


Freedom to move and live in Europe

A Guide to your rights as an EU citizen



EUROPEAN COMMISSION
DIRECTORATE GENERAL JUSTICE



This guide should help you **better understand your rights** when moving within the European Union and give you detailed practical guidance. The guide takes account of EU law as of April 2010.

It is not a legally binding document and is not exhaustive. Neither the European Commission nor any person acting on behalf of the Commission is responsible for the use which might be made of the following information.



Freedom to move and live in Europe

A Guide to your rights as an EU citizen

Chapter 1	What is EU citizenship?	4
Chapter 2	Who can benefit?	6
Chapter 3	Where can you exercise this right?	9
Chapter 4	Preparing to move	10
	Schengen rules	12
Chapter 5	The first three months	14
	Reporting your presence	15
Chapter 6	After three months	16
Chapter 7	Administrative formalities	18
	EU citizens	18
	Non-EU family members	21
	Sanctions	22
Chapter 8	Keeping the right to reside	23
	Family members	24
Chapter 9	Right of permanent residence	26
	Administrative requirements	29
Chapter 10	Equal treatment	30
Chapter 11	Restrictions	32
Chapter 12	Transitional arrangements for workers	35
Chapter 13	How to protect your rights	37

What is EU citizenship?

What does it mean to be an EU citizen?

EU citizenship

Any person who holds the nationality of an EU country is automatically also an EU citizen. EU citizenship is additional to and does not replace it.

EU citizenship gives every EU citizen a number of important rights, including:

- the **right to move freely around the European Union** and settle anywhere within its territory;
- the right to **vote or stand as a candidate in elections to the European Parliament and in municipal elections** in the EU country in which you reside, even if you are not a national of that country;
- the right to **protection by the diplomatic or consular authorities of any EU country in a third country** (country outside the EU) where your home EU country is not represented by a consulate;
- the right to petition the European Parliament, to apply to the Ombudsman, and to **write to any of the EU institutions or bodies**.

This guide is about your right to move and reside freely around the EU. You can find out more information about your other rights as an EU citizen on the European Commission's online information portal,

Your Europe <http://ec.europa.eu/youreurope>

Right to free movement

This right is one of the most visible advantages of the European Union for individual citizens. Around **11 million** EU citizens have taken advantage of this right and now live in another EU country. Many more of them travel regularly to other EU countries for business or as tourists without checks within the Schengen area or they enjoy fast-track checks at borders.

Article 21(1) of the Treaty on the Functioning of the European Union stipulates that every EU citizen has the right to move and reside freely within the territory of the EU countries, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.

Applicable EU legislation

The relevant legal framework is **Directive 2004/38/EC*** (hereinafter referred to as the Directive). It became applicable for all EU countries on 30 April 2006. The Directive codified and reviewed the existing EU instruments in order to simplify and strengthen the right of free movement and residence for all EU citizens and their family members.

You can download the Directive at

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:EN:PDF>

* 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

The Directive has been transposed by each EU country into their national legislation. If you want to find out more about your rights in a particular EU country, you should consult the applicable national laws.

The Commission issued **Guidelines** in July 2009 on how EU countries could better transpose the Directive into their national laws and how the Directive could be more effectively applied in everyday life. You can download the guidelines at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0313:FIN:EN:PDF>

2

Who can benefit?

Who can benefit from the right to move and reside freely? Is this right reserved only for EU citizens or can you bring your Russian spouse with you? And what about your Brazilian grandfather who is seriously ill and you have to take personal care of him?

EU citizens and their families!

EU citizens and their family members (even if they are not nationals of an EU country) are covered by the Directive.

But only if you move to another EU country or return home after living in another EU country

The Directive only applies **if you actually move to or reside in an EU country other than that of which you are a national**, and to your family members who accompany or join you.

You are also entitled to benefit from the rights granted under the Directive **if you return home after having resided in another EU country.**

In certain circumstances you may benefit from the Directive without having resided in another EU country, for example by providing services in another EU country without residing there.

Who is an EU citizen?

As explained above, an EU citizen is any person who holds the nationality of an EU country.

Who is a family member?

Your family members, irrespective of their nationality, have **the right to accompany or join** you in an EU country other than that of your nationality. This right applies regardless of whether they have previously been residing in another EU country or with which visa the family member entered the host EU country.

Spouses, (registered) partners, descendants and ascendants are your family members.

For each category, the definition is the following:

- Spouse **your spouse**, irrespective of when and where the marriage took place;
- Registered partner **your partner** with whom you have concluded a registered partnership on the basis of the legislation of an EU country – however, the registered partner has the right to accompany or join you only in the EU countries which treat registered partnerships as equivalent to marriage;
- Descendants **your direct descendants** (*i.e. children, grand-children, etc.*) who are under the age of 21 or are dependants and those of your spouse or registered partner;
- Ascendants **your dependent direct relatives in the ascending line** (*i.e. parents, grand-parents, etc.*) and those of your spouse or registered partner.

