OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER delivered on 25 October 2005 [1]

1. In this action, brought under the second paragraph of Article 226 EC, the Commission alleges that the Kingdom of Belgium:

(1) failed to comply with Article 18 EC and with Directive 90/364/EEC on the right of residence; [2]

(2) infringed:

(a) Article 4 of Council Directive 68/360/EEC [3] on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families, and Article 4 of Council Directive 73/148/EEC [4] on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services; and

(b) Article 2 of Council Directives 93/96/EC [5] and 90/365/EEC, [6] on the right of residence for students and of employees and self-employed persons who have ceased their occupational activity.

2. The first allegation of failure to fulfil obligations relates to the fact that the nationals of other Member States who wish to establish themselves in Belgium are required to possess sufficient 'personal' resources. The second relates to the practice of automatically issuing a deportation order to European Union citizens who fail, within a given time-limit, to submit the documents required to obtain a residence permit.

1 — Original language: Spanish.

2 — Council Directive of 28 June 1990 (OJ 1990 L 180, p. 26).

3 — Directive of 15 October 1968 (OJ, English Special Edition 1968 (II), p. 485).

4 — Directive of 21 May 1973 (OJ 1973 L 172, p. 14).

5 — Directive of 29 October 1993 (OJ 1993 L 317, p. 59).

6 — Directive of 28 June 1990 (OJ 1990 L 180, p. 28).

I — The legal framework

A — *Community law*

1. Primary law

3. Article 18(1) EC recognises the right of all citizens of the Union 'to move and 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'.

2. Secondary law

(a) The requirement of sufficient resources

4. According to the first subparagraph of Article 1(1) of Directive 90/634:

'Member States shall grant the right of residence to nationals of Member States who do not enjoy this right under other provisions of Community law and to members of their families as defined in paragraph 2, provided that they themselves and the members of their families are covered by sickness insurance in respect of all risks in the host Member State and have sufficient resources to avoid becoming a burden on the social assistance system of the host Member State during their period of residence.'

(b) Residence permits

5. Article 2(1) of Directive 90/364 provides:

'Exercise of the right of residence shall be evidenced by means of the issue of a document known as a "residence permit for a national of a Member State of the EEC" ... .

For the purpose of issuing the residence permit or document, the Member State may require only that the applicant present a valid identity card or passport and provide proof that he or she meets the conditions laid down in Article 1.'

6. Article 4 of Directive 68/360 provides:

'1. Member States shall grant the right of residence in their territory to the persons referred to in Article 1 [employed persons] who are able to produce the documents listed in paragraph 3.

...

3. For the issue of a residence permit for a national of a Member State of the EEC, Member States may require only the production of the following documents ... .'

7. Article 4(1) of Directive 73/148 provides:

'Each Member State shall grant the right of permanent residence to nationals of other Member States who establish themselves within its territory in order to pursue activities as self-employed persons, when the restrictions on these activities have been abolished pursuant to the Treaty.

As proof of the right of residence, a document entitled "residence permit for a national of a Member State of the European Communities" shall be issued ...'

8. Directive 93/96, which relates to students, states in Article 2(1) that:

'... The right of residence shall be evidenced by means of the issue of a document known as a "Residence permit for a national of a Member State of the Community" ...

For the purpose of issuing the residence permit or document, the Member State may require only that the applicant present a valid identity card or passport and provide proof that he or she meets the conditions laid down in Article 1.'

9. Lastly, Article 2(1) of Directive 90/365, which concerns retired persons, provides:

'Exercise of the right of residence shall be evidenced by means of the issue of a document known as a "Residence permit for a national of a Member State of the EEC" ...

For the purposes of issuing the residence permit or document, the Member State may require only that the applicant present a valid identity card or passport and provide proof that he or she meets the conditions laid down in Article 1.'[7]

B — *The Belgian legislation*

1. Possession of sufficient resources

10. According to Article 53(1) of the Royal Decree of 8 October 1981[8] on foreigners' entry into residence and establishment in, and expulsion from Belgian territory, Community citizens enjoy a right to live in the Kingdom, provided they have 'sufficient resources' not to become a burden on the public authorities.

2. The issue of residence permits

11. Paragraphs (2) to (6) of Article 53, as worded in the Royal Decree of 12 June 1998,[9] govern the issue of residence permits.

