



COMMISSION OF THE EUROPEAN COMMUNITIES

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REPORT FROM THE COMMISSION TO THE COUNCIL
AND THE EUROPEAN PARLIAMENT

ON THE IMPLEMENTATION OF DIRECTIVES
90/364, 90/365 and 93/96
(RIGHT OF RESIDENCE)

SUMMARY

Freedom of movement was originally limited to people exercising an economic activity. At the end of a lengthy process, this right was extended to all Member State nationals, even those who were not economically active. These extended rights are contained in three Directives adopted on 28 June 1990 on the right of residence of students, retired persons and other non-economically-active persons. Subject to certain conditions, the extension of the right of residence was formally enshrined in the Maastricht Treaty. The inclusion of Article 8a in the EC Treaty gives every citizen the fundamental and personal right to move and reside within the territory of the Member States. However, the conditions and practical procedures relating to this right, as laid down in secondary legislation, continue to apply.

This report aims to provide an assessment of the implementation of the three Directives on the right of residence of students, retired persons and other persons not engaged in an economic activity.

The first part of the assessment focuses on the transposition of the Directives.

The first point of note is that the transposition process itself was long drawn out. Only three Member States had transposed the Directives by the deadline of 30 June 1992. The Commission brought infringement proceedings against the other Member States for non-transposition, which were subsequently terminated once the transposition measures were adopted. In the case of one Member State, however, the infringement proceedings were referred to the Court of Justice, which ruled against that country in 1997.

With regard to the content of the transposition measures, the Commission was obliged to commence infringement proceedings against fourteen Member States for incorrect transposition, an abnormally high dispute rate in view of the measures concerned. Most of the proceedings were terminated, some more quickly than others, after the Member States amended their legislation. However, the Commission was obliged to refer the proceedings against two Member States to the Court of Justice in 1998.

The second part of the assessment of the implementation of the Directives deals with the experiences of the players involved, i.e. the citizens and administrations in the Member States.

The complaints received by the Commission and petitions to the European Parliament provide valuable information about the difficulties encountered by citizens arising from the application of the Directives. These difficulties include uncertainty with regard to the procedures to be followed, the length and complexity of the steps required to obtain a residence permit, and difficulty in meeting the conditions with regard to sickness insurance and resources.

The administrations themselves are often unsure about the provisions to be implemented and have difficulty in assessing the conditions to be met in terms of resources and sickness insurance in particular.

The Commission has drawn preliminary conclusions in the following four areas from its assessment of the implementation of the three Directives:

- step up the effort to inform citizens;
- continue to ensure strict compliance with existing Community law;

- make Community legislation on freedom of movement of persons clearer and restructure it around the notion of Union citizenship;
- begin discussions on substantive changes to existing legislation.

Introduction

Free movement of persons includes the right to enter, move within, reside and, where appropriate, remain in a Member State other than the country of which the Community national is a citizen. In exercising this right, any discrimination on grounds of nationality is prohibited. Originally, however, the right of a national of a Member State to reside in the territory of another Member State of the European Community was basically subject to that person engaging in an economic activity in that State. The right of residence therefore followed on from the right to engage in an economic activity.¹

But such a state of affairs could not be allowed to continue indefinitely, because it did not fully comply with one of the objectives laid down in Article 3c of the Treaty of Rome ("the abolition, as between Member States, of obstacles to the free movement of ... persons"), nor did it meet the political aspiration expressed at the Paris Summit in 1974 to move towards a "citizens' Europe".²

Building on this new perception of the freedom of movement of persons, the Commission put forward a proposal in 1979³ to extend the right of residence to other categories of persons who were not engaged in any economic activity, seeing this as an important step towards the completion of the Internal Market. But it was the impetus provided by the preparation and adoption of the Single European Act that was to generate the conditions necessary for the successful outcome of this process some ten years later. After withdrawing its 1979 proposal, the Commission split up the dossier and in 1989 put forward three new proposals⁴ covering students, retired persons and other persons not engaged in an economic activity⁵, culminating in the adoption by the Council on 28 June 1990 of Directives 90/364 on the right of residence⁶, 90/365 on the right of residence of employees and self-employed persons who have ceased their occupational activity⁷ and 90/366 on the right of residence for students.⁸

This extension in secondary legislation of the categories of persons entitled to the right of residence was subsequently formally enshrined at EC Treaty level with the insertion of Article 8a into the Maastricht Treaty, which states that "every citizen of the Union shall have the right to ... reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect".

¹ See, for example, Art. 48(3) of the EEC Treaty.

² See the Report from the Commission on the Citizenship of the Union, 21.12.1993, COM(93)702 final, Section II.

³ COM(79)215 final, OJ C 207, 17.8.1979, p. 14.

⁴ OJ C 191, 28.7.1989.

⁵ The term "other non-economically-active persons" is used throughout this report to refer to the beneficiaries of Directive 90/364.

⁶ OJ L 180, 13.7.1990, p. 26.

⁷ OJ L 180, 13.7.1990, p. 28.

⁸ OJ L 180, 13.7.1990, p. 30.

Article 8a thus establishes the right of residence as a fundamental and personal right⁹ but does not cancel previously adopted secondary legislative instruments, in particular Directives 90/364, 90/365 and Directive 93/96¹⁰ which replaced Directive 90/366 after that Directive was annulled by the Court of Justice.¹¹

Apart from the right of residence, more general reference should be made to the importance of the status of European citizen reflected in Article 8(2), also incorporated into the EC Treaty by the Maastricht Treaty, under which "citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed hereby". One of the essential rights in this respect is, as the Court of Justice recently reiterated¹², that laid down in Article 6 of the Treaty of not being subject to discrimination on grounds of nationality within the scope of application *ratione materiae* of the Treaty.

This report has been produced by the Commission in fulfilment of its obligation to report to the European Parliament and the Council on the application of the three Directives aimed at extending the right of residence to all Community nationals, even if they are not engaged in an economic activity, provided that they have sickness insurance and sufficient resources to avoid becoming a burden on the social assistance system of the host Member State.

It should be noted that the three Directives also apply in the European Economic Area and that the EFTA Surveillance Authority is in the process of drawing up a report on the application of the Directives in Norway, Iceland and Liechtenstein.

This Commission report on the implementation of the above-mentioned Directives contains four sections:

1. a brief summary of the content of the Directives;
2. an examination of their transposition into national law from the point of view of both the deadlines involved and the content of the national measures adopted;
3. an analysis of the practical application of the Directives based on information provided by the players involved: the citizens of the Union and the authorities responsible for residence matters;
4. an assessment of the application of the Directives on the right of residence, with an outline of areas for future discussion and action to ensure that the right of residence works better in the future.

¹⁰ See second report from the Commission on Citizenship of the Union, 27.5.1997, COM(97) 230 final, p. 14.

¹¹ Judgment of 7.7.1992, Case C-295/90, ECR 1992, p. I-4193.

¹² Judgment of 12.5.1998, Case C-85/96, ECR 1998, p. I-2691.

