, still has more than four months to run."

This restriction has not been included in the present proposal as it would lead to illogical situations in the frontier-free area. A person in possession of a residence permit the period of validity of which has less than four months to run would have to seek, where appropriate, a visa in order to visit another Member State during that period, whereas, after extension or renewal of his permit, he could travel again without being required to apply for a visa.

The usefulness of such a restriction is very limited, moreover, given that Article 3(2) provides that Member States must readmit such persons "even if the validity of that permit has expired."

34. The category of persons holding a residence permit issued by a Member State, covered by Article 3(1), also includes persons who, owing to their nationality, are currently exempted from the visa requirement by the Member States and can enter the territory of each of the Member States for a short stay on the basis of their identity card or passport alone.

The formulation of the duration of the stay covered by the right to travel in the internal market could restrict their existing rights in relation to short stays.

It is an unimportant restriction, however, owing to the fact that, each time they return to the territory of the Member State which issued their residence permit, such persons may immediately travel for a further three months in the territory of the other Member States.

It should be pointed out that the domestic law of a number of Member States provides that a residence permit expires in the event of its holder being absent from their territory for a continuous period of more than three months.

35. The second subparagraph of Article 3(1) contains a list of other requirements to which exercise of the right to travel is subject. These are modelled on the conditions governing access to the territories of the Member States laid down in the draft External Frontiers Convention, adapted to take account of their application to movements within the Community.

In accordance with the first indent of the second subparagraph of Article 3(1), persons having the right to travel must be in possession of their residence permit and a travel document proving their identity, both of which must be valid.

The second indent is concerned with the requirement as to possession of means of subsistence.

36. The Member State which issued a residence permit to a person is primarily responsible for that person's presence in the territory of the Union. As a result, Article 3(2) provides that that Member State must readmit the person in question into its territory if he is unlawfully resident in the territory of another Member State.

As indicated above (point 33), this readmission requirement continues to apply even after the permit has expired.

The conditions for readmission are laid down in the Annex to this proposal. The Commission has based the wording of the Annex on the conditions for readmission drawn up for the purposes of Article 8(3) of the External Frontiers Convention.

37. As a result of the abolition of controls at internal frontiers, compliance with the requirements of Article 3(1) cannot be verified at those frontiers. If, however, when carrying out a control inland, the competent authorities find that a person does not satisfy one or more of those requirements, he may be expelled from the Member State concerned. The possibility of expelling a person exercising the right to travel is extended to cases where the person concerned represents a threat to public order or public security in, or the international relations of, the Member State in which he is exercising that right.
38. Owing to the fact that readmission and expulsion within the meaning of Article 3(2) and (3) concern exclusively travel within the Community (expulsion to and readmission by the Member State which issued the residence permit) and are essential corollaries of the right to travel, these aspects are also covered by the Community's powers under Article 100.

As regards the grounds on which a person exercising the right to travel may be expelled, it should be pointed out that, under Article 1(2), the Directive is without prejudice to rights which Community law confers on third-country nationals who are members of the families of Union citizens.

Pursuant to that provision, the grounds for expulsion set out in Article 3(3) may not be relied upon absolutely in relation to a third-country national who is a member of the family of a Union citizen and who is accompanying that citizen when the latter exercises his right to free movement; family members may invoke inter alia Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health.

39. For the reason given above (point 29) paragraph 4 introduces a procedure for the notification and publication by each Member State of a list of the residence permits which it issues and on the basis of which the right to travel may be exercised.

Publication of the lists of permits referred to here will help among other things to increase legal clarity and certainty for people who have the right to travel.

Obviously, when they draw up the list of residence permits, Member States will have to ensure consistency between it and the lists of documents, to be drawn up for the purposes of implementing the External Frontiers Convention, valid for the crossing of external frontiers.

It would, in fact, be contradictory if, on the one hand, a certain type of residence permit issued by a Member State could be used to cross Member States' external frontiers under the measures laid down by the Council to give effect to the Convention while, on the other, in accordance with the lists drawn up for the purposes of this Directive, the same type of residence permit issued by that Member State could not be used to cross an internal frontier.

The consistency which Member States must ensure consists, therefore, at the very least in including, in the list referred to here of residence permits on the basis of which the right to travel may be exercised, documents valid for the purpose of crossing external frontiers. There is nothing to prevent Member States, however, from adding other documents which may serve as a basis for the right to travel within the Union without permitting the crossing of external frontiers.

