



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 26 November 2008
(OR. fr)**

**16151/1/08
REV 1**

LIMITE

**MI 478
JAI 667**

REVISED NOTE

from: Presidency

to: Council

Subject: Free movement of persons: abuses and substantive problems
– Draft Council conclusions on abuses and misuses of the right to free
movement of persons

Further to the meeting of the Permanent Representatives Committee on 26 November 2008, the Presidency forwards herewith revised draft Council conclusions.

Draft Council conclusions on abuses and misuses of the right to free movement of persons

The Council recalls the discussion it held at its meeting on 25 September 2008 concerning the action to be taken following the judgment of the Court of Justice in the Metock case (C-127/08) and on the question of the residence of third-country nationals married to EU citizens in the context of tackling illegal immigration.

The Council recalls that the right of free movement within the European Union is one of the main principles on which the Union is based, for the benefit of European citizens, Member States and the competitiveness of the European economy. That right constitutes a fundamental freedom for citizens and, for those who exercise it, entails responsibilities, including respect for the rule of law in the State where they are staying or residing.

The Council also emphasises its commitment to developing the Union as an area of freedom, security and justice, of which the fight against crime constitutes an essential aspect.

The Council considers that, in compliance with and in the interests of the right of free movement, every effort must be made to prevent and combat any misuses and abuses, as well as actions of a criminal nature, with forceful and proportionate measures with due regard to the applicable law, against citizens who break the law in a sufficiently serious manner by committing serious and repeated offences.

In this connection the Council notes the relevant provisions of Directive 2004/38/EC of the European Parliament and of the Council¹, in particular those set out in Chapter VI concerning restrictions on the right of entry and the right of residence of Community nationals and their family members on grounds *inter alia* of public policy and public security and the provisions of Article 35 concerning abuse of rights and fraud, such as marriages of convenience and the presentation of forged documents.

The Council welcomes the Commission's intention to submit between now and mid-December an assessment report on the operation of Directive 2004/38/EC and the work which the Commission is organising in close liaison with representatives of the Member States meeting in an expert group to identify problems in the implementation of the Directive and good practice at national level.

Concerned that the provisions of Directive 2004/38/EC should be fully and correctly implemented in order to improve the prevention and combating of misuses and abuses, while adhering to the principle of proportionality, the Council requests the Commission to publish guidelines for the interpretation of that Directive early in 2009 and to consider all other appropriate and necessary proposals and measures.

The Council will make a more extensive examination of the issue after the report has been submitted and in the light of the other discussions that will continue at the same time.

¹ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.