The family members referred to above enjoy the rights granted by the Directive when they join or accompany you and the **EU countries are obliged to recognise their rights.**

What about other family members?

Other family members such as **siblings, cousins, aunts and uncles and other relatives** have the right to have their entry and residence **facilitated** by the host EU country if:

- they are dependant on you; or
- they are members of your household; or
- where serious health grounds strictly require your personal care.

Your non-dependant parents or children of more than 21 years would also benefit from the right to have their entry and residence facilitated if they live with you.

EU countries cannot automatically exclude a particular category of family members.

And other partners?

The same right to facilitated entry and residence is also granted to your **partner with whom you have a durable duly attested relationship**. This covers same and different sex partnerships and de facto partnerships, such as cohabitation (where both partners are living together).

Registered partners moving to an EU country which does not treat registered partnerships as equivalent to marriage fall under this category as well.

Right to reside

The group comprising other family members and partners have **no 'automatic' right to accompany you to the host EU country or join you there**. Their rights are subject to the host EU country's discretion.

They have the **right to have entry and residence 'facilitated'**. This essentially means that the host EU country should examine their family ties with you and, if they consider that you form a genuine family, they should be treated on the same footing as family members such as spouses or children.

The host EU country is obliged to undertake an extensive examination of their personal circumstances and refusal of entry and residence to those family members must be justified, notified in writing and is subject to an appeal.

Where can I find more?

You can find the precise legal wording on the matter covered in this section in **Articles 2 and 3** of the Directive.

Where can you exercise this right?

3

In which countries can you exercise this right?

You can benefit from these rights in the EU...

You can benefit from the right to move and reside freely in **any EU country**. This **includes** the Azores, Madeira (*Portugal*), the Åland Islands (*Finland*), the Canary Islands, Ceuta and Melilla (*Spain*) and the French overseas departments. It also applies to Gibraltar.

It does **not** apply to the Channel Islands and the Isle of Man, the Faeroe Islands (*Denmark*) or to overseas countries and territories.

in Iceland, Lichtenstein and Norway...

You can also benefit from the right in Iceland, Lichtenstein and Norway, because these countries participate in the **European Economic Area**. Similarly, nationals of these three countries can move and reside freely within the European Union.

and have certain rights in Switzerland

The Directive does **not** apply in relation to **Switzerland**. However, you can enjoy certain rights in Switzerland on the basis of the 1999 EU-Swiss Agreement on Free Movement of Persons and the Protocols. These rights are more limited than those granted under the Directive. You can download the Agreement at

[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:22002A0430\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:22002A0430(01):EN:HTML)

4

Preparing to move

**You would like to move to another EU country...
what kind of documents do you need to prepare before you leave?**

National ID card or passport is all you need

As an EU citizen, you should always be able to cross the border with a valid national identity card or passport.

You do **not** need to have an identity card with a machine readable zone or passport with validity of at least another 3 months... if the travel document is valid, you are in the clear. EU countries cannot oblige you to present only a passport or only an identity card. It is your right to choose which travel document and this right cannot be limited. **You do not need an entry visa.**

As you may be required by national authorities to prove your identity for security reasons at any time, you should always carry your identity document.

Have you lost or forgotten your passport or ID card?

Should you get to the border and realise that you do not have your identity card or passport with you, the border officials cannot turn you back before giving you every reasonable opportunity to obtain the necessary documents or have them brought to the border officials within a reasonable period of time.

You can also prove by other means that you are covered by the right of free movement and residence, for example by providing evidence of your identity and nationality.

Rules for your family members

Your family members who are EU citizens themselves are covered by the same rules.

Those family members who are **not** nationals of an EU country [*so-called third country family members*] may enter the host EU country with a valid passport. If they come from certain countries which are subject to visa obligations, they **may be required to have an entry visa**.

Countries whose nationals must have an entry visa are listed in Regulation (EC) No 539/2001, or under national law in the case of the United Kingdom and Ireland.

Entry visas?

EU countries are obliged to grant your third country family members every facility to obtain the necessary visas. These should be issued free of charge as soon as possible and on the basis of an accelerated procedure. The Commission considers that delays of more than four weeks are not reasonable.

EU countries may only require entry visas for your family members; they may **not** require family or residence visas.

What documents are required?

The right of entry of your third country family members is derived from their family ties with you, an EU citizen. **All the consular officials can ask for** is their **passport** and a **document establishing their family ties with you**, such as a marriage or birth certificate and proof of dependence, where applicable. Your family members **cannot** be asked to present documents such as travel tickets, employment certificate, pay slips, bank statements, proof of accommodation and means of subsistence or a medical certificate.

