

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(80) 358 final

Brussels, 27th June 1980

AMENDED PROPOSAL FOR A COUNCIL DIRECTIVE  
ON A RIGHT OF RESIDENCE FOR NATIONALS OF MEMBER STATES  
IN THE TERRITORY OF ANOTHER MEMBER STATE

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(presented by the Commission to the Council  
pursuant to the second paragraph of article 149 of the EEC Treaty)

COM(80) 358 final

### Explanations

The amendments to the proposal for a directive set out below take account of the different suggestions made by the Economic and Social Committee (1) and the Parliament (2).

#### Preamble and considerations

Article 9 of the proposal for a directive extends the scope of directive 64/221/EEC which coordinates the special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security and public health to persons benefiting from the proposal for a directive. For this reason, it is necessary to base this directive also on article 56 §2 of the EEC Treaty. However, so as to make it quite clear that this choice is made only for that purpose, this is expressly stated, as the Parliament proposed, in both the preamble and the considerations.

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(1) Opinion of 26 March 1980, O.J. No.

(2) Resolution of 17 April 1980, O.J. No. C 117 of May 12, 1980, P. 48

(3) O.J. No. 56 of 4 April 1964, Page 850/64

Articles

Article 1

Paragraph 2 (1): The original proposal provided that the restriction on movement and residence were abolished not only for nationals from Member States but also for the members of their family. This paragraph could have been interpreted as requiring that the members of the family resided like the national under the same roof. The Parliament wanted the right of residence to be given to members of the family who resided in the same host State as the national, whether they resided with him or not. The Commission feels that that proposal is justified and has included it in its amendments.

Paragraph 2 (2): The European Parliament proposed to extend the notion of member of the family to "any person whom the holder of the right of residence has an obligation to support or who is in practice dependent on the holder." In distinction to the original proposal, according to which Member States shall only favour the admission of these "other members of family", these persons would acquire a permanent right of residence. The Parliament justified this extension of the circle of beneficiaires by the fact that families could be split up simply by the change of domicile of one of its members to another Community country.

The Commission understands very well the Parliament's attitude to this question, but it estimates that, given the present state of development of the Community, it is more useful to maintain for the moment the notion of family within narrower bounds. However, should subsequent experience prove satisfactory - and the Commission has no doubt that it will - it would be possible to complete Community law in this sense. For this reason, the Commission is unable to follow the Parliament's view on this question now.

Articles 4 and 10 (new)

- a) So as to avoid population migrations being undertaken with the sole aim of obtaining the most favorable social benefits, the Commission proposed to tie the acquisition of the right of residence to the furnishing by citizens requesting that right of proof of sufficient resources to provide for their subsistence.

This condition was criticised by the Economic and Social Committee, and particularly by the Parliament. While recognising the fears expressed by the Member States, the Parliament was of the opinion that such a condition could introduce social discrimination. Differences in social assistance regulations should be compensated in other ways. The Parliament regarded this directive as being aimed at gaining substantial progress towards complete freedom of movement for the citizens of Europe. For this reason the Parliament has stressed the necessity of removing these conditions in the proposal by a majority.

The Commission unreservedly shares the Parliament's approach on this. It does not however think that the introduction of unrestricted freedom of movement will lead to the population migrations that it is feared will emerge. For different reasons the mobility of European citizens is much less than that of citizens from other States. In view of the fears expressed by Member States the Commission believes that it is unable to follow the suggestions of Parliament immediately. It remains convinced that the favourable consequences Member States fear will not emerge and that this finding remains the best argument for proving the Commission proposes to the Council

- to retain in principle at the present stage the requirement of proof of sufficient resources (article 4 para. 4 (1)),
- to examine this issue after five years so as to see, on the basis of experience, whether this requirement is still necessary and amend the relevant provisions if appropriate (new article 10),
- to remove now the requirement for students over 18 years of age (article 4 paragraph 2 (2)).

