



European Council

Brussels, 2 February 2016  
(OR. en)

EUCO 8/16

**NOTE**

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To:	Delegations
Subject:	Draft declaration of the European Commission on issues related to the abuse of the right of free movement of persons

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Delegations will find attached the draft declaration of the European Commission on issues related to the abuse of the right of free movement of persons.

**DRAFT**

**DECLARATION OF THE EUROPEAN COMMISSION**

**on issues related to the abuse of the right of free movement of persons**

The Commission notes the Decision of the Heads of State or Government, meeting within the European Council, concerning a new settlement for the United Kingdom within the European Union and notably its section D.

The Commission intends to adopt a proposal to complement Directive 2004/38 on free movement of Union citizens in order to exclude, from the scope of free movement rights, third country nationals who had no prior lawful residence in a Member State before marrying a Union citizen or who marry a Union citizen only after the Union citizen has established residence in the host Member State. Accordingly, in such cases, the host Member State's immigration law will apply to the third country national. This proposal will be submitted after the above Decision has taken effect.

As regards situations of abuse in the context of entry and residence of non-EU family members of mobile Union citizens the Commission will clarify that:

- Member States can address specific cases of abuse of free movement rights by Union citizens returning to their Member State of nationality with a non-EU family member where residence in the host Member State has not been sufficiently genuine to create or strengthen family life and had the purpose of evading the application of national immigration rules.
- The concept of marriage of convenience - which is not protected under Union law – also covers a marriage which is maintained for the purpose of enjoying a right of residence by a family member who is not a national of a Member State.

The Commission will also clarify that Member States may take into account past conduct of an individual in the determination of whether a Union citizen's conduct poses a "present" threat to public policy or security. They may act on grounds of public policy or public security even in the absence of a previous criminal conviction on preventative grounds but specific to the individual concerned. The Commission will also clarify the notions of "serious grounds of public policy or public security" and "imperative grounds of public security". Moreover, on the occasion of a future revision of Directive 2004/38 on free movement of Union citizens, the Commission will examine the thresholds to which these notions are connected.

These clarifications will be developed in a Communication providing guidelines on the application of Union law on the free movement of Union citizens.

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