12. A Community citizen who produces the documents necessary to enter Belgium is registered in a foreigners' register and a certificate is issued, valid for five months from the date of its issue. As from that moment, the citizen has to apply for residence (the first and second subparagraphs of Article 53(2)).

13. During that period, the person concerned must provide evidence that he satisfies the conditions of Article 53(1) (third subparagraph of Article 53(2)). If he does not satisfy them, or fails to provide the required proof, the right of residence is refused, which means he has to leave Belgian territory (Article 53(4)).

14. However, if that five month period has not elapsed and the applicant is in possession of the registration certificate referred to above, he is asked to produce the necessary documents before the period expires, and the stay is extended by one month (Article 53 (5)).

7 — 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 (OJ 2004 L 158, p. 77), which repealed the above directives and entered into force on 30 April 2004 (Article 41), preserves the essential aspects of the legal environment described above. Article 7 refers to the 'sufficient resources' of applicants, for themselves and their family members, and Article 8 replaces the residence permit or card with entry in a register which, by means of a certificate, confirms the name and address of the person concerned and the date of the registration.

8 — *Moniteur Belge*, supplement to No 206, of 27 October 1981, p. 1. The current wording of Article 53(1) is based on the Royal Decree of 22 December 1992, *Moniteur Belge*, No 14, of 23 January 1993, p. 1053.

9 — *Moniteur Belge*, No 160, of 21 August 1998, p. 26854.

15. When the application is refused after expiry of those time-limits, it is accompanied by an order to leave Belgian territory, which becomes enforceable in 15 days (Article 53 (6)). [10]

16. Articles 45, [11] 55 and 51 lay down similar arrangements for employed and self-employed workers, students [12] and retired persons from other Member States.

II — Pre-litigation procedure

17. The Commission received various complaints about Belgian legislation and practice relating to residence permits and deportation orders for Community nationals.

18. In particular, it was struck by the situation of Mrs Mamade De Figueiredo, a Portuguese citizen who, in August 1999, together with her three children, joined her long-standing partner, a Belgian national. The municipal authorities of Waterloo requested authorisation from her husband for her to establish residence in that country, since they had not yet divorced in Portugal, where the couple had its marital home. It would appear that no such authorisation ever arrived.

19. Even though she had completed the entry declaration, accompanied by a document in which her partner undertook to maintain her and her children, on 16 December 1999 the authorities notified her of the refusal of the application and served a deportation order.

20. On 7 January 2000, the Commission conveyed to the authorities of the defendant Member State its misgivings as to whether the requirements which they were imposing for the issue of a residence permit were compatible with Community law, and with regard to Mrs Mamade De Figueiredo, stressed that there was nothing whatsoever to prevent the grant of the permit, since she had provided evidence that her partner would be responsible for feeding her. On 8 March 2000, they responded that the undertaking in question did not amount to proof that the applicant had her own means of subsistence.

21. Dissatisfied with the stance taken by the Kingdom of Belgium, on 8 May 2001 the Commission, whose departments had received a number of further complaints, put the State on formal notice on two grounds. The first was that, in its view,

10 — The Interior Ministry Circular of 14 July 1998, on the conditions of residence of EC foreign nationals and members of their family, and foreign family members of Belgian citizens (*Moniteur Belge*, No 160 of 21 August 1998, p. 27032) confirms that understanding in Chapter III, part A, point 3.b.1.

11 — Article 45(6) allows the foreigner, prior to deportation, to deliver the documents he did not produce previously, with the grant of a new registration certificate for a further five months.

12 — In that case, the registration in the foreigners' register lasts for three months (Article 55(2)).

Directive 90/364 does not make the grant of a residence permit conditional on the applicant's resources being personal, and the second was that to issue an automatic deportation order if the appropriate supporting documents for obtaining such a permit are not available contravenes the principle of proportionality.

22. On 6 July 2001, Belgium again asserted that the income of a person wishing to live in its territory had to be that person's own income, and added that it was possible to order a citizen of the Union to leave if, on expiry of three months from entry, that person remained in the country and had not made an administrative application for residence and had not filed the necessary documents.

23. Since it took issue with that view of the national authorities, on 3 April 2002 the Commission issued a reasoned opinion, alleging that Belgium had failed to comply with the obligations set out in point 1 of this Opinion, and giving it two months to comply with the requirements of Community law. The Member State reiterated its arguments in a document of 10 July 2002.