1. The content of the Directives

1.1. Retired persons and other non-economically-active persons:

Directives 90/365 and 90/364 extend the right of residence to retired persons and other non-economically-active persons subject to two conditions: that they have sufficient resources to avoid becoming a burden on the social assistance system of the host Member State during their period of residence, and that they are covered by sickness insurance in respect of all risks in the host Member State (Article 1(1), first subparagraph). Their resources are deemed sufficient if they exceed the threshold for social assistance applicable in the host Member State (Article 1(1), second subparagraph).

The family members entitled to accompany the holder of the right of residence are his or her spouse and their dependants in the descending or ascending line (Article 1(2)).

The validity of the residence permit may be limited to five years, and the Member States may, when they deem it to be necessary, require "revalidation" of the permit at the end of the first two years of residence (Article 2). By reference (in Article 2) to various provisions of Directive 68/360,¹³ the residence permit is valid throughout the territory of the Member State, its validity is not affected by breaks in residency of not more than six consecutive months, it is issued free of charge or at a cost which must not exceed the cost of the identity card issued to nationals of the host Member State, and the visas required, if need be, for family members who are not nationals of a Member State are issued free of charge and without undue formalities.

Irrespective of their nationality, the holder's spouse and dependent children shall be entitled to take up any employed or self-employed activity anywhere within the territory of the host Member State (Article 2).

The right of residence shall remain for as long as the beneficiaries of that right continue to satisfy the requirements with regard to sufficient resources and suitable sickness insurance (Article 3).

1.2. Students:

Before examining the provisions of Directive 93/96, a brief summary of the case-law of the Court of Justice pertaining to the legal basis for the right of residence for students is required.

The basis for the right of residence for students:

The wording used by the Council in Directive 90/366 ("Member States shall ... grant the right of residence to any student") differs from the wording used in the Commission's 1989 proposal ("the Member States shall recognise the right of residence"). In the light of the Gravier judgment¹⁴, the Commission took the view that students had a right of

¹³ Council Directive of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families, OJ L 257, 19.10.1968.

¹⁴ Judgment of 13.2.1985, Case 293/83, ECR 1985, p. 593.

residence deriving from the prohibition of any discrimination between Member State nationals with regard to vocational training access, and it therefore amended its proposal to exclude students from the scope of the Directive¹⁵. After Directive 90/366 was annulled by the Court of Justice¹⁶, the Commission reinserted the same wording in its 1993 proposal¹⁷ as it had used in its 1989 proposal (the Member States "shall recognise" the right of residence). The Commission was backed up in its choice of wording by the Raulin judgment of 26 February 1992¹⁸, where the Court of Justice ruled that "a national of a Member State who has been admitted to a course of vocational training in another Member State derives from Community law a right to reside in that other Member State for the purpose of following that course and for the duration thereof". Council Directive 93/96 takes up this notion of entitlement, whence the wording that the Member States "shall recognise" the right of residence.

The provisions on the right of residence contained in Directive 93/96:

The right of residence is subject to the condition that the student is enrolled in a recognised educational establishment for the principal purpose of following a vocational training course there and that he is covered by sickness insurance (Article 1). As regards resources, the student may choose to make a straightforward declaration (Article 1).

The right of residence is extended to the student's spouse and dependent children, but not to other family members (Article 1).

The validity of the residence permit may be limited to the duration of the course of studies or to one year where the course lasts longer (Article 2(1)). Reference is made to Directive 68/360 with regard to the cost of the residence permit and the procedures for issuing visas to family members (Article 2(2)).

The spouse and dependent children are entitled to take up any employed or self-employed activity anywhere within the territory of the host Member State (Article 2(2)).

By implicit reference to the case-law of the Court of Justice, it is stipulated that students may not, on the basis of the Directive, claim the payment of maintenance grants by the host Member State (Article 3).

The right of residence shall remain for as long as beneficiaries of that right fulfil the conditions laid down in Article 1 (Article 4).

¹⁵ COM(85)292 final, OJ C 171, 10.7.1985, p. 8.

¹⁶ The Court of Justice ruled, as the European Parliament had maintained in its application and the Commission had held in its statement in intervention, that the Directive should have been based on the second paragraph of Article 7 of the Treaty and not on Article 235, the legal basis on which the Council had approved the Directive. See footnote 11 above.

¹⁷ COM(93) 209 final

¹⁸ Case C-357/89, ECR 1992 I-1027.

2. Transposition of the Directives into national law

Following an examination of the transposition measures adopted by the Member States, the Commission was obliged to launch infringement proceedings against almost all Member States for incorrect transposition of one or more provisions of Directives 90/364, 90/365 and 93/96.

2. 1. Adherence to the deadline for transposition laid down in the Directives

Pursuant to Article 5 of Directives 90/364, 90/365 and 90/366, the Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with the Directives not later than 30 June 1992.

Only three Member States (the Netherlands, Denmark and Spain) met the deadline laid down in the Directives, adopting their transposition measures during the month of June 1992.

The Commission commenced infringement proceedings against the other Member States for non-transposition, and letters of formal notice were sent to them in October 1992.

The infringement proceedings were limited to Directives 90/364 and 90/365 in view of the action for annulment of Directive 90/366 instituted by the European Parliament on 28 September 1990.

Following the letters of formal notice, the infringement proceedings for non-transposition of Directives 90/364 and 90/365 progressed at variable speeds in the different Member States. The Commission decided to terminate the proceedings as and when the Member States adopted the transposition measures¹⁹.

However, the proceedings against Germany were not terminated. When no satisfactory reply was received from Germany to the reasoned opinion delivered to it in September 1993, the Commission referred the matter to the Court of Justice on 24 March 1995. The German Government considered that there were no grounds for the action, emphasising that Paragraph 2(2) of the *Ausländergesetz* (Law on Foreigners) evoked the primacy of Community law over national law. It also pointed out that the competent administrative authorities in the Länder had been informed of the need to comply fully with the Directives.

In a judgment delivered on 20 March 1997²⁰, the Court of Justice ruled against Germany for not adopting within the prescribed period the laws, regulations and administrative provisions necessary for transposing into national law Directives 90/364 and 90/365. The Court fully concurred with the arguments put forward by the Commission in the course of the proceedings. The Court thus ruled that "the mere fact that Paragraph 2(2) of the *Ausländergesetz* contains a general reference to Community law does not amount to transposition ensuring in a sufficiently clear and precise manner the actual implementation in full of Directives 90/364 and 90/365, both of which are intended to

¹⁹ The dates on which the transposition measures were adopted are given in the table in Annex 1 to this report.

²⁰ Case C-96/95, *Commission v Germany*, ECR 1997, I-1653.

confer rights on nationals from other Member States" (para. 36), and observed that "the fact that the competent national administrative authorities were informed of the implications of the two Directives in question cannot be regarded as satisfying, by itself, the requirements of publicity, clarity and certainty as to the legal situations governed by those Directives" (para. 39).

In the case of Austria, Finland and Sweden, their obligations under the European Economic Area Agreement which entered into force on 1 January 1994 meant that they should have transposed the Directives prior to joining the European Union on 1 January 1995.

On the right of residence for students, after the Court's judgment of 7 July 1992²¹ annulling Directive 90/366, the Commission was obliged to review the question of bringing possible infringement proceedings for non-transposition.

