



**COUNCIL OF
THE EUROPEAN UNION**

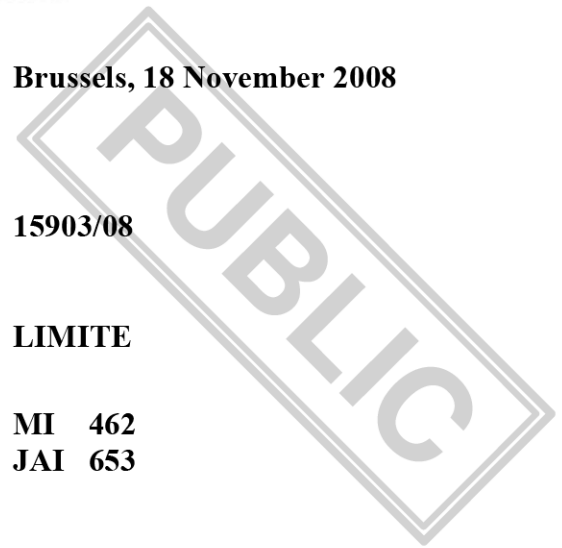
Brussels, 18 November 2008

15903/08

LIMITE

MI 462

JAI 653



NOTE

from: the United Kingdom delegation
to: Permanent Representatives Committee
Subject: Free movement of persons: abuses and substantive problems
- Draft Council Conclusions

The right of free movement is one of the main achievements of the European Union. And the UK is one of its strongest proponents. But with this right also come responsibilities. The large numbers of EEA nationals moving freely within the EU make it all the more important to protect the free movement principle from abuse, and to maintain public confidence.

We think it is essential that the existing safeguards in the Free Movement Directive against criminality and abuse are properly understood and enforced. Rather than letting concerns about abuse grow and undermine the public support for free movement, we believe we should take proportionate action now.

Ahead of the Commission's assessment of the implementation of the Free Movement Directive, the September JHA Council held a debate on the follow-up to the European Court of Justice ruling in *Metock*, in the context of the fight against illegal immigration. The Council looked forward to the Commission's assessment, including any guidelines or proposals on free movement that might be necessary in order to fight potential misuse, abuse or breaches of the law. The Council said it would return to the matter as soon as possible.

DRAFT COUNCIL CONCLUSIONS ON FREE MOVEMENT

The Council emphasises its commitment to developing the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with measures on external border controls, asylum, immigration and the prevention and combating of crime.

The right to move freely within the borders of the European Union is one of the Union's main achievements. All Member States have benefited greatly from free movement and it represents a fundamental freedom for our citizens. But those enjoying this right must also adhere to the responsibilities it carries, including abiding by the laws of the host country.

The Council therefore underlines the following principles for the application of Directive 2004/38/EC to protect free movement from abuse, misuse and crime:

- Third country national family members of European citizens share the right to move freely within the borders of the European Union. Member States reiterate their commitment to protecting this right from being misused as a route for illegal immigration into the EU and will take forward cooperation to this end;
- Member States will continue to take a robust approach to those who break the laws of their host country by expelling persons involved in violent or sexual assaults, drug trafficking, burglary and other such crimes. The Council considers that the severity of an offence is an important factor in determining, whether an offender poses a present threat to public policy or security;
- Host Member States should also be able to consider that the cumulative damage caused by continuous low-level offending can amount to a sufficiently serious threat to public policy;

- Only those exercising their rights in the spirit of the Treaty should benefit from freedom of movement. The length of an individual's residence should be balanced against the threat posed by certain types of offending behaviour. Member States do not consider that time spent in prison custody in a host country contributes towards the period of residence set out in Article 28 of the Directive. The safeguards against expulsion for long-term residents are intended to reflect time spent genuinely integrating into a host Member State.

- The European Pact on Immigration and Asylum underlined the importance of coherence between Union policies, to avoid creating opportunities for abuse. The Justice and Home Affairs Council on 25 September 2008 noted the European Court of Justice ruling in the Metock case and considered the potential risk of abuse. Member States will step up their practical cooperation to tackle sham marriages, fraudulent family relationship claims and illegal immigration. The Council also commits to ensuring fast and effective exchange of criminal record information, so that a person's track record of offending in other Member States can be taken fully into account when considering whether or not their free movement should be restricted.

The Council asks the Commission to bring forward an interpretative statement, providing guidelines on the operation of Directive 2004/38/EC and any appropriate proposals to combat abuse, misuse or crime. These guidelines would reflect the Council's Conclusions and support Member States' efforts to safeguard their fundamental interests and prevent abuses of free movement.