In the Commission's view, these provisions constitute a compromise between the wishes of the Parliament, with which the Commission fully agrees, and the interests of the Member States. They will enable the necessary experience to be made within a reasonable time, on the basis of which the Community rules can be tested in practice. One social group is however excluded from the need to provide proof of sufficient resources, namely young people in the course of their training, whose residence in the host state is by its nature temporary and serves only a very specific purpose.

- b) It did not seem appropriate for the Commission to fix for each Member State the minimum sum of resources regarded as sufficient to ensure the subsistence of those seeking residence as a condition of the granting of the right. This will be within the competence of each Member State, according to its social legislation, when the directive is transposed into its national law. Consequently, a more precise formulation of this notion cannot be made. However, it is necessary to ensure on transposition of this directive into national law, that nationals of other Member States do not suffer less favourable treatment than nationals of the host state. This is a permanent interest of the Community. For this reason it is provided in article 4 para. 2 (3) that it is not permitted to require of citizens seeking residence, proof of a minimum of resources for subsistence which is superior to that required of the State's own nationals.

#### Recommendation of the Council

The Parliament invited the Council to adopt at the issue of the directive a recommendation concerning the adoption by the Member States of a system of treatment for stateless persons and refugees from third countries resident in the Community which was as favourable as that applied to nationals of Member States. In the Commission's opinion this suggestion could be realized by the adoption of a declaration by the representatives of Member States, when the directive is adopted by the Council, giving expression to Parliament's wishes, as was done in the Declaration of the Representatives of Governments of Member States in Council on 24 March 1964 (1), in which a similar resolution appears.

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(1) O.J. 78/1225 of 22nd May 1964

## II

*(Preparatory Acts)*

## COMMISSION

**Amended proposal for a Council Directive on a right of residence for nationals of Member States in the territory of another Member State <sup>(1)</sup>***(Submitted by the Commission to the Council on 1 July 1980 pursuant to the second paragraph of Article 149 of the EEC Treaty)*

## ORIGINAL VERSION

NEW PROPOSAL <sup>(\*)</sup>

THE COUNCIL OF THE EUROPEAN  
COMMUNITIES,

unchanged

Having regard to the Treaty establishing the  
European Economic Community, and in particular  
Articles 56 (2) and 235 thereof,

Having regard to the Treaty establishing the  
European Economic Community, and in particular  
Articles 235 and 56 (2) thereof,

Having regard to the proposal from the Commission,

unchanged

Having regard to the opinion of the European Par-  
liament,

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

Whereas the Member States, in signing the Treaty  
establishing the European Economic Community,  
have declared themselves 'determined to lay the founda-  
tions of an ever closer union among the peoples of  
Europe'; whereas, to this end, they have provided for  
the removal in the Member States of obstacles to the  
free movement of persons;

unchanged

<sup>(1)</sup> OJ No C 207, 17. 8. 1979, p. 14.

<sup>(\*)</sup> The modifications of the original version are underlined.

## ORIGINAL TEXT

## AMENDED TEXT

Whereas, to achieve this objective, the Treaty has provided for powers to take action to ensure freedom of movement for workers and self-employed persons; whereas, however, no provision has been made for powers to take action with regard to freedom of movement for persons independently of the pursuit of an occupation activity;

unchanged

Whereas, however, freedom of movement of persons is by virtue of Article 30 of the Treaty one of the foundations of the Community and can be fully attained only if a right of permanent residence is granted to those Community nationals in whom such right does not already vest under the Community law in force, and to the members of their family;

unchanged

Whereas the exercise of this right may, however, be made subject to economic conditions;

unchanged

Whereas Directive 64/221/EEC <sup>(1)</sup> coordinated special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health;

Whereas Directive 64/221/EEC <sup>(1)</sup>, *which is based on Article 56 (2) of the EEC Treaty*, coordinated special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health;

Whereas Directive 64/221/EEC should also apply to nationals of Member States moving within the Community independently of the pursuit of an economic activity,

unchanged

*Whereas, therefore, for the sole purpose of extending the application of those provisions, this Directive should also be based on Article 56 (2) of the EEC Treaty;*

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

*Article 1*

1. Member States shall, under the conditions laid down in this Directive, abolish restrictions on movement and residence in respect of nationals of another Member State who reside or wish to reside in their territory and who are not covered by the provisions of Directive 68/360/EEC <sup>(2)</sup>, Regulation (EEC) No 1251/70 <sup>(3)</sup>, Directive 73/148/EEC <sup>(4)</sup> or Directive 75/34/EEC <sup>(5)</sup>.

unchanged

<sup>(1)</sup> OJ No 56 of 4. 4. 1964, p. 850/64

<sup>(2)</sup> OJ No L 257, 19. 10. 1968.