Passport without a visa?

Your family members **cannot** be automatically turned back at the borders if they do not have a valid passport or, if required, an entry visa, as long as they are able to prove their identity and family ties with you.

Residence card = no visa required

Possession of a valid residence card issued by any Schengen EU country (*see below*) **exempts the family members from the visa requirement in other Schengen EU countries.**

If your third country family members move between a Schengen EU country and a non-Schengen EU country, they can also be exempted from the visa requirement if they have a valid residence card issued to them as family members by an EU country other than that of your nationality.

Boarding a flight

You should be able to board an intra-European flight with a valid passport or identity card (*your third country family members with a valid passport*). Other identity documents could be accepted in accordance with the internal rules of the respective carrier.

Where can I find more?

You can find the precise legal wording on the matter covered in this section in **Article 5** of the Directive.

Schengen rules

What about moving within the Schengen area?

What is the Schengen area?

The Schengen area is a zone inside the European Union where there are **no internal border controls**. In this zone, the ‘Schengen rules’ apply.

The majority of EU countries (*Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Greece, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden*), plus Iceland, Norway and Switzerland are part of the Schengen area.

Bulgaria, Cyprus, Romania and Liechtenstein are not yet fully-fledged members of the Schengen area, since the border controls between them and the Schengen area are maintained until they meet the conditions for abolishing them.

The United Kingdom and Ireland are outside the Schengen area as they have chosen to maintain border controls with other EU countries.

Border checks on EU citizens

EU citizens crossing the external borders receive are subject only to a minimum check and can use separate lanes dedicated to EU citizens.

Removal of border controls means that **passports or identity cards no longer have to be shown when crossing internal borders** between Schengen EU countries. However you should always carry your passport or identity card as your right of free movement and residence is conditional on you being able to present these documents on request.

... and their family members

Your family members who are EU citizens themselves are covered by the same rules.

Your third country family members can enter the Schengen area with an entry visa, if required (*see above*), and can travel freely throughout it because the uniform visa is valid for the entire territory of the Member States.

5

The **first**
three **months****You have crossed the border, but what now?**

Right of residence for up to three months

Every EU citizen has the **right to reside** on the territory of the host EU country **for a period of up to three months without any conditions or formalities** other than the requirement to hold a **valid identity card or passport**.

It does not matter whether you came to work or study there or just to visit as a tourist. A valid identity card or passport is all you need.

Third country family members who accompany or join you can reside with you for up to three months **just with their passport**.

Special treatment for job-seekers

EU citizens benefit from the right to reside without any conditions and formalities for a period of six months and even longer, if they continue to seek employment in the host EU country and have a genuine chance of getting work.

Where can I find more?

You can find the precise legal wording on the matter covered in this section in **Article 6** of the Directive.

Reporting your presence

Reporting your presence

You and your family members might be required to **report your presence** within a reasonable period of time after arrival. This allows the public authorities of the host EU country to be fully aware of population movements in their territory.

The EU countries, however, have the option not to require you to report your presence.

What happens if you do not report your presence?

If you or your family members **fail to comply with the requirement to report your presence**, you can be liable to **proportionate and non-discriminatory administrative sanctions**. This means that the sanctions must be appropriate to the violation made and must be the same as those which would be imposed on nationals of the host EU country. However, you cannot be expelled just for violating this rule.

Where can I find more?

You can find the precise legal wording on the matter covered in this section in **Article 5(5)** of the Directive.

6

After three months

What if you want to stay for longer than three months?

It depends on your status

Your **right to reside for more than three months is subject to certain conditions**. The nature of these conditions depends on your status in the host EU country.

Workers, self-employed, providers of services

Workers and self-employed persons have the right to reside **without any conditions other than being a worker or self-employed person**. The same right applies to persons who temporarily provide services in the host EU country.

For details of transitional arrangements on free movement of workers, see Chapter 12 below.

Retention of worker or self-employed status

EU citizens **retain the status of workers and self-employed persons** in the following circumstances:

- if they are unable to work as the result of an illness or accident; or
- if they are in duly recorded involuntarily unemployment and have registered as job-seekers with the relevant employment office; or
- if they have embarked on vocational training.

Students...

Students must meet the following three conditions:

- be enrolled at an establishment for the principal purpose of following a **course of study or vocational training**;
- have **comprehensive sickness insurance cover** there; and
- assure the relevant national authority, by means of a **declaration** or by such equivalent means as they may choose, that they have **sufficient resources** for themselves and their family not to become a burden on the host EU country's social assistance system during their residence.

... and other economically inactive persons

Other economically inactive persons (*e.g. unemployed, retired, etc.*) must also have **sufficient resources** for themselves and their family not to become a burden on the host EU country's social assistance system during their residence and have **comprehensive sickness insurance cover**.