III — The forms of order sought by the parties and the proceedings before the Court of Justice

24. On 1 October 2003, the Commission brought this action, under the second paragraph of Article 226 EC, seeking a declaration that the Kingdom of Belgium had failed to comply with its obligations under Article 18 EC and Directive 90/364, Article 4 of Directive 68/360, Article 4 of Directive 73/148, Article 2 of Directive 93/96 and Article 2 of Directive 90/365, and the Member State defended the action, with the United Kingdom of Great Britain and Northern Ireland intervening in its support. [13]

25. At the hearing, held on 20 September 2005, the parties' representatives confirmed their respective positions.

IV — Analysis of the alleged infringements

26. The application turns on two very specific questions: the source of the financial resources of a Community citizen who wishes to establish himself in Belgium (first point), and whether it is possible to order his expulsion if he does not produce the necessary documents for the residence permit within the prescribed time-limit (second point).

13 — The observations of the United Kingdom, as the Commission points out, are irrelevant, since they relate to issues not in dispute (the adequacy of the income and the burden of proving it), and fail to address the real point of the discussion (whether that income has to be personal to the applicant and the consequences of failure to provide evidence).

A — *The source of the resources*

1. Defining the issues: admission of one infringement

27. All those involved in these proceedings have acknowledged that the Belgian authorities require nationals of other Member States, who seek a residence permit under Directive 90/364, to have sufficient income 'of their own'. [14] Mrs Mamade De Figueiredo is a good example of this.

28. However, as the debate proceeded, both in the administrative proceedings and before this Court, the Kingdom of Belgium has adopted a less stringent position, tempering its argument so far as to concede that Article 1 of that directive does not expressly require the Union citizen personally to have the relevant financial resources, in order not to become a burden on the coffers of the host State, but accepts that they may come from a person linked to the applicant by ties which oblige that person to maintain the latter, such as spouses, children, and even a third party with a contractual obligation, provided there is a binding legal relationship (paragraphs 3 to 12 of the defence and paragraphs 2 to 4 of the rejoinder).

29. That change of strategy in the proceedings constitutes an implicit admission of the alleged infringement, since Mrs Mamade De Figueiredo included in her application a document in which her partner undertook to 'maintain' her, and it is not for the national administrative authorities nor for this Court to determine its effect, since the power to do so lies with the courts of Belgium, whose legal order permits freedom of contract. [15]

30. The discussion could end here. Yet, in view of the terms in which the dispute has unfolded, it is appropriate to analyse the notion of freedom of movement within the European Union, in order to ascertain the meaning of the requirement under Article 1 of Directive 90/364 for the beneficiary of the right to have sufficient income.

2. Freedom of movement of citizens of the Union

31. Union citizenship, which is of a secondary nature, [16] is the 'fundamental status' of

14 — In the oral phase of proceedings, the United Kingdom persisted in its erroneous line of argument, concentrating on the requirement of adequacy and taking as read that the resources must come from the applicant, overlooking the fact that the debate turned on that latter issue.

15 — Article 1126 et seq. of the Belgian Civil Code establishes the principle of bargaining autonomy.

16 — According to Article 17(1) EC, its acquisition is subject to possession of the nationality of a Member State, which it complements but does not replace. Kovar, R., described it as 'subordinate' in 'L'émergence et l'affirmation du concept de citoyenneté européenne dans le processus d'intégration européenne', *La citoyenneté européenne*, University of Montreal, 2000, pp. 81 to 94, in particular, pp. 85 to 87.

the Community individual. That view, expressed for the first time in *Grzelczyk* (paragraph 31), [17] has become settled Community case-law. [18]

32. Union citizenship comprises, according to Article 17(2) EC, all the rights and obligations for which the Treaty provides, in particular in Articles 18 EC to 21 EC.

33. Article 18(1) EC, in establishing the right to reside in the territory of the Member States, creates a privileged legal status with four characteristic features. First, it is a personal guarantee, which forms the bedrock of the Union's system of coexistence. [19] Furthermore, as it is structured, it has direct effect, and is therefore immediately applicable and can be relied upon by its beneficiaries. [20] Thirdly, it is not unconditional, since there is no such thing as an unfettered right. Article 18(1) EC itself contains the qualification that its exercise is subject to the limitations and conditions laid down in the Treaty itself and by the measures adopted to give it effect, a point which the case-law has made repeatedly. [21] Lastly, as a fundamental right, it merits a broad interpretation, which entails a highly restrictive interpretation of any conditions to be attached, confining such conditions, in the name of the principle of proportionality, [22] to the aspects strictly indispensable in order to safeguard any collective values which might limit freedom, whilst not undermining the scope of that freedom. [23]

3. 'Sufficient resources' as a requirement for exercise of the right of residence

34. So, from entry into force of the Maastricht Treaty, which included the articles on

17 — Case C-184/99 [2001] ECR I-6193.

