

*Directorate - General Justice, Freedom and Security  
European Commission*

# Right of Union citizens and their family members to move and reside freely within the Union



*Guide on how to get the best out of Directive  
2004/38/EC*

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# *Civis europaeus sum*

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The history of our “Europeanness” is ancient, as is the history of our continent. A general feature of our history is the long road travelled down by the peoples of Europe to create a place where their rights, freedoms, democracy, justice, security and solidarity are guaranteed.

This long journey was begun by the Ancient Greeks, who proclaimed the right to have one’s human dignity respected and the right to democracy and freedom. They were followed by the Ancient Roman civilisation, which spread these values and enshrined them in its *jus universale*.

Several important – if not definitive – stages punctuated this journey throughout subsequent centuries, sometimes at the price of wars and bloody revolutions: from the Magna Carta of 1215 to the Bill of Rights of 1689, from the 1789 Declaration following the French Revolution to the Universal Declaration of Human Rights of 1948.

The heritage of rights and values which has forged our “Europeanness” over twenty-five centuries of history has been enriched and bequeathed to future generations by visionaries such as Jean Monnet, Robert Schuman, Konrad Adenauer, Alcide de Gasperi, Paul-Henri Spaak and many more who have assumed their mantle. They decided definitively to abandon the idea of a Europe based on the Yalta order and proposed a new kind of Europe, based on common rules and institutions, whose task it would be to ensure the observance of these rights and values, thereby creating “an ever-closer union among the peoples of Europe”.

The long journey of European citizens towards definitively achieving their rights and freedoms found its continuation in the partnership pact of 9 May 1950 and subsequent achievements which have made the “European project” an example to all.

We refer, among other things, to the Treaties establishing the European Communities and the European Union, a vast body of Community legislation in this field and the case-law of the Court of Justice of the European Communities; all of these assert not only the right of Union citizens to move and reside within the territory of the EU but also the fundamental rights of individual dignity and full integration into the fabric of society in Member States.

The Treaty of Maastricht (which made nationals of all EU Member States Union citizens), the enlightening case-law of the Court of Justice, which has derived

innovative and integrationist principles from this new right, the Charter of Fundamental Rights of the European Union signed and proclaimed in Nice on 7 December 2000, and – most recently – Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, adopted by the European Parliament and the Council on 29 April 2004 and entering into force on 30 April 2006, are the latest decisive steps on the European citizen’s long journey.

The “crisis of confidence” affecting the European Union since the rejection of the Constitution by two Member States and the wedge this has driven between citizens and the Institutions require urgent, effective action if the “communication deficit” between the two is to be bridged. Such action should enable Union citizens to be aware of their rights and freedoms and appreciate the great advantage of living within a “special area of human hope”.

This “Guide”, regarding Directive 2004/38/EC, is part of this action and is specifically related to “Plan-D for Democracy, Dialogue and Debate” launched by the Commission in response to a call from EU Heads of State or Government.

The Guide will further familiarise Union citizens with the rights and freedoms afforded them by this Directive, whether or not they perform an economic activity in the host Member State. These rights and freedoms include the right to move and reside within the EU (a right which is extended to all members of the person’s family – including now “registered partners”), new rights for family members in the event of death of a Union citizen or marriage dissolution, a new right entitling citizens to reside in the host Member State permanently and unconditionally after having completed five years of legal residence there, the suppression of residence permits (replaced, if need be, by a simple registration certificate issued by the relevant authorities), the right to treatment equal to that of nationals of the host Member State, and the strengthening of the substantive and procedural guarantees available to Union citizens in this Directive where the host Member State needs to take measures to limit or restrict the right to free movement and residence so that these rights may be exercised as fully as possible.

Community law, in the form of Directive 2004/38/EC, fulfils one of humanity’s most long-standing aspirations: the possibility of moving without restrictions or hindrances and settling down in the country of one’s choice together with one’s family. This “Guide” is part of our efforts to fully familiarise Union citizens with the rights and advantages they enjoy thanks to EU membership, to enable them to call upon their new legal status and to declare “*civis europaeus sum*”.

# Right of Union citizens and their family members to move and reside freely within the Union

## *Guide on how to get the best out of Directive 2004/38/EC*

### Chapter 1

### Union citizenship

#### ***Union citizenship***

Union citizens are at the heart of the European project and citizenship of the Union grants them a **number of important rights** including the right to vote and stand as a candidate in municipal and European Parliament elections in the Member State in which they reside.

