



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE
amending Directive 68/360/EEC on the abolition of restrictions on movement
and residence within the Community for workers of Member States and their families
and Directive 73/148/EEC on the abolition of restrictions on movement and residence
within the Community for nationals of Member States with regard to
establishment and the provision of services

(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

1. Article 7a (formerly Article 8a) of the EC Treaty provides for the establishment of an internal market comprising 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.

In parallel with other flanking measures needed to bring about an area without internal frontiers, it is appropriate to adapt those provisions of secondary legislation in the field of the free movement of persons which reflect a situation in which the crossing of internal frontiers gives rise, at least potentially, to controls on individuals. The present proposal is designed to attain this general objective and seeks specifically to delete from Directives 68/360/EEC⁽¹⁾ and 73/148/EEC⁽²⁾ those provisions which make it possible to make the crossing of frontiers subject to production of a valid identity document.

No adjustment is called for in the case of the directives on the entry and residence of persons entitled to move freely in other circumstances (Directive 90/364/EEC of 28 June 1990 on the right of residence⁽³⁾, Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity⁽⁴⁾ and Directive 93/96/EEC of 29 October 1993 on the right of residence for students⁽⁵⁾) inasmuch as these three Directives refer in Article 2(2) to Articles 2 and 3 of Directive 68/360/EEC.

2. Bringing about an area without internal frontiers involves differentiating between the arrangements applicable at frontiers according to whether they are internal or external frontiers. Since the scope of Article 7a is restricted to internal frontiers and since the proposal for a Convention on controls on persons crossing the external frontiers of the Member States⁽⁶⁾ provides, in Article 1(2), that the Convention applies in principle to all persons other than those entitled under Community law, it must be expressly stated in secondary legislation that the crossing of external frontiers remains conditional on production of a valid identity document.

3. The bringing-about of an area without internal frontiers has no impact on the arrangements applicable to the right of residence proper (cases in which a residence permit must be applied for, procedure for the delivery of such permits), nor does it prevent Member States from carrying out checks on individuals other than in connection with the crossing of internal frontiers. This being so, the adaptation of the secondary legislation must make it clear that Member States may require persons exercising their right of free movement to be in possession of a valid identity document.

(1) OJ No L 257, 19.10.1968, p. 13.

(2) OJ No L 172, 28.6.1973, p. 14.

(3) OJ No L 180, 13.7.1990, p. 26.

(4) OJ No L 180, 13.7.1990, p. 28.

(5) OJ No L 317, 18.12.1993, p. 59.

(6) OJ No C 11, 15.1.1994, p. 6.

4. Under Article 8a of the Treaty, the right of every citizen of the Union to move and reside freely within the territory of the Member States is subject to the limitations and conditions laid down in the Treaty and by the measures adopted to give it effect. The proposal to delete from secondary legislation the requirement that persons produce, when crossing internal frontiers, a valid passport or identity card is designed to reduce the limitations and conditions to which exercise of the fundamental right of free movement enshrined in Article 8a is subject.

5. Article 3(2) of Directives 68/360/EEC and 73/148/EEC authorizes Member States to make the entry into their territory of family members who are not nationals of a Member State subject to prior acquisition of a visa. When this provision is applied in practice, due regard will have to be paid to another flanking measure which is to be taken in order to complete the single market, namely the proposal for a Directive on the right of third-country nationals to travel in the Community⁽⁷⁾. According to that instrument, third-country nationals who are lawfully in the territory of a Member State may travel in the territory of another Member State for a short period without having to apply for a visa from the Member State they are visiting. When the Directive enters into force, the arrangements it lays down concerning the equivalence between a residence permit and a visa will, of course, have to be taken into account in applying the abovementioned Article 3(2). That provision does not need to be amended, however, because, as presently worded, it can be interpreted as meaning that the right to require a visa from family members who are third-country nationals must not run counter to any other provisions of Community law that might be applicable.

6. The various amendments to Directives 68/360/EEC and 73/148/EEC outlined above form the subject-matter of this proposal, which is based both on Article 49 and on Articles 54(2) and 63(2) of the Treaty. These Articles are the legal bases of Directives 68/360/EEC and 73/148/EEC respectively. Recourse to a single instrument to amend two directives is possible inasmuch as the legal bases concerned involve the same procedure, namely co-decision.

Commentary on the Articles

Article 1:

- Point 1: the deletion of the sentence "such right shall be exercised simply on production of a valid identity card or passport" in Article 2(1) of Directives 68/360/EEC and 73/148/EEC brings the secondary legislation into line with Article 7a of the Treaty by abolishing a provision which makes it possible to make the right to leave the territory of a Member State subject to production of an identity document.
- Point 2: the new wording of Article 3(1) reflects the fact that the scope of Article 7a is limited to controls at internal frontiers, and indicates that the crossing, by those entitled under Community law, of external frontiers, whether in the inward or the outward direction, is subject to production of a valid document.

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- **Point 3: the purpose of the new Article 3(3) is to clarify the scope of Article 7a and its implications. Although the creation of a frontier-free area means that the crossing of an internal frontier no longer gives rise to the need to produce an identity document, the exercise of the right of free movement nevertheless presupposes that the person concerned is in possession of a valid identity document, which is required notably for the issue of a residence permit.**

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 49, Article 54(2) and Article 63(2) thereof,

Having regard to the proposal from the Commission,

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

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

Whereas Article 8a of the Treaty provides that every citizen of the Union is to have the right to move freely within the territory of the Member States, subject to the limitations and conditions laid down by Community law;

Whereas Article 7a of the Treaty provides for the establishment of an internal market comprising 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 Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families⁽¹⁾, as last amended by the Act of Accession of Austria, Finland and Sweden, and Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services⁽²⁾ contain provisions concerning controls on persons at frontiers; whereas, with a view to attaining the objective of Article 7a, to which a Directive on the elimination of controls on persons crossing internal frontiers contributes as well, those provisions should be adapted in order to limit their application to the Community's external frontiers alone;

(1) OJ No L 257, 19.10.1968, p. 13.

(2) OJ No L 172, 28.6.1973, p. 14.

Whereas there is no need to amend Council Directive 90/364/EEC of 28 June 1990 on the right of residence⁽³⁾, Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity⁽⁴⁾, and Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students⁽⁵⁾ in so far as Article 2(2) of those Directives refers to the provisions of Directive 68/360/EEC, the amendment of which is the object of this Directive;

Whereas it should be made clear that the objective of Article 7a does not imply that citizens of the Union and members of their families are entitled to travel without being in possession of the requisite travel documents,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 68/360/EEC and Directive 73/148/EEC are hereby amended as follows:

1. The second sentence of Article 2(1) is deleted;
2. Article 3(1) is replaced by the following:
 1. "Member States shall allow the persons referred to in Article 1 to enter their territory.

The persons referred to in Article 1 shall have the right to cross the external frontiers of the Member States simply on production of a valid identity card or passport";
3. The following paragraph 3 is added to Article 3:
 - "3. Member States may require the persons referred to in Article 1 to be in possession of a valid identity card or passport, if necessary bearing a visa, when they exercise their right of free movement."

Article 2

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.

(3) OJ No L 180, 13.7.1990, p. 26.
(4) OJ No L 180, 13.7.1990, p. 28.
(5) OJ No L 317, 18.12.1993, p. 59.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

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