Article 4

40. Article 4 is concerned with the right to travel of two categories of third-country national allowed to enter the territory of a Member State for a short stay:

- (1) third-country nationals who are subject in all the Member States to a visa requirement under Article 1(1) of, and the Annex to, Regulation ... determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States;
- (2) third-country nationals in respect of whom each Member State decides, in accordance with the first sentence of Article 1(2) of the said Regulation, whether to require a visa; this category includes both persons who are exempted from visa requirements by all Member States and persons who are exempted therefrom by only a limited number of Member States.

41. The External Frontiers Convention does not confer a right of entry into the territories of the Member States to persons holding a visa issued by one Member State but still to be recognized by the others. A visa does not confer a right of entry; when crossing the external frontiers, the visa holder is subject to a control designed to ensure that all the conditions for access to the territory are met. If that is not the case (e.g. if he does not have sufficient means of subsistence), the visa is annulled and its holder is turned back.

On the other hand, this Directive confers a right - albeit subject to certain conditions - to travel on third-country nationals who are lawfully in the territory of a Member State for a short stay.

The persons concerned will have undergone a thorough control in accordance with the External Frontiers Convention when they entered the Union.

42. Article 4(1) applies to persons falling within the first category referred to above, i.e. persons subject to a visa requirement in all Member States.

Such persons can exercise the right to travel on the basis of a visa (for the definition of "visa", see Article 2(3)) valid throughout the Union issued by a Member State. In other words, another Member State cannot require such a person to be in possession of a visa issued by its own authorities for him to be able to cross internal frontiers and stay for a short time in its territory.

As regards the duration of the stay authorized in connection with the right to travel, the second subparagraph states that such duration is limited to the length of stay permitted by the visa.

The conditions for exercising the right to travel are the same as those imposed on persons holding residence permits (see point 35 above).

43. Article 4(2) applies to third-country nationals who are exempted from visa requirements by all Member States. Member States must grant them the right to travel in their territories for a total of not more than three months within a period of six months from the date of first entry. This restriction stems from the duration of a short stay as defined by the law of most Member States and by the visa Regulation and the External Frontiers Convention; those who wish to remain in a Member State for a total of more than three months within a six-month period are obliged as a rule to apply for a residence permit.

The conditions governing the exercise of the right to travel by the persons referred to here are the same as those imposed on holders of residence permits (see point 35 above).

44. Article 4(3) renders the arrangements in paragraph 2 applicable to third-country nationals on whom only some Member States impose a visa requirement. This is an entirely temporary situation, the objective of Article 100c(1) of the EC Treaty being complete harmonization of visa policies.

The second subparagraph contains a specific provision concerning this category of persons who do not need a visa to enter the territories of a number of Member States but who do need a visa to enter the territories of the other Member States: if such persons have not obtained a visa, the right to travel is limited to the territories of the Member States which do not require them to have a visa; if they have obtained a visa, the right to travel extends to the territories of all the Member States on condition that it is a visa within the meaning of Article 2 of the proposal for a Regulation (see point 30 above).

The length of stay in the territories of the Member States which require a visa is limited to that permitted by the visa.

45. In contrast to Article 3, which concerns holders of a residence permit issued by a Member State, Article 4 does not contain any general provisions on the readmission and expulsion of third-country nationals. This is due to the fact that the persons referred to here will have to be expelled in principle to a third country, a matter which is dealt with in the External Frontiers Convention. However, in order to make it clear that the right to travel is not an absolute right, and owing to the fact that a third-country national who is in the Union for a short stay may, in certain circumstances, be expelled to another Member State, it has to be provided that third-country nationals allowed into a Member State for a short stay may be expelled from the Member State in which they are exercising the right to travel. The grounds for expulsion are mutatis mutandis those which may justify the expulsion of a third-country national who holds a residence permit issued by a Member State.

Article 5

46. The right to travel is granted as a flanking measure accompanying the opening-up of internal frontiers. However, the abolition of controls on persons at internal frontiers does not mean that Member States may not retain or introduce in their territories a system for checking on the presence of persons in their territories.

Thus, like the secondary Community legislation on the free movement of Community nationals and members of their families (see inter alia Article 8(2) of Council Directive 68/360/EEC of 15 October 1968, OJ No L 257, 19.10.1968), Article 5 provides that Member States may require persons exercising the right to travel to report their presence in their territories.