Given that the Court had specified in its judgment that the effects of Directives 90/366 were to be maintained on a provisional basis until it was replaced by a Directive with an appropriate legal basis, the Commission considered that the obligation to transpose the Directive remained in spite of its formal annulation. At the beginning of April 1993, the Commission sent letters to the Member States which still had not transposed Directive 90/366 informing them of its intention to commence infringement proceedings against them. The adoption by the Council on 29 October 1993 of Directive 93/96 on the right of residence of students²², the content of which was almost identical to that of Directive 90/366 which it replaced, gave rise to a novel situation with regard to the opening of infringement proceedings for non-transposition: from that date on the Commission had to base its action on the new Directive 93/96 which, in accordance with its Article 6, was to be transposed by 31 December 1993.

In February 1994, the Commission sent a letter of formal notice to Germany, Belgium and France, the only Member States which still had not transposed the Directive on the right of residence for students. The proceedings against Belgium and France were terminated in 1994 and 1995 respectively. A reasoned opinion was sent to Germany in July 1995, followed by a supplementary reasoned opinion in October 1996. The proceedings were only terminated in 1997, following the entry into force of the *Verordnung* (Decree) of 17 July 1997.

Apart from Denmark, Spain and the Netherlands, which fulfilled their obligations within the prescribed periods, all the other Member States²³ lagged behind to varying degrees in transposing Directives 90/364, 90/365 and 90/366-93/96, despite the small number of provisions involved and the lack of specific legal difficulties in transposing them into national law. This reluctance on the part of the Member States to transpose the Directives and consequently to extend the right of residence to new categories of persons is probably linked to the legacy of the past. For thirty years, the freedom of movement of persons was managed from an economic

²¹ See footnote 11 above.

²² See footnote 10 above.

²³ In this case the "old" Member States, the Twelve.

perspective, and this notion of functional mobility has proved an obstacle to the emergence of a personal right to freedom of movement, independent of economic considerations.

2. 2. Compliance of the transposition measures with the Directives

2.2.2. Incorrectly transposed provisions:

- The types of resources and supporting documentation required of retired persons and other non-economically-active persons:

The first subparagraph of Article 1(1) of Directives 90/365 and 90/364 states that the right of residence of the persons concerned (retired persons and non-economically-active persons respectively) is subject to the requirement that they "have sufficient resources to avoid becoming a burden on the social assistance system of the host Member State during their period of residence". Subparagraphs 2 and 3 deal with the method to be used to determine the level above which the resources are to be deemed sufficient. Nowhere do the Directives specify what types of resources are to be taken into consideration, nor do they mention what supporting documentation can be required by the competent authorities.

In view of the wording of Article 1(1) of Directives 90/365 and 90/364, and given the fact that the Directives contain provisions which allow the host Member States to effectively check on the ongoing availability of resources and to take action in the event that the persons concerned no longer have sufficient resources, the Commission holds that Article 1(1) of the Directives is not correctly transposed by national measures which arbitrarily limit the types of resources that can be taken into account or impose excessive demands with regard to the types of supporting documentation accepted.

The Commission commenced infringement proceedings against those Member States (France and Italy) which in its view had incorrectly transposed Article 1(1) of Directives 90/365 and 90/364 to varying degrees.

- Revalidation of the residence permits of retired persons and non-economically-active persons:

Article 2(1) of Directives 90/364 and 90/365 states that the right of residence shall be evidenced by means of the issue of a residence permit, the validity of which may be limited to five years, and specifies that "the Member States may, when they deem it to be necessary, require revalidation of the permit at the end of the first two years of residence".

Drawing on the preparatory work for the Directives, the Commission sees revalidation as an opportunity for the competent authorities in the host Member States to check up on the administrative position of certain persons where, at the time of their initial request for a residence permit, there were doubts about their ability in the longer term to continue to meet the sickness insurance conditions laid down in Article 1 of the Directives. In view of this safeguard, the Commission considered that systematic revalidation of the residence permits of retired persons and other non-economically-active persons after two years or imposing a two-year limit on the validity of their residence permits at the outset

amounted to incorrect transposition of the Directives. Furthermore, while restricting the validity of residence permits to two years was already in itself contrary to the Directives, some Member States' legislation gave the competent administrative authorities the option of applying such a restriction but provided no guarantees that such a restriction would be limited only to cases where the person's sickness insurance position was difficult to assess at the time of their initial request for a residence permit.

The Commission brought infringement proceedings against a number of Member States (Spain, Greece, Italy, Portugal and the United Kingdom) for incorrect transposition, to varying degrees, of Article 2(1) of Directives 90/364 and 90/365.

- Sickness insurance cover for retired persons, non-economically-active persons and students:

Article 1 of the three Directives makes the right of residence subject to having "sickness insurance in respect of all risks in the host Member State". Given the very general wording of this provision, the Commission is of the view that the persons concerned should be given a variety of ways of fulfilling the sickness insurance condition, provided of course that they meet the criterion on the level of risks covered. Thus, for example, the persons entitled to sickness insurance cover would include the dependants of insured persons, and persons who are members of a private social insurance scheme either in their country of origin, in the host Member State or in another Member State, etc.

Infringement proceedings were instituted against the following countries for incorrect transposition of the sickness insurance provision in the Directives:

- France, because its legislation and administrative practice obliges students from other Member States to join the social security scheme for students in France if they have no social insurance or are not dependants of an insured person and are unable to supply a certificate issued pursuant to Regulations (EEC) No 1408/71 and No 574/72.

- Luxembourg, whose legislation appeared to be too restrictive with regard to the types of sickness insurance that non-economically-active persons could take out.

- The declaration of students' resources:

Under the terms of Article 1 of Directive 93/96, the Member States shall recognise the right of residence "for any student who is a national of a Member State ... where the student assures the relevant national authority, by means of a declaration or by such alternative means as the student may choose that are at least equivalent, that he has sufficient resources to avoid becoming a burden on ... the host Member State during their period of residence²⁴". Given the crystal clear wording of this provision, and in view of the background to it, the Commission considers that national transposition measures are contrary to this provision where, for example, they deny students the right to make a declaration of their resources, oblige them to provide evidence thereof, or require a minimum level of resources which must be backed up in the supporting documentation or referred to in the declaration.

²⁴ The terms are identical to those used in Article 1 of Directive 90/366.

The Commission brought infringement proceedings against those Member States (Denmark, Spain, Finland, France, Ireland, Italy, Luxembourg, the Netherlands and the United Kingdom) which, in its view, had incorrectly transposed Article 1 of Directive 93/96 to varying degrees.

- The formalities relating to the period of stay:

Directives 90/364, 90/365 and 93/96 refer to Article 3 of Directive 68/360, which states that entry into the territory of the Member States shall be allowed simply on production of a valid identity card or passport. As a rule, the authorities should not ask persons entering their territory questions on, for example, the destination or purpose of their stay, or the financial means at their disposal²⁵.

In Finland, a provision in an Interior Ministry Decree gave the authorities blanket permission to check whether Member State nationals seeking to enter Finland met the conditions for residence.

The Commission considered that applying such a provision to the beneficiaries of the three Directives was contrary to Community law.