Rights of your family members

Your family members have the right to reside with you provided that you meet the conditions outlined in this Chapter.

Exception for family members of students

The only exception is for some family members of students. The host EU country can decide that only the student's spouse, registered partner and their dependent descendants have the 'automatic' right of residence. Their other family members, such as parents, only have the right to have their entry 'facilitated'.

It is a personal right

The **right to reside in another EU country** is your fundamental and personal right and **is granted to you directly by the Treaty on the Functioning of the European Union**.
The **right is therefore not dependent upon you having fulfilled administrative procedures**.

This basically means that once you meet the conditions, you have the right to reside from that moment and your right is not granted to you by a decision of the host EU country. The documents you or your family members might be issued with by the host EU country merely acknowledge that you have the right. However, if you fail to register or your family member's residence card expires, your right to reside cannot be terminated if you still meet the conditions. You may be subject to a proportionate and non-discriminatory administrative sanction for your failure to observe the national rules.

Where can I find more?

You can find the precise legal wording on the matter covered in this section in **Article 7** of the Directive.



Administrative formalities

What administrative formalities might you need to follow to be able to stay for longer than three months?

EU citizens

Registration

You may be required to register with the relevant authorities, but **only for periods of residence longer than three months**.

EU countries have the option not to require EU citizens to register.

Certificate and deadline

The deadline for registration is laid down by each EU country but it may not be less than three months from the date of arrival. The relevant national authority should issue you with a **registration certificate** stating your name and address and the date of registration, **immediately** after presentation of the required documents.

No residence permits

Residence permits for EU citizens have been abolished by the Directive and replaced by registration certificates, which shall be issued in a much faster procedure.

Documents to prepare

You may be required to produce documents showing that you meet the conditions listed in Chapter 6 above.

- ID or passport In any case, you should ensure you have a **valid identity card or passport**.
Depending on your status, you might also be required to present proof that you comply with the conditions attached to the right of residence for your category of status (e.g. worker, student, etc.).
- for workers **Workers** must produce a **confirmation of engagement from the employer or a certificate of employment**. There is no need to produce pay slips.
- for self-employed **Self-employed persons** must produce **proof that they are self-employed**.
- for students **Students** must produce the following:
 - **proof of enrolment** at an accredited establishment;
 - **proof of comprehensive sickness insurance cover**; and
 - a **declaration**, or any other equivalent means as they may choose, **that they have sufficient resources** not to become a burden on the social assistance system of the host EU country.
- for others **Other economically inactive persons** should provide **proof of comprehensive sickness insurance cover** and of **sufficient resources** not to become a burden on the social assistance system of the host EU country.

What are sufficient resources?

National authorities must take into account the personal situation of the EU citizen concerned but they can, when necessary, undertake checks on the existence of the resources, their lawfulness, the amount and availability. Resources from a third party must be accepted.

And family members?

Your **family members who are EU citizens themselves** will also be issued with a **registration certificate** upon presentation of the following:

- a valid identity card or passport;
- your registration certificate or, in the absence of a registration system, any other proof of your residence in the host EU country; and
- a document attesting to the existence of a family relationship or of a registered partnership with you *and* documentary evidence that they are dependant on you, if applicable.

Family members who have the right to have entry and residence *facilitated* must *also* present:

- a document issued by the relevant authority of the country of origin stating that they are your dependants or members of your household;
- proof of the existence of serious health grounds; or
- proof of a durable relationship with you.

Validating and translating documents

If the EU country has serious doubts about the authenticity of the documents you provide, you may need to have them certified as genuine. To do this, you need to go to a lawyer, a notary or your embassy, and a fee is usually payable. If the EU country cannot understand your documents, you may also be asked for a translation.

EU countries can adopt the necessary measures to **refuse, terminate or withdraw any right** conferred by the Directive in the case of **forged documentation**.

Fees?

Registration certificates must be issued **free of charge or for a charge not exceeding that imposed on nationals for the issuing of similar documents**, such as national identity cards.

Where can I find more?

You can find the precise legal wording on the matter covered in this section in **Article 8** of the Directive.

Non-EU family members

Residence card

Family members who are not EU citizens themselves will be issued a **residence card** clearly indicating that they are family members of an EU citizen upon presentation of the following:

- a valid passport;
- your registration certificate or, in the absence of a registration system, any other proof of your residence in the host EU country; and
- a document attesting to the existence of a family relationship or of a registered partnership with you *and* documentary evidence that they are dependent on you, if applicable.

Family members who have the right to have entry and residence *facilitated* must present any of the same documents which are required from EU citizens who enjoy that right.

Deadlines and validity

Your family members who are not EU citizens themselves are **obliged to apply for a residence card** where the planned period of residence is for more than three months.