<sup>(3)</sup> OJ No L 142, 30. 6. 1970.

<sup>(4)</sup> OJ No L 172, 28. 6. 1973.

<sup>(5)</sup> OJ No L 14, 20. 1. 1975.

## ORIGINAL TEXT

2. They shall abolish these restrictions in respect of members of those nationals' families who do not personally come within the conditions laid down in Article 4 (2) and who reside with those nationals on the territory of the host Member State.

'Members of the family' of nationals of a Member State means:

- (a) the spouse and relatives in the descending line who are either dependent or under 18 and their spouses,
- (b) the dependent relatives in the ascending line and those of their spouse,

irrespective of their nationality.

3. Member States shall favour the admission of any other member of the family of a national referred to in paragraph 1 or of the spouse of that national, when that member is dependent on them or was living under the same roof in the country of origin.

*Article 2*

1. Member States shall grant the persons referred to in Article 1 the right to leave their territory. Such right shall be exercised simply on production of a valid identity card or passport. Members of the family shall enjoy the same right as the national on whom they are dependent.

2. Member States shall, acting in accordance with their laws, issue to their nationals, or renew, an identity card or passport, which shall state in particular the holder's nationality.

3. The passport shall be valid at least for all Member States and for countries through which the holder must pass when travelling between Member States. Where a passport is the only document on which the holder may lawfully leave the country, its period of validity shall be not less than five years.

4. Member States may not demand from the persons referred to in Article 1 any exit visa or equivalent requirement.

## AMENDED TEXT

2. They shall abolish these restrictions in respect of members of those nationals' families who do not personally come within the conditions laid down in Article 4 (2) and who *also* reside on the territory of the host Member State.

'Members of the family' of nationals of a Member State means:

(a) unchanged

(b) unchanged

unchanged

*Article 2*

1. Member States shall grant the persons referred to in Article 1 the right to leave their territory. Such right shall be exercised simply on production of a valid identity card or passport.

[17 words deleted]

2. Member States shall, acting in accordance with their laws *and administrative regulations*, issue to their nationals, or renew, an identity card or passport, which shall state in particular the holder's nationality.

unchanged

unchanged



## ORIGINAL TEXT

## AMENDED TEXT

*Article 3*

1. Member States shall grant to the persons referred to in Article 1 the right to enter their territory merely on production of a valid identity card or passport.

unchanged

2. No entry visa or equivalent requirement may be demanded save in respect of members of the family who do not have the nationality of a Member State. Member States shall afford to such persons every facility for obtaining any necessary visas.

unchanged

*Article 4*

1. Member States shall grant the right of permanent residence to citizens of another Member State referred to in Article 1 (1) who reside or wish to reside in their territory.

unchanged

2. Nevertheless, the Member States may require those citizens to provide proof of sufficient resources to provide for their own needs and the dependent members of their family referred to in Article 1 (a) (2). Citizens of at least 18 years of age who are studying or wish to study in the host Member State may provide such proof by showing that their means of subsistence derive from a relative in the ascending line who does not live with them in the host country.

2. Nevertheless, the Member States may require those citizens to provide proof of sufficient resources to provide for their own needs and the dependent members of their family referred to in Article 1 (a) (2). *[49 words deleted]. This provision shall not apply to citizens who are 18 years olds or more and are studying in the host country.*

Member States may not require such resources to be greater than the minimum subsistence level defined under their law.

Member States may not require such resources to be greater than the minimum subsistence level *applicable* under their law *in respect of their own nationals*.