18 — This Court also ruled to that effect in, amongst others, Case C-413/99 *Baumbast and R* [2002] ECR I-7091, paragraph 82; Case C-148/02 *Garcia Avello* [2003] ECR I-11613, paragraph 22, and Case C-200/02 *Zhu and Chen* [2004] ECR I-9925, paragraph 25.

19 — *Grzelczyk*, paragraph 33, and *Garcia Avello*, paragraph 24, describe it as a fundamental freedom. This Court recently ruled to the same effect in Case C-209/03 *Bidar* [2005] ECR I-2119, paragraph 33, and Case C-403/03 *Schempp* [2005] ECR I-6421, paragraph 18. The Charter of Fundamental Rights of the European Union (OJ 2000 C 364, p. 1) includes that right in Article 45, and it appears also in Article II-105 of the Treaty establishing a Constitution for Europe (OJ 2004 C 310, p. 1). In his Opinion in Case C-456/02 *Trojani* [2004] ECR I-7573, Advocate General Geelhoed asserted that the right of residence is a fundamental right of every European citizen (point 12). Advocate General Tizzano treats it in the same way in his Opinion in *Zhu and Chen* (point 73).

20 — *Baumbast and R*, paragraph 84, *Trojani*, paragraph 31, and *Zhu and Chen*, paragraph 26.

21 — By way of example, *Baumbast and R*, paragraph 86; *Trojani*, paragraph 32, and *Zhu and Chen*, paragraph 26.

22 — In my Opinion in Case C-138/02 *Collins* [2004] ECR I-2703, delivered on 10 July 2003, I pointed out once again how the principle of proportionality operates in that field (point 70).

23 — Joined Cases C-482/01 and C-493/01 *Orfanopoulos and Oliveri* [2004] ECR I-5257, held that the status of citizen of the Union warrants a restrictive interpretation of the derogations from that freedom (paragraph 65). The judgment in *Trojani*, in turn, added that the limitations to which exercise of the right is subject must comply with the general principles of Community law and, in particular, the principle of proportionality (paragraph 46).

Union citizenship, [24] nationals of the Member States, simply by virtue of their status as citizens of the Union, are entitled to live in other Member States under Article 18(1) EC, and that right cannot be subject to the exercise of an economic activity. [25] The only conditions appear in Article 1(1) of Directive 90/364, and require the person concerned and family members to have sickness insurance and income enabling them to live without being dependent on the social assistance system of the host country.

35. The directive contains nothing to support the arguments of the Kingdom of Belgium during the pre-litigation procedure. This is apparent from the judgment in *Zhu and Chen*, where it states that the relevant provision of Directive 90/364 lays down no requirement whatsoever as to the origin of the financial resources (paragraph 30), with the effect that any prescription of that nature would involve a disproportionate interference with the exercise of the fundamental right in question (paragraph 33).

36. Nor is the position eventually adopted by the defendant State consistent with the spirit of Article 1(1). The purpose of the provision is to ensure that the right freely to reside does not become an additional burden on the host Member State, which means that a Community citizen who wishes to establish himself in a Member State other than that of which he is a national must show that he has sufficient funds, and it is irrelevant whether they are his own or those of a third party or, in the latter case, to what extent that party is legally bound or whether he provides the funds out of pure generosity. [26]

37. The administrative authority which issues a residence permit must ascertain whether the conditions are satisfied for an existing right to be valid, [27] making the relevant checks and assessing the evidence offered by the applicant. It must confine itself, then, to verifying that the applicant has sufficient resources, [28] without investigating their origin or nature, although it can make a

24 — That Treaty, in force since 1 November 1993, established the notion of citizenship of the Union in Article G (subsequently, Articles 8 to 8 E of the EC Treaty) which, with the amendments made by the Treaty of Amsterdam, currently comprise the second part of the EC Treaty (Articles 17 EC to 22 EC).

25 — The judgment in *Trojani* (paragraph 46), paraphrasing that in *Baumbast and R* (paragraph 46), pointed out that a citizen of the Union who does not have a right of residence in the host Member State under Article 39 EC, 43 EC or 49 EC can exercise that right simply as a citizen of the Union, in reliance on Article 18(1) EC.