The deadline for submitting the application may not be less than three months from the date of arrival.

The **residence card is issued within six months from application** and is valid for five years (*or for the duration of the envisaged period of your residence if this is less than five years*) from the date of issue. It must be issued as a **self-standing document** and not in the form of a sticker in a passport. A **certificate of application should be issued immediately**.

Validating and translating documents

As for EU citizens, you may be required to have documents certified as genuine if the EU country has serious doubts about their authenticity. To do this, you need to go to a lawyer, a notary or your embassy, and a fee is usually payable. If the EU country cannot understand your documents, you may also be asked for a translation.

EU countries can adopt the necessary measures to **refuse, terminate or withdraw any right** conferred by the Directive in the case of **forged documentation**.

Fees?

Residence cards must be issued **free of charge or for a charge not exceeding that imposed on nationals for the issuing of similar documents.**

Where can I find more?

You can find the precise legal wording on the matter covered in this section in **Articles 9 to 11** of the Directive.

Sanctions

And if you don't meet the administrative requirements...?

What happens if you have not applied for a required document?

If you or your family members **fail to comply with the requirement to register or to apply for a residence card**, you can only be liable to **proportionate and non-discriminatory administrative sanctions**. EU countries can impose the same sanctions as those imposed on their own nationals for failure to carry their identity card.

In any case, **you or your family members cannot be expelled for mere violation of this rule.**

Can you be obliged to carry the documents with you?

EU countries may require that non-nationals must always carry their registration certificate or residence card and carry out checks, but only if the same requirement applies to their own nationals as regards their identity card.

Where can I find more?

You can find the precise legal wording on the matter covered in this section in **Articles 8(2) and 9(3)** of the Directive.



© Dreamstime.com

Keeping the right to reside

8

Chapter

What do you need to do to retain your right to reside?

How can you keep the right to reside?

You and your family members have the right as long as the conditions of the right to reside are met. So you may lose the right if you no longer work or retain the status of worker or if you finish your studies and you do not have sufficient resources to cover your residence.

Becoming a burden on the social assistance system may endanger your right to reside

If your right to reside is conditional upon having sufficient resources not to become a burden on the host EU country's social assistance system (*i.e. when you are not economically active*), **it might be terminated once you become an unreasonable burden on the social assistance system.**

This does not mean that you cannot apply for social assistance there when you are in need. You have the right to receive the benefit under the same conditions as nationals of the host EU country.

However, the host EU country is entitled to examine the circumstances of your claim. They can consider whether your need to apply for assistance is a case of temporary difficulties.

They will take into account the duration of your residence, the personal circumstances and the amount of aid granted.

If the host EU country concludes that you have become an unreasonable burden on its social assistance system, they may proceed to your expulsion. However, **an expulsion measure can in no case be the automatic consequence of recourse to the social assistance system.**

Consequences of expulsion

Should you be expelled on these grounds, the host EU country **cannot** impose a ban on entry and you can return back at any time and enjoy the right to reside if you meet the relevant conditions described in Chapter 6.

Economically active persons are exempted

Categories whose right to reside is not subject to the condition of sufficient resources, such as workers or self-employed persons, **cannot** be expelled because they receive social assistance benefits.

Where can I find more?

You can find the precise legal wording on the matter covered in this section in **Article 14** of the Directive.

Family members

What happens to family members if the EU citizen loses their right to reside?

Retention of residence by family members

Your family members may, under certain conditions, retain their right to reside **in the event of your death, departure or termination of family ties** (*divorce, annulment of marriage or termination of registered partnership*).

As **their right to reside is derived from your right** to move and reside freely and is dependent on it, your death, departure or termination of family ties affects their legal position in the host EU country.

Once the right of permanent residence is acquired (*see Chapter 9*), this right is unconditionally retained even in the event of your death, departure or termination of family ties.

Once again, the situation of your family members depends on whether they are EU citizens or not.

They are EU citizens themselves

If **they are EU citizens**, their right to reside is not affected if they meet the conditions of the right to reside on their own (*basically they must be workers or self-employed, or alternatively students or inactive persons with comprehensive sickness insurance cover and sufficient resources*) or if they are family members of an EU citizen who meets these conditions (*e.g. family members who are dependent*).

They are not EU citizens

If **they are not EU citizens**, their right to reside is not affected if they meet the conditions of the right to reside on their own or if they are family members of a person meeting these conditions. **In addition, they must meet certain additional conditions depending on the circumstances, and these are listed below.**

Death or departure of the EU citizen

Your **death** will not lead to the loss of the right of residence of your third country family members provided that they have been residing in the host EU country as your family members for at least one year before your death.