In the light of the objective of Article 7a of the Treaty, it is clear that Member States may not require the persons concerned to report their arrival at internal frontiers.

Proposal for a
COUNCIL DIRECTIVE
on the right of third-country nationals to travel in the Community

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European 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,

Having regard to the opinion of the Committee of the Regions,

Whereas Article 7a of the Treaty provides for the establishment of an internal market, which is to comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty;

Whereas in order to achieve this objective Member States will have to allow third-country nationals who are lawfully in the territory of another Member State to enter their territories for short stays; whereas if there were no such right to travel each Member State would have to consider the fact that there were people in other Member States who were not entitled to enter its territory, which might be an argument for maintaining controls at internal frontiers;

Whereas the approximation of Member States' laws on this question directly affects the establishment and functioning of the internal market;

Whereas the issue of a residence permit by a Member State to a third-country national, whereby the latter is authorized to live in that State, is an act surrounded by sufficient safeguards for the other Member States no longer to need to subject the person concerned to the requirement that he obtain a visa in advance from their own authorities and hence for them to grant him the right to travel; whereas, in any event, each Member State may expel the person concerned to the Member State which issued the residence permit, which is obliged to readmit him, if he stays unlawfully in its territory, if he does not fulfil the conditions governing the right to travel, or if he represents a threat to public order or public security in that State, or to its international relations;

Whereas, where a third-country national who is not resident in the Community is in possession of a visa issued by a Member State which permits him to cross the external frontiers of all the Member States by virtue of its being valid throughout the Community and mutually recognized by the Member States for that purpose, each Member State enjoys sufficient safeguards for it to grant the person concerned the right to travel; whereas the same right must a fortiori be granted to third-country nationals who may cross the external frontiers without being subject to a visa requirement; whereas, in any event, each Member State is

entitled to expel a third-country national if he does not fulfil the conditions governing the right to travel or if he represents a threat to public order or public security in that State, or to its international relations;

Whereas persons who exercise the right to travel should not become a burden on the social assistance system in the Member States they visit; whereas the right should therefore be subject to the condition that such persons have sufficient resources to undertake the trip;

Whereas this Directive forms part of a general body of Community and national provisions governing the legal position of third-country nationals in the Member States; whereas the scope of this Directive should accordingly be precisely defined,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Member States shall grant third-country nationals who are lawfully in a Member State the right to travel in the territories of the other Member States in accordance with this Directive.
2. This Directive shall be without prejudice to rights
 - which Community law confers on third-country nationals who are members of the families of citizens of the Union;
 - which are granted to third-country nationals and to members of their families irrespective of nationality where, under an agreement between the Community, its Member States and the relevant third country, they enjoy rights of entry and residence in a Member State identical to those of citizens of the Union.
3. This Directive shall not affect provisions of Community or domestic law on
 - stays other than for a short time, and
 - access to employment and the taking-up of activities as a self-employed personapplicable to third-country nationals.

Article 2

For the purposes of this Directive:

- (1) "right to travel" means the right to cross internal Community borders and to remain in the territory of a Member State for a short stay, or to travel onward, without the person concerned being required to obtain a visa from the Member State or States in whose territory the right is exercised.

- (2) "residence permit" means any document or authorization issued by the authorities in a Member State which permits a person to reside in that Member State, and which appears on the list referred to in Article 3(4).
- (3) "visa within the meaning of point (3) of Article 2" means a visa which is valid throughout the Community and which is mutually recognized for the purpose of crossing the external frontiers of the Member States.
- (4) "third-country national" means any person who is not a citizen of the Union within the meaning of Article 8(1) of the Treaty establishing the European Community.

Article 3

1. Member States shall grant the right to travel to third-country nationals who hold a valid residence permit issued by another Member State.

Any such person may travel in the territories of the other Member States for a continuous period of not more than three months provided that he meets the following requirements:

- he must be in possession of a valid residence permit and a valid travel document;
- he must have sufficient means of subsistence, both to cover the period of the intended stay or transit and to enable him to return to the Member State which issued the residence permit, or to travel to a third country into which he is certain to be admitted.

2. Member States shall, in accordance with the conditions laid down in the Annex, readmit any person to whom they have issued a residence permit and who is unlawfully resident in the territory of another Member State, even if the validity of that permit has expired.
3. A third-country national who holds a residence permit issued by a Member State and who is exercising the right to travel may be expelled if he does not meet the requirements laid down in paragraph 1 or if he represents a threat to public order or public security in the Member State in which he is exercising the right to travel, or to its international relations.
4. Member States shall provide the Commission and the other Member States with a list of the documents they issue which are treated as equivalent to residence permits for the purposes of this Article, updating it as and when necessary.