26 — Clearly, it is irrelevant that the income may come from the non-Community spouse or child of the Union citizen, and that those third parties may not be legally resident in Belgium, since their right is not at issue. The fate of family members follows that of their 'principal': if the latter lives in the Member State of which he is a national, no one can prevent them from residing with him. Something similar occurs when the person moves to another country in the Union. That outcome is not unreasonable. The opposite solution, which renders the effectiveness of the freedom to reside subject to the right of a third party and which is, moreover, subordinate to that freedom, would, however, be unreasonable.

27 — Case C-215/03 *Oulane* [2005] ECR I-1215 laid emphasis on the fact that the issue of a residence permit to a national of a Member State is to be regarded not as a measure giving rise to rights, but as proof of that person's individual position in relation to Community law (paragraph 18).

28 — Nor are the authorities totally at liberty in that regard, since Community law (the first and second paragraphs of Article 1 (1) of Directives 90/364 and 90/365), as well as their transposition into national law (Article 53(1), paragraph two, of the Royal Decree of 8 October 1981) lay down certain criteria.

finding as to possible fraud. Because it is a fundamental right, no obstacles not intended by the legislature can be put in its way, and any additional restraint is out of the question, whether it relates directly to the source of the income or indirectly limits the means of confirming the resources and their sufficiency. [29]

38. Obviously, there are risks, since it is possible that the source of the sufficient income might dry up, although that can happen not only where the income is the applicant's own but also where it comes from another person. However, no one would refuse residence to a Community citizen because he cannot guarantee that his income at the time the application is determined will continue throughout his stay in the host country. For that purpose, as the Commission points out, the directive lays down a system of safeguards: Article 3 gives power to withdraw the right of residence if the circumstances which gave rise to its grant cease to exist; further, Article 2(1) allows a requirement that the permit be renewed and compliance with the specific conditions thereby confirmed, on expiry of the first two years of residence.

39. In the light of those considerations, it is apparent that the Kingdom of Belgium is disregarding the principle of proportionality given that, because the aim is to protect the public finances of the host Member States, [30] there is nothing to justify excluding funds paid by third parties, since the misfortune of their loss can also occur if they are the person's own income, and the directive contains appropriate mechanisms to circumvent such a contingency.

40. In short, the nature of the right granted to Community citizens in Article 18(1) EC and governed by Article 1 of Directive 90/365 only allows for the restrictions expressly provided for, and requires the cancellation of rules such as those of the defendant State which seek, on a general basis and from the outset, to give that right a narrower scope than the Community legislature intended, precluding the possibility that the sufficient resources to which the directive refers might come from a person other than the applicant.

41. On that basis the authorities refused Mrs Mamade De Figueiredo's application, and the claim that the Member State failed to fulfil its obligations must therefore be upheld.

29 — The judgment in Case C-424/98 *Commission v Italy* [2000] ECR I-4001, in which I delivered my Opinion on 19 November 1999, held that, in such matters, the Member States cannot limit the means of proof (paragraphs 34 to 37).

30 — So state the fourth recital to Directive 90/364 and the first paragraph of Article 1(1), as confirmed by *Zhu and Chen* (paragraph 33).

B — *The automatic issue of the deportation order*

42. The Commission takes issue with the fact that citizens of the Union wishing to establish themselves in Belgium are deported if, on expiry of the period allowed by the entry registration, they have not regularised their situation. [31]

43. There are four possible situations in which deportation can occur. The first arises when the person concerned has not made the administrative application for a residence permit; the second, when it is found that the person does not satisfy the requirements on which the authorisation depends; the third when, in the course of that application, the person concerned has not produced the relevant evidence and it has been proven that he does not enjoy the right; the fourth when, once the applicant has been requested to submit the relevant documents, he fails to do so, and it is not known whether he is entitled to the permit. It is to that fourth situation that the Commission's second claim refers.

44. The solution to the dispute turns on the very nature of the freedom to reside, and is clear from the Community case-law.

45. *Royer,* [32] interpreting Directive 68/360, stated that the mere infringement by a national of a Member State of the formalities concerning the access, movement and residence of foreigners in the territory of a different Member State does not justify their expulsion (paragraph 38), which, according to *Pieck,* [33] is a measure incompatible with the Treaty, since it implies negating the very right which the Treaty confers and guarantees (paragraph 18).