School children and their parents

In case of your **departure**, your third country family members in principle do **not** retain their right of residence but your departure or death should not affect the right of residence of your children or of the parent who has actual custody of the children, irrespective of nationality, if the children are enrolled at an educational establishment, until the completion of their studies.

Divorce or termination of registered partnership

Your third country family members can acquire an autonomous right to reside if, prior to initiation of the divorce proceedings or termination of the registered partnership, the marriage or registered partnership has lasted at least three years, including one year in the host EU country.

Custody of or access to the EU citizen's children

Your third country family members can acquire an autonomous right to reside also if, by agreement between the spouses or the partners or by court order, he or she has custody of your children or has the right to access to your minor child, provided that the court ruled that such access must be in the host EU country.

In the case of right to access to a minor child, the right to reside is retained for as long as it is required.

Particularly difficult circumstances

The family members acquire an autonomous right to reside also if this is warranted by particularly difficult circumstances, such as having been a victim of domestic violence during the marriage or registered partnership.

Where can I find more?

You can find the precise legal wording on the matter covered in this section in **Articles 12 and 13** of the Directive.

9

Right of permanent residence

What are your rights after five years of continuous lawful residence?

Right of permanent residence

The Directive provides for a **right of permanent residence for EU citizens and their family members**.

How do EU citizens acquire it?

All you need is **five years of continuous legal residence in the host EU country** and you are entitled to reside there on a permanent basis! **This right is granted to you directly by EU law.**

This right is unconditional but can you lose it?

Once acquired, this right is not subject to the conditions foreseen under Chapters 6 and 7 above. **You can lose this right only through absence for a period exceeding two consecutive years.**

Acceptable absences

Continuity of residence is not affected by the following:

- temporary absences not exceeding a total of six months a year; or
- absences of a longer duration for compulsory military service; or
- one absence of a maximum of twelve consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another EU country or a third country.

How do family members acquire it?

Your family members who have legally resided with you in the host EU country for five years acquire the right of permanent residence too.

Family members who retained the right to reside in the host EU country in the event of your death, departure or termination of family ties, may also acquire the right of permanent residence on their own after five years of residence.

More favourable treatment for workers and self-employed

The requirements you need to meet to acquire the right of permanent residence depend on your status in the host EU country. Some categories of persons receive **more favourable treatment**.

If you are a **worker or self-employed person** you may acquire, under certain conditions, the right of permanent residence **before** completion of a continuous period of five years of residence in the following three cases:

1. Reaching the age of entitlement to old age pension or early retirement

If you stop working because you have **reached the age for entitlement to an old age pension or to take early retirement**, provided:

- you have been working in that EU country for at least the preceding *twelve months*; and
- you have resided there continuously for more than *three years*.

If the law of the host EU country does not grant the right to an old age pension to certain categories of self-employed persons, the age condition is met once the person concerned has reached the age of 60.

2. Permanent incapacity to work

If you have stopped working in the host EU country as a result of **permanent incapacity to work**, provided:

- you have resided there continuously for more than *two years*.

If your incapacity is the result of an accident at work or an occupational disease, you do not have to meet the condition on length of residence.

3. Frontier workers

If you **work in another EU country**, provided:

- this is after *three years* of continuous employment and residence in the host EU country; and
- you retain your place of residence in the host EU country, to which you return *each day or at least once a week*.

For the purposes of acquiring your right to permanent residence in the host EU country in the first two cases, periods of employment spent in the EU country *in which you work* are considered as having been spent in the host EU country.

Family members

In the three cases listed above, your family members who are residing with you in the host EU country acquire the permanent right of residence when you acquire it.

If you are a worker or self-employed person, in the case of your **death before you acquire the permanent right of residence**, your family members who were residing with you can acquire this right provided:

- you had, at the time of death, resided in the host EU country continuously for *two years*; or
- the death resulted from an accident at work or an occupational disease; or
- if the surviving spouse lost the nationality of that EU country following marriage to you.

Where can I find more?

You can find the precise legal wording on the matter covered in this section in **Articles 16 and 17** of the Directive.

Administrative requirements

What do you need to do to prove your permanent residence status?

What document will be issued to you?

Your right of permanent residence as an EU citizen is evidenced by a **document certifying permanent residence** which must be **issued as soon as possible upon application**. You are not obliged to apply for it but it might be helpful to prove your status as a permanent resident.

And to your family members?

Your **family members who are EU citizens themselves** will get the same document.

Third country family members have to apply for the permanent residence card *before* their standard residence card expires. They should be issued with a permanent residence card **within six months of application**. The permanent residence card is automatically renewable every ten years.

Sanctions

If your third country family members fail to comply with the requirement to apply for a permanent residence card, they can be liable to proportionate and non-discriminatory sanctions. However, they cannot be expelled for mere violation of this rule.

Where can I find more?