- The residence permit:

Article 2 of the three Directives states that exercise of the right of residence shall be evidenced by means of the issue of a document called a residence permit. The residence permit is therefore a separate document and not a stamp in the holder's passport. Infringement proceedings were brought against Sweden because, under Swedish law, a stamp in the holder's passport could be used as evidence of the right of residence.

2.2.3. The course and outcome of the infringement proceedings for incorrect transposition:

When the Commission has initiated infringement proceedings against a Member State, it has, in principle, followed one and the same procedure relating to one or more complaints relating to one or more of Directives 90/364, 90/365 and 93/96.

The outcome of the proceedings is given below, while the summary table in Annex II to the report traces their chronological development, Member State by Member State:

- **Netherlands:** the infringement proceedings were terminated. It emerged that, following the new Decree on Foreigners of 30 December 1993 and the 1996 amendment to the Circular on Foreigners, students can now choose to make a declaration of their resources.

- **Greece:** on the basis of clarifications provided in response to the letter of formal notice, the proceedings were terminated. The Greek authorities confirmed that the residence permits issued to retired persons and non-economically-active persons were valid for a

²⁵ Judgment of 30.5.1991, Case C-68/89, Commission v Netherlands, ECR 1991 I-2637.

period of five years and were only subject to revalidation in exceptional cases, and that instructions had been given to the competent authorities to this effect.

- **Denmark:** the infringement proceedings were terminated following the amendments made in Interior Ministry Decree No 684 of 12 July 1996 to the earlier Decree No 761 of 22 August 1994. The outcome of these amendments is that residence permits issued to retired persons and non-economically-active persons are valid for five years and that revalidation is required only where it is deemed necessary.

- **Spain:** the proceedings were terminated following Decreto Real No 1710/1997 of 14 November 1997 amending Decreto Real No 766/1992. These amendments mean that residence permits issued to retired persons and non-economically-active persons are valid for five years and that students are entitled to make a declaration of their resources.

- **Italy:** in the absence of a satisfactory response to the letter of formal notice and the reasoned opinion, the Commission has referred the matter to the Court of Justice.

- **France:** in the absence of a satisfactory response to the letters of formal notice and the reasoned opinion, the Commission has referred the matter to the Court of Justice²⁶. The specific proceedings relating to sickness insurance for students²⁷ are at the reasoned opinion stage.

- **Ireland:** the infringement proceedings were terminated after entry into force of the European Communities (Right of Residence for Non-Economically Active Persons) Regulations 1997. Under the new legislation, students are no longer required to provide evidence of their resources.

- **United Kingdom:** the proceedings were terminated after amendments were introduced in the Immigration (European Economic Area) (Amendment) Order 1997. As a result of these amendments, students are entitled to make a declaration of their resources, and revalidation of the residence permits of retired and non-economically-active persons is limited to cases where it is deemed necessary and does not affect the initial five-year period of validity of the residence permit.

- **Portugal:** the proceedings were terminated after the enactment of Enabling Law No 8/98 of 13 February 1998 and the Decree Law N° 250/98. The amendments made by this instrument to Decree Law No 60/93 of 3 March 1993 mean that residence permits issued to retired and non-economically-active persons are valid for five years.

- **Luxembourg:** the infringement proceedings were terminated after the Grand Ducal Regulation of 3 June 1996 amending the Grand Ducal Regulation of 28 March 1972 was passed, meaning firstly that students now have the option of making a declaration of their resources and are no longer required to provide evidence thereof (this was the case under the previous legislation), and secondly that non-economically-active persons now have

²⁶ In the course of the proceedings before the Court of Justice, the Commission was informed of a Decision taken by France's Council of State on 3 October 1997 – GISTI (Groupe d'Information et de Soutien des Immigrés) – cancelling some of the provisions of the Decision of 6 April 1995 which were also referred to in the Commission's action.

²⁷ See Section 2.2.2 above

greater choice in terms of the types of sickness insurance schemes that they may belong to.

- Finland: the infringement proceedings were terminated following amendments to the laws governing checks on persons entering Finland and checks on students' resources.

- Sweden: the infringement proceedings were terminated after the Decree on Foreigners was amended: the amended text removes the differences in treatment between family members depending on whether they are nationals of an EEA country or not, and clarifies that residence permits are issued in the form of a separate document.

- Germany and Austria: infringement proceedings were initiated against these two Member States for incorrect transposition of Directives 90/364, 90/365 and 93/96. The proceedings are at the letter of formal notice stage.

With regard to Belgium, examination of the transposition measures did not show up any problem of compliance with the provisions of Directives 90/364, 90/365 and 93/96 themselves. However, other infringement proceedings relating to the compliance of Belgian legislation with Directive 68/360 on the right of residence of employed persons²⁸ also had implications for students, retired persons and other non-economically-active persons, since these proceedings related, among other things, to Article 4 of Directive 68/360 (procedures and deadlines for the issue of residence permits for employed persons), the content of which is similar to Article 2(1) of Directives 90/364, 90/365 and 93/96. The proceedings also related to Article 9 of Directive 68/360 (cost of residence permits), to which Directives 90/364, 90/365 and 93/96 specifically refer.

The infringement proceedings resulted in a ruling against Belgium by the Court of Justice on 20 February 1997.²⁹ The Court of Justice's findings concerning the infringement of Directive 68/360 with regard to the procedures for issuing residence permits (system of successive registration certificates) and the cost of the permits must be seen as applying by analogy to students, retired persons and other non-economically-active persons.

To comply with the Court's judgment, Belgium amended its legislation.³⁰ An examination of whether this new legislation complies with Directive 68/360 and Directives 90/364, 90/365 and 90/366 is under way.

The transposition of Directives 90/364, 90/365 and 90/366-93/96 gave rise to infringement proceedings against almost all Member States. Nevertheless, the Commission welcomes the fact that the vast majority of the infringement proceedings had a positive outcome. The Member States acknowledged that the Commission's arguments were well-founded, and 'corrected' their transposition measures, some more quickly than others. Thus the infringement proceedings for incorrect transposition were terminated in ten cases, while two proceedings are still

²⁸ See footnote 13 above.

²⁹ Case C-344/95, *Commission v Belgium*.

³⁰ Royal Decree of 8 May 1998 amending the Royal Decree of 8 October 1981 on the entry, residence, establishment and deportation of foreigners.

under way, at letter of formal notice stage. Only in two cases has the Commission referred the matter to the Court of Justice.

However, the Commission acknowledges that the infringement proceedings progressed quite slowly and is aware of the disadvantages of this: for too long, EU citizens have been denied some of their rights or been faced with unjustified administrative difficulties due to the incorrect transposition of the Directives. The Commission's decision to speed up its internal procedures should mean that breaches of Community law can be stopped more quickly in the future.

3. Assessment of the practical application of the Directives

3.1. Citizens' experiences:

The letters, complaints and petitions to the European Parliament which are passed on to the Commission constitute an invaluable, if incomplete, source of information for the Commission departments on the practical application of the Directives. For the purposes of the assessment, the Commission also requested information from institutions which, by virtue of their work, are particularly well placed to collect data on the experience of students³¹ and retired persons.³² A survey was also carried out of former Commission staff who, on retirement, went to live in a Member State other than their country of origin or the country of their last appointment prior to retirement. These various sources of information, to which must be added the observations of the Eurojus network of advisors as well as information from the Citizens orientation services,³³ have highlighted the following areas as problematic.

