

EUROPEAN COMMISSION

PRESS RELEASE

Brussels, 21 June 2012

Free movement: Commission asks Austria, Germany and Sweden to uphold EU citizens' rights

The European Commission has given Austria, Germany and Sweden two months to comply with EU rules on free movement of EU citizens and their family members across the EU. The Commission's request takes the form of reasoned opinions (second step in the three-step EU infringement proceedings). In the absence of a satisfactory answer within two months, the Commission may decide to refer these countries to the Court of Justice of the European Union.

The EU's Free Movement Directive $\underline{2004/38/EC}$ lays down detailed rules to ensure that EU citizens and their families can freely travel, live and work anywhere in the EU. The Directive should have been transposed into national laws by April 2006. On the initiative of Vice-President Viviane Reding, the Commission successfully enforced citizens' right to free ($\underline{IP/11/981}$). More than 90% of outstanding issues in national implementation have now been resolved through bilateral discussions with EU Member States, but certain obstacles remain.

During 2011, the Commission therefore launched infringement proceedings against Austria, Belgium, Cyprus, the Czech Republic, Germany, Italy, Malta, Lithuania, Spain, Sweden, Poland and the United Kingdom. The second step in these proceedings was taken in the case of the Czech Republic and Lithuania in January 2012 ($\underline{\text{IP}/12/75}$) and against the United Kingdom in April 2012 ($\underline{\text{IP}/12/417}$). Three new reasoned opinions are now being sent to Austria, Germany and Sweden.

Austria does not grant so-called "extended" family members of EU nationals who have moved to another Member State the rights granted by the Directive. "Extended" family members are, for example, aunts/uncles or cousins who are financially dependent on the EU citizen in the country where they come from. Under the Directive, Member States have to examine in detail the personal circumstances of such persons and justify any denial of entry or residence. Once these persons have been granted entry and residence, they enjoy the full set of rights granted by the Directive (e.g. protection against expulsion, right to take up employment, etc.). Under Austrian law, extended family members are not granted a "residence card for EU family members" but a *Niederlassungsbewilligung-Angehöriger* (residence permit) valid only for one year (and not for five years or for the envisaged period of residence of the Union citizen if this period is less than 5 years, as foreseen by the Directive). They also cannot automatically take up work, but need to apply for a specific permit which grants access to the labour market provided further conditions are met. Austrian law is thus not in line with the Directive.

In Germany, there are three issues of incorrect transposition of the Directive. Firstly, it has not – as is required by the Directive – set up a procedure designed to facilitate entry and residence for "extended" family members of EU citizens.



Secondly, Germany has not adopted any measure in its legislation to ensure that "extended" family members are granted the full set of rights granted by the Directive (see explanation above in the Austrian case). For instance, they are not issued registration certificates (if they are EU citizens) or residence cards (if they are non EU nationals) as close family members are.

Thirdly, under German law, decisions to expel EU citizens and their family members are, by law and as a rule, combined with an exclusion order which is unlimited in time. The prohibition to re-enter the German territory can only be limited in time upon application of the person concerned. Exclusion orders constitute the very negation of the right to move freely within the EU. Foreseeing that exclusion orders are, by law and as a rule, of unlimited duration does not comply with the principle of proportionality, which is one of the fundamental principles of the Union's legal order.

In **Sweden,** eleven issues of incomplete or incorrect transposition have been identified. The key issues are the following:

The scope of the Swedish law as regards "extended" family members is narrower than the scope of the Directive. As a consequence, some of the "extended" family members, who should benefit from the rights created by the Directive, continue to only be subject to Swedish immigration rules, like any third country national.

Sweden does not provide for a procedure to facilitate entry and residence of "extended" family members. Nor does it provide for the issuing of a registration certificate (if they are EU citizens) or residence cards (if they are non EU nationals) for such extended family members, as provided for by the Directive.

Sweden does not provide for visas for family members of EU citizens being issued in an accelerated procedure and free of charge. All this places a high administrative burden on family members, not only family members who are third country nationals but also EU family members. They may be prevented from joining or accompanying the Union citizen or the procedure may become excessively difficult, for example, if they have to apply for a national residence permit to be legally staying in Sweden. This is all the more serious in a situation where decisions rejecting applications for registration certificates and residence cards cannot be appealed under existing Swedish law.

The Commission will continue to closely monitor how all other EU countries which have just amended or announced amendments of national rules to comply with the concerns raised by the Commission are delivering on their commitments.

For more information

MEMO/12/464

European Commission: EU citizenship – movement and residence:

http://ec.europa.eu/justice/citizen/move-live/index en.htm

Justice Directorate General Newsroom:

http://ec.europa.eu/justice/news/intro/news intro en.htm

Homepage of Vice-President Viviane Reding, EU Justice Commissioner:

http://ec.europa.eu/reding

Contacts:

Mina Andreeva (+32 2 299 13 82)
Natasha Bertaud (+32 2 296 74 56)