The Commission shall publish the lists and any updates in the Official Journal of the European Communities.

Article 4

1. Member States shall grant the right to travel to third-country nationals who hold a visa within the meaning of point (3) of Article 2.

Such persons may travel in the territories of the Member States during the period of stay permitted by the visa, provided that they are in possession of a travel document bearing the valid visa and meet the requirement laid down in the second indent of Article 3(1).

2. Member States shall confer the right to travel on third-country nationals who are exempted from visa requirements by all the Member States.

Such persons may travel in the territories of the Member States for a total of no more than three months within a period of six months from the date of first entry in the territory of one of the Member States, provided that they are in possession of valid travel documents and meet the requirement laid down in the second indent of Article 3(1).

3. Paragraph 2 shall also apply to third-country nationals who are subject to a visa requirement in a number of Member States.

However, the right to travel shall in their case be restricted to the territories of such Member States as have exempted nationals of the relevant third country from the obligation to hold a visa, unless they do hold a visa within the meaning of point (3) of Article 2.

In the latter event, the period of stay in the territories of the Member States which require a visa shall be limited to the period permitted by the visa.

4. The provisions of this Article shall not prevent any Member State from authorizing the stay in its territory of a third-country national beyond three months.
5. A third-country national allowed to enter the Community for a short stay who is exercising the right to travel may be expelled if he does not satisfy the conditions in paragraphs 1 or 2, according to whether or not he is subject to a visa requirement, or if he represents a threat to public order or public security in the Member State in which he is exercising the right to travel, or to its international relations.

Article 5

Member States may require persons exercising the right to travel to report their presence in their territories.

Article 6

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1996. They shall immediately inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

Article 7

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities.

Article 8

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

**Conditions for the readmission by the Member States of third-country nationals who are unlawfully resident in a Member State but who hold a residence permit for another Member State
(Article 3(2) of the Directive)**

1. These provisions on readmission are applicable to third-country nationals who hold a residence permit within the meaning of point (2) of Article 2 and who are exercising the right to travel but who are unlawfully resident in the territory of another Member State.

The provisions do not affect Member States' obligations under the Dublin Asylum Convention to readmit applicants for asylum who are unlawfully resident in another Member State.

2. Where a person covered by point 1 has entered one Member State from another Member State for the purposes of a short stay or transit under Article 3(1) and is unlawfully resident there, that person must go without delay to the Member State for which he holds a residence permit unless he is authorized to go to another country to which he is certain to be admitted.

If a third-country national wishes to go to another country, he must provide documentary evidence that he may be admitted to that country, e.g. in the form of an entry permit or valid visa, and that he is in possession of the necessary resources, e.g. in the form of a ticket or other documentation that allows him to travel, and cash or a bank deposit in order to secure his transportation and his residence in the country to which he may be admitted.

3. If a third-country national unlawfully resident in the territory of a Member State refuses to leave voluntarily, Member States are required to readmit him in accordance with the guidelines set out below.

If the person holds a valid residence permit for another Member State, the Member State which has issued the permit is required to readmit him.

Moreover, Member States must readmit a third-country national in accordance with Article 3(2) within a period of up to two months after the expiration of the validity of the residence permit.

The obligation to readmit him is subject to the condition that a request for readmitting him shall be lodged within one month by the authorities becoming aware of the person's unlawful presence in the Member State.

4. The person is to be readmitted after a request has been made by the competent authorities in the requesting Member State showing that the person in question holds a valid residence permit for the readmitting Member State.

A Member State receiving a request in accordance with point 3 must reply to the request within eight days. If the Member State does not respond within that time, it will be deemed to have agreed to readmission, unless it has expressly requested a one-week extension of that time-limit.

The Member State to which the request was addressed is required to take in, within a month at most, the person it has agreed to take back. That time-limit may be extended by agreement between the two Member States concerned, upon submission by the requesting Member State of an explicit and justified application.

Member States are to exchange lists of authorities competent to consider requests for readmission and of points at borders where readmission can take place.

5. The financial costs entailed by readmission are to be met by the person concerned. Where the person is unable to meet the expenses, the expenses up to the point of readmission are as a rule to be met by the Member State requesting readmission.