- The resources of retired persons and other non-economically-active persons:

The first difficulty encountered by retired and non-economically-active persons is in determining the level of resources that they are required to have available.

Directives 90/364 and 90/365 do not lay down a minimum level of resources but establish a mechanism for determining whether they are sufficient or insufficient. It is up to the Member States to give practical application to this mechanism. However, it turns out that most of the transposition measures merely repeat the wording of the Directives, with no further specifications, or refer to a provision in social legislation laying down a minimum level of resources or allowances which is used to determine whether retired and other non-economically-active persons fulfil the resources condition.

A second difficulty relates to the supporting documentation that retired and non-economically-active persons must provide as evidence of their resources.

Quite apart from cases of disproportionate requirements arising from the incorrect transposition of the Directives,³⁴ the information sent by citizens to the Commission

³¹ National Erasmus agencies.

³² Eurolink Age.

³³ See point 4.1 below

³⁴ The infringement proceedings instituted in this regard are discussed in Section 2.2 above

shows that the competent administrations quite often require evidence of resources (bank statements for the preceding months, bank declaration showing the account balance, tax declaration, etc.), which more often than not are excessive in view of the Directives.

In view of the fact that the Directives make the right of residence subject to the condition of having sufficient resources to avoid becoming a burden on the social security system of the host Member State, and taking account of the fact that the assessment of sufficiency is made by reference to an objective threshold, the Commission considers that the national authorities should only request evidence of resources up to this threshold. It appears that in these disproportionate situations, the administrative authorities responsible for residence matters examine the entire financial and/or property situation (e.g. bank statements from the preceding months) of retired persons and non-economically-active persons applying for a residence permit. The Commission also notes that some supporting documents (e.g. bank declarations showing the account balance) only reflect the situation at a given moment in time and cannot really be considered as proof that such a level of resources will be maintained in the future.

With regard to the specific case of beneficiaries of Directive 90/365, the Commission observes that a specific characteristic of old age and retirement pensions is their stability. Thus, in the Commission's opinion, requiring many types of evidence of resources is particularly disproportionate in the case of pensioners.

- The length of residence of retired and non-economically-active persons:

Some retired and non-economically-active persons usually reside in another Member State for several months each year (for example during the winter period). It seems that many of them do not apply for a residence permit, even when staying for more than three months. In most cases they do this to avoid inconvenient administrative procedures and red tape. It also seems that, when the administrative authorities receive applications for residence permits from people in such situations, they only issue them with permits for the duration of their intended period of residence, whereas Article 2 of Directives 90/364 and 90/365 states that the validity may not be less than five years.

- Problems linked to the sickness insurance condition:

It would appear that retired and other non-economically-active persons quite often find it hard to have their sickness insurance policies recognised by the authorities in the host Member State. The people who most often experience these problems are civil servants³⁵ and people with a private sickness insurance policy.

According to information received recently by the Commission, two Member States went so far as to oblige retired and other non-economically-active persons to join the sickness insurance scheme of the host Member State, even though they already had sickness insurance cover. This problem is similar to that experienced by students in France.³⁶

³⁵ The problems experienced by civil servants should now be regarded as resolved since the adoption of Council Regulation (EC) No 1606/98 of 29 June 1998 amending Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 with a view to extending them to cover special schemes for civil servants.

³⁶ See Section 2.2.2 above

- The level of coverage provided by the sickness insurance policy:

The Commission's attention has been drawn to a problem experienced by some retired people who, after moving to another Member State, find out that their sickness benefits in kind are more limited than the benefits they were entitled to in their Member State of origin. This is a reflection of the general rule whereby sickness benefits in kind are provided in accordance with the legislation in force in the Member State of residence. Furthermore, it is often impossible to maintain benefits from supplementary insurance taken out previously in the Member State of origin (insurers' fears about the extent of their risk because they do not know what level of benefits is provided in the other Member State). Nor is it usually possible to take out such insurance in the Member State where the retired person has just established residency (person too old to take out such supplementary insurance).

- Taxation:

Some retired and otherwise economically inactive persons experience difficulties in understanding the tax implications of their establishment in another Member State and in familiarising themselves with the characteristics of the taxation system in the host Member State. A certain number of complaints have been addressed to the Commission services on this subject.

- Contamination by Directives 90/364 and 90/365 in other areas:

The Commission has been informed of a number of cases where the administrative authorities responsible for processing applications for residence permits required proof of resources from persons who were neither retired nor non-economically-active. Those concerned were either employees or self-employed persons or persons who were still resident in the Member State where they had last worked. However, the legislation applicable to such persons³⁷ states that they are not obliged to provide evidence of their resources. In the cases that it has been informed about, the Commission has drawn the attention of the Member States to this type of "contamination" by Directives 90/364 and 90/365.

Another type of contamination is specific to Directive 90/364. In the past, i.e. prior to Directive 90/364, Community nationals married to nationals of their host Member State were not covered by Community law if they were not engaged in an economic activity. Their residence rights were covered by national legislation on foreigners. In some cases, this legislation contained specific provisions on the spouses of nationals. Since the transposition of Directive 90/364 into national legislation, Community nationals who are married to nationals of the host Member State and are not engaged in an economic activity in that State, have an autonomous right of residence on the basis of the Directive. In practice, however, the competent administrations do apply the provisions of the Directive to such persons. When checking on the resource requirement, they proceed in the same way as for a standard application for a residence permit submitted by an unmarried person not engaged in an economic activity.

³⁷ Directives 68/360 and 73/148 for employed and self-employed persons; Regulation No 1251/70 and Directive 75/34 for persons who remain in the Member State of their previous economic activity.

The Commission has been informed of cases where the competent administration insisted on obtaining evidence of independent resources from the person concerned and refused to take into account the fact that their resources were the same as their spouse's. In other cases, the administration required the person concerned to provide a financial guarantee or an undertaking from their spouse to support them. It is difficult to justify this manner of checking on the resources condition, as illustrated by the two cases outlined above, in view of the provisions contained in Directive 90/364, and it is incompatible with the general obligation on the Member States, under Article 9 of Directive 68/360,³⁸ to simplify the formalities and procedures for obtaining residence permits to the greatest possible extent.

- The right of residence for some students:

Students taking part in programmes such as Erasmus, Socrates and Leonardo stay in the host Member State for a few months, mostly for between three months and a year (if the intended period of residence is longer than three months, EU citizens are required under Community law to apply for a residence permit). Experience has shown that the formalities often drag on for a long time. Quite often, students either do not receive their residence permit at all or only receive it at the end of their stay, shortly before their return to their home Member State. While the right of residence does not depend on a residence permit being issued, which is only declaratory in nature, such a state of affairs is nevertheless unhealthy. On the basis of reports from their colleagues or predecessors on these programmes, students are not exactly encouraged to engage in an apparently pointless procedure. Nor do the competent administrations seem to see the importance of issuing students with residence permits.

- Residence permits for students:

Students are not happy with having to pay a fee every time they renew their residence permit in some Member States.