3. The Member States recognize a permanent right of residence for members of the family referred to in Article 1 (2) of any one who possesses such right by virtue of the preceding paragraph. This provision applies even after the decease of the interested party.

unchanged

*Article 5*

1. The right of residence shall be evidenced by issue of a document entitled 'Residence Permit for a National of a Member State of the European Community'. This document shall be valid for not less than five years from the date on which it is issued.

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1. The right of residence shall be evidenced by issue of a document entitled 'Residence Permit for a National of a Member State of the European Community'. This document shall be valid for not less than five years from the date on which it is issued.

## ORIGINAL TEXT

The residence permit shall be automatically renewable except at the end of the first period for which it is valid if it is proved that the condition referred to in Article 4 (2) is no longer satisfied. Nevertheless, this exception shall not apply to members of the family referred to in Article 1 in the event of the death of the national on whom they are dependent.

2. Breaks in residence not exceeding 12 consecutive months and absence on military service or civil service done instead of military service or absence on medical grounds shall not affect the validity of the residence permit.

3. A member of the family who is not a national of a Member State shall be issued with a residence document which shall have the same validity as that issued to the national on whom he is dependent.

*Article 6*

For the issue of the residence permit, Member States may require only the production of the following documents:

— by the applicant:

- (a) the document under cover of which he entered their territory,
- (b) documents proving that he has at his disposal the resources referred to in Article 4 (2);

— by the members of the family:

- (c) the document under cover of which they entered the territory,
- (d) a document issued by the competent authority of the State of origin or the State whence they came proving their family relationship,
- (e) in the cases referred to in Article 1 (2) and (3), a document issued by the competent authority of the State of origin or the State whence they came, certifying that they are dependent on the relative or live with him in this country.

## AMENDED TEXT

The residence permit shall be automatically renewable except at the end of the first period for which it is valid if it *appears* that the condition referred to in Article 4 (2) is no longer satisfied. Nevertheless, this exception shall not apply to members of the family referred to in Article 1 in the event of the death of the national on whom they are dependent.

unchanged

unchanged

*Article 6*

unchanged

ORIGINAL TEXT	AMENDED TEXT
<i>Article 7</i>	<i>Article 7</i>
The right of residence shall be effective throughout the territory of the Member State concerned.	unchanged
<i>Article 8</i>	<i>Article 8</i>
1. The residence documents granted to nationals of a Member State shall be issued and renewed free of charge or on payment of an amount not exceeding the dues and taxes charged for the issue of identity cards to nationals. These provisions shall also apply to documents and certificates required for the issue and renewal of such residence documents.	1. The residence documents granted to nationals of a Member State shall be issued and renewed free of charge or on payment of an amount not exceeding the dues and taxes charged for the issue of identity cards <i>or passports</i> to nationals. These provisions shall also apply to documents and certificates required for the issue and renewal of such residence documents.
2. The visas referred to in Article 3 (2) shall be free of charge.	unchanged
3. Member States shall take the necessary steps to simplify as much as possible the formalities and procedures for obtaining the documents mentioned in paragraph 1.	unchanged
<i>Article 9</i>	<i>Article 9</i>
1. Member States shall not derogate from the provisions of this directive save on grounds of public policy, public security or public health.	unchanged
2. Directive 64/221/EEC shall apply to the persons covered by this directive.	unchanged
	<i>Article 10 (new)</i>
	<i>Within six years of the notifications of this Directive the Commission shall submit to the Council a report on the application of the condition to dispose of sufficient resources as provided for in Article 4 § 2. If appropriate, the Commission shall submit to the Council proposals to terminate the application of that condition.</i>
<i>Article 10</i>	<i>Article 11 (new)</i>
1. Member States shall, within twelve months of notification of this Directive, bring into force the measures necessary to comply with its provisions and shall forthwith inform the Commission thereof.	unchanged

## ORIGINAL TEXT

## AMENDED TEXT

2. After notifications of this directive, Member States shall moreover inform the Commission, allowing sufficient time for it to submit its observations, of any subsequent draft laws, regulations or administrative provisions which they propose to adopt in the field covered by this directive.

unchanged

*Article 11*

This Directive is addressed to the Member States.

*Article 12 (new)*

unchanged

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