You can find the precise legal wording on the matter covered in this section in **Articles 19 and 20** of the Directive.

10 Equal treatment

What other rights do you have if you move to live or work in another EU country?

What other rights do you have?

If you move to live or work in another EU country you enjoy a **whole set of additional rights to make the freedom of movement meaningful and useful.**

Equal treatment

The most important of these rights is the **right to equal treatment**. Article 18 of the Treaty on the Functioning of the European Union stipulates that, within the scope of application of EU law and without affecting any special provisions, **any discrimination on grounds of nationality is prohibited**.

The Directive extends this right to family members, which means that EU citizens and their family members residing in the territory of the host EU country enjoy **equal treatment with the nationals of that EU country** within the scope of the Treaty.

What benefits does this bring?

Thanks to the principle of equal treatment **you are entitled to most advantages and benefits** (including notably all the social and tax advantages) that are granted by the host EU country to its own nationals. For example:

Subsidised travel fare

If the host EU country provides **subsidised travel passes**, e.g. for its pensioners or big families, then you are entitled to them as well if you meet the conditions.

Registration and tuition fees

You are entitled to have **access to education** under the very same conditions as nationals (e.g. no registration or tuition fees if nationals do not have them, no numerical quotas for EU citizens so EU countries cannot give preferential access to the education system to their own nationals).

Social assistance

You are entitled to receive **social assistance** on the same grounds as nationals in the host EU country.

Does the host EU country provide for an extra **benefit for low-income families to support their housing costs**? If yes, you are entitled to apply for such benefit and you will be treated just as any national of that State.

Exception – access to social assistance during first three months

An important exception is that **EU countries may decide that they will not confer entitlement to social assistance during the first three months of residence** to you and your family members (and for an even longer period for job-seekers) but only if you are not a worker or self-employed person.

Exception – maintenance aid for students

EU countries may also decide not to grant maintenance aid for studies (e.g. student grants or student loans) to persons other than workers, self-employed persons, those who retain such status and members of their families. However, you must be granted the aid once you acquire the right of permanent residence.

Access to the labour market

Your family members, irrespective of their nationality, **are entitled to take up employment or self-employment** in the host EU country. It does not matter whether you work, study or just reside there, your family members can start their economic activity with the same paperwork as nationals.

Where can I find more?

You can find the precise legal wording on the matter covered in this section in **Articles 23 and 24** of the Directive.

Restrictions

On what grounds can EU countries restrict freedom of movement and residence?

Public policy, public security and public health grounds

EU countries may impose restrictions where this is justified on grounds of **public policy, public security or public health**.

Any such restrictions, such as a denial of entry, a refusal of residence or an expulsion measure, must comply with the terms and conditions laid down in the Directive.

Safeguards

There are **significant safeguards** provided by the Directive to make sure that such **restrictions** are exercised correctly by EU countries.

Proportionality

When it comes to public policy and public security, measures taken on these grounds must be:

- **proportionate** (*expulsion is a very considerable interference in a person's life and must be proportionate to the seriousness of the breach of public policy or public security*); and
- **based exclusively on the personal conduct** of the individual concerned which must represent a **genuine, present and sufficiently serious threat** affecting one of the fundamental interests of society.

Further safeguards

Previous criminal convictions in themselves do **not** constitute grounds for restricting the right to move and reside freely. The restrictive measures also **cannot** rely on considerations of general prevention.

EU countries are entitled to consult your previous police record but cannot require you to produce such a document or a certificate of good conduct.

Factors taken into account

Before taking an expulsion decision on grounds of public policy or public security, the host EU country must take account of considerations such as:

- how long the person concerned has resided on its territory;
- his/her age, state of health, and family and economic situation;
- his/her social and cultural integration into the host EU country; and
- the extent of his/her links with the country of origin.

Increased protection for permanent residents and minors

EU citizens and their family members who have the **right of permanent residence enjoy increased protection against expulsion** as they can be expelled only on **serious** grounds of public policy or public security.

When it comes to those EU citizens who have resided in the host EU country **for the previous 10 years** or are **minors** [*i.e. under the age of 18*], the expulsion can be justified only on **imperative** grounds of public security (*in the case of minors a removal may also be justified when it is necessary for the best interests of the child*).

Public health

When it comes to public health, **only the most serious infectious diseases** can justify measures restricting freedom of movement. Where there are serious indications that it is necessary, you may, within three months of the date of arrival, be required to undergo a medical examination, free of charge.

In any case, diseases occurring after a three-month period from the date of arrival do not constitute grounds for expulsion.

Procedural safeguards

EU citizens and their family members are also protected by the following **procedural safeguards**.