3.2. Practical application of the Directives by the Member State administrations

In order to carry out an in-depth examination of the practical application of the Directives, information was required from those involved in implementing Directives 90/364, 90/365 and 93/96, i.e. the competent administrations in the Member States. To this end, the Commission sent a questionnaire to the Member States asking for different types of information on the application of the Directives. The main headings of the questionnaire are covered below, with a short summary of the replies from the Member States (Greece, Ireland and Luxembourg did not reply to the questionnaire).

³⁸ To which Article 2(2) of Directive 90/364 refers.

3.2.1. The resources of retired persons and other non-economically-active persons:

- What categories of personal income are taken into account by the competent authorities: capital gains? rental income? royalties? other? Does the origin of these resources (Member State of residence, Member State of origin, other Member State, third country) determine whether they are taken into account?

Examination of the replies to the questionnaire confirmed that almost all the Member States took a wide variety of resources into account and that the origin of the resources was not in itself relevant to the determination of sufficiency of resources. The overriding factor for several Member States was whether the person concerned really could access the resources in question freely.

- What categories of resources other than personal income are taken into account: financial support from relatives? from the person's cohabitant? from third parties? other resources?

The Member States' replies differed on the question of whether resources other than personal income were taken into consideration.

Belgium does not take such resources into account under Directive 90/364. Sweden takes the same position on principle and does not take into account contributions from relatives unless the money is paid into a bank account which the person concerned can access freely. Spain only takes financial contributions from relatives into account. It should be noted that the Netherlands does not view an undertaking from the person's cohabitant as constituting sufficient resources.

When assessing resources from relatives or third parties, the Member States require many different types of supporting documentation.

- Do the competent authorities take account of factors which, while not resources in the strict sense (e.g. ownership of the accommodation or free accommodation), constitute material benefits which go towards meeting the needs of those concerned? If so, how?

When assessing the resources requirement, Austria, Finland, France, Portugal, the United Kingdom, Sweden and, to a certain extent, Denmark take account of the fact that the persons concerned own their accommodation or live there free of charge. Spain does not take the material benefits mentioned in the questionnaire into consideration.

3.2.2. Students' resources:

Since the entry into force of the transposition measures for Directives 90/366-93/96, how many students have become a burden on the social assistance authorities, and what steps have been taken?

None of the Member States provided data on the number of students that have become a burden on the social assistance authorities in the course of their stay.

3.2.3. The cost for students of renewing their residence permits:

How much does a residence permit cost? Is the same amount charged every time the permit is renewed?

Germany, Denmark, France, Italy and the United Kingdom provide residence permits free of charge. Of the remaining Member States, some charge the same fee for each renewal as for the first permit (Belgium, Spain, Finland and Portugal), while Austria charges a slightly reduced fee for renewals and the Netherlands only requires payment for the initial residence permit.

4. Conclusions:

The various observations made above on the application of the Directives should not cause us to lose sight of the fact that there has been a high level of uptake by the new categories of beneficiaries - students, retired persons and non-economically-active persons - of the opportunities provided by freedom of movement. Even though most Member States have been unable to provide statistics in this regard, the phenomenon is definitely real and can be demonstrated, however imperfectly, by examining a number of indicators.

Based on the experiences of both citizens and the competent administrations in the practical application of Directives 90/364, 90/365 and 90/366-93/96, the Commission has drawn the following conclusions as part of its contribution to greater freedom of movement for students, retired and non-economically-active persons.

4.1. - Step up the effort to inform citizens:

The letters and complaints received by the Commission show that citizens lack information on the exact extent of their rights in the area of free movement. This lack of awareness can work in both directions: citizens are often unaware of their real rights but also, conversely, can be convinced that they have rights which in reality are of minor importance or are even non-existent.

Among other things, the smooth operation of the Internal Market in the area of freedom of movement of persons depends on the quality of information given to citizens. The Commission is aware of its role in this regard and has already undertaken initiatives in the past.

As part of the Citizens First initiative launched jointly with the European Parliament in November 1996 with the aim of making citizens aware of their rights in Europe and in particular in the Single Market, the Commission produced a Guide entitled Living in another country of the European Union, which gives EU citizens an overview of their rights in the area of residency. Information on the right of residence for students has also been included in the Guide "Studying, training and doing research in another country of the European Union". As a supplement to these Guides, the Commission produced Factsheets on the individual countries in cooperation with the Member States. These widely available Guides and Factsheets³⁹ are one of the means used to combat the lack of information of citizens. Thus each national Factsheet includes data on the minimum amount of resources required in the Member State in question.⁴⁰ The Commission's information effort has also included setting up a Signpost Service through which citizens⁴¹ can contact experts to clarify issues in relation to their rights, particularly in the area of residence rights.

³⁹ The Guides and Factsheets, available in the 11 official languages of the Union, can be obtained free of charge by calling a freephone number in each Member State. They are also available on the Internet (<http://europa.eu.int/citizens>).

⁴⁰ See Section 3.1.

⁴¹ Via the Internet and freephone numbers (see footnote 39 above).

One person in five who contacted the Signpost Service raised the issue of residence rights and practical difficulties with national administrations. A successor programme to the Citizens First initiative was launched at the Cardiff European Council with the aim of setting up a permanent mechanism for Dialogue with citizens and business. The Dialogue thus integrates the work done under the Citizens First initiative into a permanent information mechanism.

The aim is to provide direct and easy access to information on rights ensuing from the Internal Market, and at the same time to give everyone the chance to ask questions, talk about their experiences and make suggestions.

Apart from specific information campaigns, other avenues also need to be explored. For example, the Commission's answers to parliamentary questions do not really reach the general public, despite the fact that they are published in the Official Journal of the European Communities. Consideration could be given to ensuring swift dissemination of answers to parliamentary questions to interested parties (Member States, associations, etc.).

4.2. - Continue to ensure strict compliance with existing Community law:

The Commission monitors administrative practice closely by pursuing the infringement proceedings it has launched for incorrect transposition of the Directives and, where necessary, commencing new infringement proceedings.

For example, the Commission departments are currently closely examining various national practices relating to the evidence of resources required⁴² as well as a series of complaints from students from which it would appear the option of making a declaration of resources is not being granted in practice, even though this is specifically provided for in the national legislation.⁴³

The Commission will continue this work in the future in order to ensure compliance with Community law, not only at the level of legislative standards and regulations but also in terms of the day-to-day administrative practices with which citizens are faced.

In addition to the procedures and formalities relating to the actual residence, the Commission will ensure that the status of citizen of the Union⁴⁴ is fully adhered to as regards students, retired persons and other non-economically-active persons. In this context, checks will have to be made to ensure that Article 6 of the Treaty prohibiting discrimination on grounds of nationality is being genuinely applied to those categories of persons, except of course for the derogations provided for in the Directives applying to them in the field of sickness insurance and resources.

⁴² See Section 3.1 above, p. 13.

⁴³ In some cases this possibility was inserted into national legislation in the wake of the infringement proceedings taken by the Commission.

⁴⁴ See note 12 above.

4.3. - Make Community legislation on free movement of persons clearer and restructure it around the notion of European citizenship:

The addition to existing secondary legislation of three Directives applicable to new categories of persons has increased the number of instruments in the area of freedom of movement and has made Community law less transparent for both citizens and the administrations.