46. That view is borne out by Article 18 EC which, as already indicated, enshrines a fundamental right of Union citizens, and has given the Court of Justice the opportunity to confirm unequivocally that the contested decision, in so far as it impairs the very essence of the right, is manifestly disproportionate to the gravity of the infringement. [34] It is, therefore, an excessive sanction.

31 — Case C-344/95 *Commission* v *Belgium* [1997] ECR I-1035 held that the Member State in question was infringing its Community obligations by requiring nationals of the other Member States who were trying to work in its territory to leave automatically on expiry of three months, without ascertaining whether they were continuing to seek employment or if they had genuine chances of being engaged (paragraphs 17 and 18).

32 — Case 48/75 [1976] ECR 497.

33 — Case 157/79 [1980] ECR 2171.

34 — Case C-459/99 *MRAX* [2002] ECR I-6591, paragraph 78; and *Oulane*, paragraph 40.

47. I consider, in that context, that Belgian law and administrative practice, by deporting the nationals of other Member States simply because they have failed to comply in time with the formal procedures necessary for issue of a residence permit, are inconsistent with Community law, and the defendant Kingdom has failed to fulfil its obligations as the Commission alleges. [35]

48. I accept that the directives set out in part at the beginning of this Opinion oblige applicants to provide the relevant documents, and to assume the burden of proving that they fulfil the requirements for the grant of the permit. [36] However, as the case-law already suggests, to link the failure to comply with that formality with denial of the freedom of movement strikes me as disproportionate, [37] given that the freedom in question already exists (Article 18 EC) [38] and all that has to be demonstrated in the procedure in question is that the conditions for it to be valid are satisfied, hence the declaratory nature of the procedure. I have already pointed out that the issue of a residence permit merely certifies an earlier right. [39]

49. It would be more appropriate to treat the application as having lapsed, leaving the right pending, and to put the person concerned on notice to remedy the shortcoming within a strict time-limit, with a warning that, if he fails to act, he will be presumed to have withdrawn the application. [40] A fair balance is thus achieved meeting the needs of both the rights of the individual and the public interest, preventing a situation in which persons who are not entitled to settle in the host Member State because they do not fulfil the due requirements, can do so by remaining silent. The Belgian State concurs with that argument in paragraph 5 of its rejoinder.

V — Costs

50. The forms of order sought by the applicant having been upheld, the defendant must be ordered to pay the costs, in accordance with Article 69(2) of the Rules of Procedure, since they have been applied for by the Commission.

35 — At the hearing, the representative of the Belgian Government, in reply to my questions, indicated that there is no such automatic deportation, but his statement contradicts the sense of Article 45(3), Article 51(4), Article 53(4) and Article 55(3) of the Royal Decree of 12 June 1998.

36 — *Commission* v *Italy*, cited above, stated that the directives do not refer to the manner in which the beneficiaries have to prove those facts (paragraph 34).

37 — The United Kingdom expressed the same view at the hearing.

38 — Either because the person concerned carries on or has ceased to carry on an activity as an employee or self-employed person in the host State (Directives 68/360, 73/148 and 90/365), or because he is pursuing studies (Directive 93/96), or because he holds the nationality of another Member State (Directive 90/364). The sole exceptions are those based on reasons of public policy, security or public health (Article 2 (2), third paragraph, of Directives 90/364 and 90/365).

39 — As expressed in paragraph 18 of *Oulane*.

40 — The recommendation does not disregard the burden of proof, since it does not require the Member State to prove the lack of resources.

VI — Conclusion

51. In view of the foregoing considerations, I propose that the Court of Justice should:

(1) declare that the Kingdom of Belgium has failed to comply with its obligations under:

(a) Article 18 EC and Council Directive 90/364/EEC on the right of residence, by requiring Community citizens wishing to reside in its territory to have sufficient 'personal' resources;

(b) Article 4 of Council Directive 68/360/EEC on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families; Article 4 of Council Directive 73/148/EEC on the abolition of such restrictions with regard to establishment and the provision of services; Article 2 of Council Directive 93/96/EC and Article 2 of Council Directive 90/365/EEC on the right of residence for students and of employees and self-employed persons who have ceased their occupational activity, by allowing the issue of deportation orders against Community citizens who have failed within a given time-limit to submit the documents required to obtain a residence permit;

(2) order the Kingdom of Belgium to pay the costs.