Union citizenship does not replace national citizenship, merely complements it.

Union citizenship also confers on every Union citizen a **personal right to move freely around the Union** and settle anywhere within its territory.

This right is one of the most visible advantages of a united Europe for individual citizens. Already around 7 million Union citizens have taken advantage of this right and now live in another Member State of the Union.

Many more of them travel regularly to other Member States for business or as tourists and enjoy fast-track checks at borders or even no checks at all.

So Union citizenship offers concrete rights for all Union citizens!

**Applicable  
Community  
legislation**

Our legal reference is **Directive 2004/38/EC**<sup>1</sup> (*hereinafter referred to as the Directive*). It became applicable on 30 April 2006 and replaced a motley set of nine directives and a regulation adopted between 1964 and 1993. It codified and reviewed the existing Community instruments in order to simplify and strengthen the right of free movement and residence for all Union citizens and their family members. It extended family reunification rights of Union citizens to their partners under certain conditions and granted autonomous rights to family members in case of death or departure of the Union citizen or dissolution of marriage or registered partnership.

The Directive also introduced a new right for Union citizens: the right of permanent residence which is a concrete expression of Union citizenship.

Finally, it limits the scope for Member States to end an individual's right of residence on grounds of public policy, public security and public health.

As with any other directive, it must be transposed into national legislation. So in all Member States you will find their legislative instruments respecting the provisions of the Directive.

**Practical guide**

This guide should help you **understand better your rights** when moving within the European Union and give you detailed practical guidance.

**Chapter 2**

**Who can benefit from the right to move and reside freely?**

**Who can benefit from free movement?**

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

**Union citizens and their family members!**

The **personal scope** of the Directive is quite wide and covers **not only Union citizens but also their family members**.

Your family members, irrespective of their nationality, have the right to accompany or join you in a Member State other than that of your nationality. This right applies irrespective whether they have

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<sup>1</sup> 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

previously been residing in another Member State.

**Who is a Union citizen?** A Union citizen is any person having the nationality of a Member State. If you have dual or multiple nationalities, you are a Union citizen if you hold the nationality of at least one Member State.

**Who is a family member?** The following persons are your family members, as defined by the Directive:

- **Spouse** • **your spouse;**
- **Registered partner** • **your partner** with whom you have concluded a registered partnership on the basis of the legislation of a Member State – however, the registered partner has the right to accompany or join you only in the Member States which treat registered partnerships as equivalent to marriage;
- **descendants** • **your direct descendants** (*i.e. children, grand-children...*) 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 ...*) and those of your spouse or registered partner.

The above family members enjoy the rights granted by the Directive when they join or accompany you and the **Member States have no scope for discretion in recognition of 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 Member State if they are dependant on you or are members of your household or where serious health grounds strictly require your personal care. This could be the case as well of your non dependant parents or children of more than 21 years if they live with you.

**And partners?** Your registered partner enjoys the same right as other family members in the Member States which do not treat registered partnerships as equivalent to marriage. The same goes also for your **partner with whom you have a durable duly attested relationship**. This concept of partnership covers same and different sex partnerships and de facto partnerships, such as cohabitation.

**Right to reside** This group of family members and partners has **no "automatic"**

*for this group*

**Community right to accompany or join you** but their rights are subject to the Member State's discretion.

They have the **right to have entry and residence facilitated** and the host Member State should recognize their status as your de facto family member and treat them on the same footing as your other family members.

The Member State is therefore 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.

### Chapter 3

### Where can you exercise your right to move and reside freely?

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

You can benefit from the right to move and reside freely in any Member State of the European Union. This includes also 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 ...*

Similar rights to move and reside freely will be granted to nationals of Iceland, Lichtenstein and Norway by virtue of their participating in the **European Economic Area** as soon as the Directive has been integrated into the EEA Agreement. At present you can move to and reside freely in these three countries but the new rights introduced by the Directive, such as the right of permanent residence, do not apply yet with regard to these countries.

*And Switzerland!*

The Directive does not apply in relation to **Switzerland**. However, you can enjoy the right of free movement and residence also in Switzerland on the basis of the 1999 EU-Swiss Agreement on Free Movement of Persons and the 2004 Protocol. These rights are more limited than those foreseen under the Directive.