The Commission has already observed⁴⁵ that, apart from the practical disadvantages of an increase in the number of legal instruments, these should be reviewed in the light of the introduction into Article 8a of the EC Treaty of the notion of Union citizenship, leading to a revision of the "right of freedom of movement and residence in the context of the rules on citizenship".⁴⁶ The European Parliament has also come out in favour of this revision work,⁴⁷ which will have to include substantive amendments. Some of the amendments, which pertain to the three Directives under review, are outlined below.

4.4. - Begin discussions on substantive changes to the existing legislation:

- The resources of retired persons and other non-economically-active persons:

The resources condition laid down in Directives 90/364 and 90/365 leads in practice to advance checks (requirement to produce various supporting documents) which are often excessive, particularly in view of the fact that a revalidation mechanism is provided for in Article 1(2) and that a clear link is established in Article 3 between maintaining the right of residence and meeting the conditions with regard to resources and sickness insurance on an ongoing basis. In some cases, these advance checks even run the risk of infringing personal privacy.

Furthermore, the survey carried out by the Commission shows that the administrations in several Member States have difficulty in assessing whether or not resources are sufficient.

In view of these various factors, the Commission intends to examine whether the principle of a declaration of resources, similar to the declaration that students can make, could be extended to retired persons and other non-economically-active persons.⁴⁸

- Residence permits for retired persons and non-economically-active persons:

Practice has shown that many retired persons (and to a lesser extent other non-economically-active persons) have a rotating lifestyle, residing in turn in their Member State of origin and in another Member State. Under Community law,⁴⁹ absences of

⁴⁵ Commission Communication to the European Parliament and the Council on the follow-up to the recommendations of the High-Level Panel on the Free Movement of Persons, 1.7.1998, COM(1998)403 final.

⁴⁶ See p. 2 of the above Communication.

⁴⁷ See points 3 and 4 of the Resolution of 2 July 1998 on the second Commission report on citizenship of the Union.

⁴⁸ The Report from the High-Level Panel on the Free Movement of Persons (Veil Report) presented to the Commission on 18 March 1997 suggests this solution (Chapter I, Section II, Subsection 1(d)).

⁴⁹ See Section 1.1., p. 4.

longer than six months from the host Member State affect the validity of the residence permit.

In view of the difficulties experienced by retired and non-economically-active persons in particular, the Commission will review the question of the effect of periods of absence on the validity of residence permits.

- The cost of residence permits for students:

Under Directive 93/96 in its current wording, students from one Member State who undertake their entire course of study at a university in another Member State can be required by the host country to pay the same fee for each annual renewal of their residence permit as for the initial residence permit. Conversely, short-stay students are obliged to apply for a residence permit if they are staying for more than three months, and can be required to pay the same fee as is charged for a standard permit valid for five years.

The Commission is aware that student mobility is determined by the costs for those concerned and it will look into whether a proposal that the initial residence permit and subsequent renewals be granted to students free of charge would be appropriate.

- The scope of Directive 93/96:

The current wording of Article 1, which refers to recognised educational establishments, has the effect of excluding from the scope of the Directive persons who are in training in institutions other than recognised establishments.

In a bid to ensure that mobility for people in training is not hindered by obstacles relating to the right of residence, the Commission will look into the possibility of clarifying the scope of the right of residence for students, while paying particular attention to the administrative difficulties currently facing trainees and persons involved in volunteer projects

**NATIONAL TRANSPOSITION MEASURES FOR DIRECTIVES 90/364, 90/365 AND
90/366-93/96**

Member States	Transposition measures
Belgium	<p>Transposition of Directives 90/364 and 90/365:</p> <ul style="list-style-type: none"> - <u>Arrêté royal</u> du 7 décembre 1992 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, Moniteur belge du 22.1.1993, p. 1052; - <u>Koninklijk besluit</u> van 7 december 1992 tot wijziging van de wet van 15 december 1980 betreffende de toegang to het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen, Belgisch Staatsblad 22.1.1993, p.1052. - <u>Arrêté royal</u> du 22 décembre 1992 modifiant l'Arrêté royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, Moniteur belge du 22.1.1993, p. 1053; - <u>Koninklijk besluit</u> van 22 december 1992 tot wijziging van het Koninklijk besluit van 8 oktober 1981 betreffende de toegang to het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen, Belgisch Staatsblad 22.1.1993, p. 1053. <p>Transposition of Directive 93/96:</p> <ul style="list-style-type: none"> - <u>Arrêté royal</u> du 22 février 1995 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, Moniteur belge du 15.3.1995, p. 5784; - <u>Koninklijk besluit</u> van 22 februari 1995 tot wijziging van de wet van 15 december 1980 betreffende de toegang to het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen, Belgisch Staatsblad 15.3.1995, p. 5784; - <u>Arrêté royal</u> du 22 février 1995 modifiant l'Arrêté royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, Moniteur belge du 15.3.1995, p. 5784; - <u>Koninklijk besluit</u> van 22 februari 1995 tot wijziging van het Koninklijk besluit van 8 oktober 1981 betreffende de toegang to het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen, Belgisch Staatsblad 15.3.1995, p. 5785.
Denmark	<ul style="list-style-type: none"> - Justitsministeriets <u>bekendtgørelse</u> nr. 575 af 26. Juni 1992; - Indenrigsministeriets <u>bekendtgørelse</u> nr. 761 af 22. August 1994; - Indenrigsministeriets <u>bekendtgørelse</u> nr. 684 af 12. Juli 1996 (*).
Germany	<ul style="list-style-type: none"> - <u>Verordnung</u> vom 17/07/1997 über die allgemeine Freizügigkeit von Staatsangehörigen der Mitgliedstaaten der Europäischen Union (Freizügigkeitsverordnung/EG – FreizügV/EG), Bundesgesetzblatt Teil I vom 22/07/1997 Seite 1810.