Written notification and appeal

If **expelled or denied entry**, the decision must:

- **be notified in writing** and in a way that enables the person concerned to **comprehend its content and the implications for them**;
- include **precise and full information of the grounds** on which the decision is based; and
- **specify the court or administrative authority** with which the person concerned may lodge an **appeal** and the **time limit for the appeal**.

Access to judicial redress

The persons concerned must have **access to judicial and where appropriate administrative redress procedures** to appeal or seek review of any decision against them on these grounds. These procedures must allow for an examination of the **legality of the decision, as well as of the facts and circumstances** on which the proposed measure is based.

If the application for appeal is accompanied by an application for an interim order to suspend enforcement of that decision, actual removal from the territory **cannot** take place as a general rule until the decision on the interim order is taken.

Expulsion as a legal consequence of a custodial penalty

An expulsion order can be issued as a penalty or legal consequence of a custodial penalty. If an order is issued for this purpose but is enforced more than two years after it was issued, the **host EU country is obliged to**:

- **check that the person concerned is currently and genuinely a threat to public policy or public security** before expelling them; and
- **assess whether there has been a material change in the circumstances** before expelling them or their family member.

Exclusion ban

Expelled EU citizens and their family members may also be excluded on grounds of public policy or public security but they **can apply for lifting of this ban on entry** after a reasonable period of time, and in any event after three years from enforcement of the final exclusion order.

Abuse and fraud

EU countries may adopt the necessary measures to refuse, terminate or withdraw any right conferred by the Directive in the case of **abuse of rights or fraud, such as marriages of convenience or forged documentation**.

Where can I find more?

You can find the precise legal wording on the matter covered in this section in **Chapter VI (Articles 27 to 33) and Article 35** of the Directive.



© istockphoto.com

Transitional arrangements for workers

12

Transitional arrangements on free movement of workers

EU countries can temporarily restrict access to their labour markets of nationals from countries which joined the EU in **2004 and 2007**: as the transitional arrangements allow them to delay the application of EU law on free movement of workers guaranteeing free access to employment, they can instead apply national rules.

As a consequence, workers from the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia (until 30 April 2011 at the latest), Romania and Bulgaria (until 31 December 2013 at the latest) can be required to obtain a work permit in order to take up employment in one of the other EU countries.

As a further consequence, EU countries may also derogate from some specific provisions on the right of residence of EU workers but only where this is necessary. For example, an EU country that requires registration with the relevant authorities for periods of residence longer than three months could require workers from the above countries who need to obtain a work permit to produce this work permit, in addition to the confirmation of engagement from the employer or a certificate of employment.

Where to find more information?

If you need to find more information on whether the EU country you would like to work in restricts access to its labour market or on the working and living conditions, please go to the official website <http://ec.europa.eu/eures> where you can find **comprehensive information on free movement of workers**.

You can also consult the **Commission's Guide to working in another EU country** produced by the Directorate-General for Employment, Social Affairs and Equal Opportunities, which is available to download at

<http://ec.europa.eu/social/main.jsp?catId=25&langId=en&pubId=215&type=2&furtherPubs=yes>



How to protect your rights

13

Chapter

Where can you find more information?

What can you do if you think your rights have not been upheld?

Where to get free information?

For further information about your rights to free movement and residence, you can consult the European Commission's online information portal, **Your Europe**:

<http://ec.europa.eu/youreurope>

You may also wish to consult the website of the European Commission's **Directorate-General Justice** at http://ec.europa.eu/about/ds_en.htm

If you would like to access EU legislation on free movement, you can visit the European Commission's online access portal to EU law, **EUR-Lex** at

<http://eur-lex.europa.eu/en/index.htm>

Do you think that your rights have been violated?

If you think that **your right to move and reside freely has been violated**, you should appeal before the competent national courts or administrative bodies. Please note that national courts are the only body that can award you damages or order a body to do or stop doing something. You should contact a local solicitor for assistance.

Citizens Signpost Service is a Europe-wide service that provides custom-made legal advice on your rights within the European Union. Responses are provided free of charge, within 8 calendar days, and in any of the official languages of the European Union. For more information, please go to <http://ec.europa.eu/citizensrights>

If you think that your problem was caused because **national public authorities incorrectly applied their own national and also EU law**, you can use the **SOLVIT** system, an on-line problem solving network in which EU countries work together to solve problems without legal proceedings. For more information, please go to <http://ec.europa.eu/solvit>

If you consider that your EU rights have not been upheld and have exhausted the above means of redress, you can also lodge your **complaint with the European Commission** at http://ec.europa.eu/community_law/your_rights/your_rights_forms_en.htm

You are also entitled to lodge a **petition with the European Parliament**. To lodge a petition, please go to

www.europarl.europa.eu/parliament/public/staticDisplay.do?id=49&language=EN



EN

ISBN 978-92-79-16092-9



9 789279 160929