Greece	Προεδρικό διάταγμα 278/92, Είσοδος και διαμονή στην Ελλάδα υπηκόων κρατών μελών της ΕΟΚ, που δεν έχουν το δικαίωμα αυτό βάσει άλλων διατάξεων του κοινοτικού δικαίου ή σπουδάζουν ή έχουν παύσει την επαγγελματική τους δραστηριότητα ως μισθωτοί ή μη μισθωτοί εργαζόμενοι, σε συμμόρφωση προς τις Οδηγίες του Συμβουλίου Ευρωπαϊκών Κοινοτήτων υπ' αριθμ. 90/364/ΕΟΚ, 90/366/ΕΟΚ και 90/365/ΕΟΚ (ΦΕΚ Α' 144 της 28ης Αυγούστου 1992, σελ. 5).
Spain	<ul style="list-style-type: none"> - <u>Real Decreto</u> 766/92, de 26 de junio, sobre entrada y permanencia en España de nacionales de Estados miembros de las Comunidades Europeas, BOE Num. 156, 30.6.1992, Página 22275. - <u>Real Decreto</u> número 737/95 de 05/05/1995, por el que se modifica el <u>Real Decreto</u> 766/92, de 26 de junio, sobre entrada y permanencia en España de nacionales de Estados miembros de las Comunidades Europeas, Boletín Oficial del Estado número 133 de 05/06/1995 Página 16547 (Marginal 13536) (*)
Ireland	<ul style="list-style-type: none"> - European Communities (Right of Residence for Non-Economically Active Persons) <u>Regulations</u> 1993, S.I. 109 of 1993; - European Communities (Right of Residence for Non-Economically Active Persons) <u>Regulations</u> 1997, S.I. 57 of 1997 (*).
Italy	<ul style="list-style-type: none"> - <u>Legge</u> 19 febbraio 1992, n. 142, Disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia alle Comunità europee (legge comunitaria per il 1991). - <u>Decreto legislativo</u> 26 novembre 1992, n. 470 , Attuazione delle direttive 90/364/CEE, 90/365/CEE e 90/366/CEE in materia di diritto di soggiorno dei cittadini comunitari, dei lavoratori salariati e non salariati che hanno cessato la propria attività professionale e degli studenti, Gazzetta Ufficiale n. 286, 4 Dicembre 1992, Pag. 12. - <u>Legge</u> 24 aprile 1998, n. 128, Disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia alle Comunità europee (Legge comunitaria per 1995-1997), Gazzetta Ufficiale n. 104, 7 maggio 1998, (**)
Luxembourg	<ul style="list-style-type: none"> - <u>Règlement grand-ducal</u> du 12 février 1993 portant modification du règlement grand-ducal modifié du 28 mars 1972 relatif aux conditions d'entrée et de séjour de certaines catégories d'étrangers faisant l'objet de conventions internationales, Mémorial Grand-Ducal A Numéro 21 du 24 mars 1993, p.382; - <u>Règlement grand-ducal</u> du 03 juin 1996 portant modification du règlement grand-ducal du 28 mars 1972 relatif aux conditions d'entrée et de séjour de certaines catégories d'étrangers faisant l'objet de conventions internationales, Mémorial Grand-Ducal A Numéro 39 du 14 juin 1996 Page 1268 (*).

Netherlands	<ul style="list-style-type: none"> - <u>Besluit</u> van 23/06/1992 tot wijziging van het vreemdelingenbesluit, Staatsblad nummer 329 van 29/06/1992 - <u>Besluit</u> van 30/12/1993 houdende wijziging van de vreemdelingenwet, Staatsblad nummer 8 van 06/01/1994 - <u>Besluit</u> van 07/07/1994, houdende wijziging van het Vreemdelingenbesluit (gewijzigde indiening aanvragen om toelating als vluchteling), Staatsblad nummer 526 van 19/07/1994
Austria	<ul style="list-style-type: none"> - <u>Bundesgesetz</u> über die Einreise und den Aufenthalt von Fremden (Fremdengesetz – FrG), Bundesgesetzblatt für die Republik Österreich, Nr. 286/1992; - Fremdengesetz 1992, Bundesgesetzblatt für die Republik Österreich, Nr. 838/1992; - Fremdengesetz 1997, Bundesgesetzblatt für die Republik Österreich, Nr. 75/1997;
France	<ul style="list-style-type: none"> - <u>Décret</u> n° 94-211 du 11 mars 1994 réglementant les conditions d'entrée et de séjour en France des ressortissants des Etats membres de la Communauté européenne bénéficiaires de la libre circulation des personnes, J.O. du 13 mars 1994, p. 3989. - <u>Arrêté</u> du 6 avril 1995 fixant les modalités d'application du décret n° 94-211 du 11 mars 1994 transposant les directives du Conseil des Communautés européennes des 28 juin 1990 et 29 octobre 1993 relatives au droit de séjour en France, J.O. du 15 avril 1995, p. 5993. - <u>Décret</u> n° 98-864 du 23 septembre 1998 modifiant le décret n° 94-211 du 11 mars 1994 réglementant les conditions d'entrée et de séjour en France des ressortissants des Etats membres de la Communauté européenne bénéficiaires de la libre circulation des personnes, J.O. du 27 septembre 1998, p. 14743 (*).
Portugal	<ul style="list-style-type: none"> - <u>Decreto-Lei</u> n.º 60/93 de 3 de Março, Diário da República I Série A N° 52 de 03/03/1993 Página 943; - <u>Lei</u> n° 8/98 de 13 de Fevereiro, que concede ao Governo autorização para alterar o regime legal de entrada, permanência, saída e expulsão de estrangeiros do território nacional, Diário da República I Série A N° 37 de 13.2.1998 Página 570 (**); - <u>Decreto-Lei</u> n° 250/98 de 11 de Agosto, Diário da República I Série A N° 184 de 11.8.1998 Página 3891 (*);

Finland	<ul style="list-style-type: none"> - Ulkomaalaislaki/Utlänningslagen (378/91) 22/02/1991 - Laki ulkomaalaislain muuttamisesta/Lag om ändring av utlänningslagen (640/93) 28/06/1993 - Asetus ulkomaalaislain muuttamisesta annetun lain voimaannpanosta/Förordning om ikraftträdande av lagen om ändring av utlänningslagen (1393/93) 22/12/1993 - Ulkomaalaisasetus/Utlänningsförordningen (142/94) 18/2/1994 - Sisäasiainministeriön määräys/Inrikesministeriets föreskrift 30.12.1993 Dno. 8/010/93 (*) - Sisäasiainministeriön ohje/Inrikesministeriets föreskrift 18.5.1994 Dno. 10/010/94 (*)
Sweden	<ul style="list-style-type: none"> - Utlänningslagen (1989:529) - Lagen (1992:1165) om ändring i utlänningslagen (1989:547) - Utlänningsförordningen (1989:547). De viktigaste ändringarna: SFS 1992:1166, 1993:1369 och 1994:1698 - Förordning (1998:153) om ändring i utlänningsförordningen (1989:547) (*)
United Kingdom	<ul style="list-style-type: none"> - The Immigration (European Economic Area) <u>Order</u> 1994, S.I. 1994/1895; - The Immigration (European Economic Area) <u>Amendment Order</u> 1997, S.I. 1997/2981 (*).

(*) Amendment made to the transposition measure in the wake of the infringement proceedings launched by the Commission.

(**) Enabling Act allowing the government to amend the legislation on foreigners.

Annex 2

**Summary table of the infringement proceedings
for incorrect transposition of Directives 90/364, 90/365 and 93/96**

Member State	Letter of formal notice ¹	Additional letter of formal notice 1	Termination ²	Reasoned opinion 1	Termination 2	Submission to the Court of Justice
Germany	9.98					
Austria	10.97					
Denmark	7.95		6.97			
Spain	7.95		6.98	10.96	6.98	
France	9.95 (Dir. 93/96) 2.96 (Dir. 90/364,365) 8.97 (Dir. 93/96, sickness insurance)	3.96 (93/96) 5.98		1.97 (covers both proceedings) 1.99		6.98
Ireland	7.95		6.97			
Luxembourg	7.95		12.96			
Finland	11.97		12.98			
Sweden	10.97		12.98			
United Kingdom	10.96		6.98			
Greece	7.95		5.96			
Netherlands	10.95		5.96			
Italy	6.95			11.96		11.98
Portugal	7.95			2.97	12.98	

¹ Notification to the Member State.

² Commission Decision.