### Chapter 4

### Crossing the borders

*Before crossing the border*

You are about to cross the border and enter another Member State ... what kind of paperwork do you need to have ready before leaving?

*National ID card or passport is*

**You should always be able to cross the border with a valid**

- all you need*** **identity card or passport.** For this purpose, the Directive provides that Member States shall, acting in accordance with their laws, issue to their own nationals and renew an identity card or passport stating their nationality. You do not need to have an identity card with machine readable zone or passport with validity of at least another 3 months ... if the travel document is valid, you are in the clear. The Member States also cannot oblige you to present only a passport or only an identity card. It is your right to choose the travel document and this right cannot be limited. **You do not need any entry visa.**
- Have you lost or forgotten your passport or ID card?*** Should you by any chance want to cross 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 you. You can also prove by other means that you are covered by the right of free movement and residence by establishing your identity and nationality.
- Rules for your family members*** Your family members, who are Union citizens themselves, are covered by the very same rules.
- Those family **members who are not nationals of a Member State** (so-called *third country family members*) may enter the host Member State with a valid passport. If they come from certain countries which are subject to visa obligation, they **may be required to have an entry visa.** Countries whose nationals are subject to visa are listed in Regulation (EC) No 539/2001, or under national law in the case of the United Kingdom and Ireland.
- Entry visas?*** **Member States shall grant your third country family members every facility to obtain the necessary visas.** Such visas shall be issued free of charge as soon as possible and on the basis of an accelerated procedure. Member States may not require family or residence visas for your family members but only entry visas.
- Documents that can be required when applying for the visa*** The right of entry of your third country family members is derived from their family ties with you, a Union citizen. **All the Member State consular officials can ask for** is their **passport** and a **document establishing their family ties with you**, such as 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 with  
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, when they are able to prove by any other means that they are covered by the right of free movement and residence by establishing their identity and family ties with you.

**Residence card  
= no visa**

Possession of the valid residence card issued by any Member State **exempts the family members from the visa requirement in all Member States.**

## Schengen rules

**More favourable  
treatment for  
Union citizens**

The above rules on crossing the borders are without prejudice to the **more favourable treatment under Schengen rules** which have suppressed border controls at common internal borders.

Removal of border controls means that passports or identity cards no longer have to be shown when crossing borders between Schengen Member States but you should always carry your passport or identity card as your right of entry and residence is conditional on your presenting these documents.

**... and their  
family members**

Your family members, who are Union citizens themselves, are covered by the very same rules.

Your third country family members should also enter the Schengen area with an entry visa, if required (*see above*), and travel freely throughout it as border controls at common internal borders have been suppressed.

**Schengen area**

Today, thirteen EU Member States (*Austria, Belgium, Denmark, Finland, France, Germany, Italy, Greece, Luxembourg, Netherlands, Portugal, Spain, Sweden, plus Norway and Iceland*) are part of the Schengen area.

The twelve new EU Member States (*Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia*) are not yet fully-fledged members of the Schengen area, since the border controls between them and the Schengen area are maintained until the EU Council decides that the conditions for abolishing internal border controls have been met.

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

## Chapter 5

### Your right to reside for up to three months

You all made it past the border! But what now?

#### *Right of residence for up to three months*

Every Union citizen has the **right to reside** on the territory of the host Member State **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*

Union 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 Member State and have a genuine chance of being engaged, as the European Court of Justice confirmed.

### Reporting your presence

#### *Reporting your presence*

Without prejudice to the right of residence, you and your family members might be required to **report your presence** within a reasonable period of time from arrival. This would provide public authorities of the host Member State with detailed knowledge of population movements in their territory.

The Member States, 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 sanctions. In any case, you cannot be expelled for mere violation of this rule.

## Chapter 6

### Your right to reside for more than three months and up to five years

#### *Different conditions for different categories of Union citizens*

According to the Directive, your **right to reside for more than three months is subject to certain conditions**. As described in Chapter 7, you acquire permanent residence after five years of uninterrupted legal residence. The Directive continues to distinguish between **certain categories of Union citizens** with

respect to the capacity in which they reside.

**Workers, self-employed, providers of services**

The Directive provides that **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 providers of services.

For details of transitional arrangements on free movement of workers, see below in Chapter 10.

**Retention of worker or self-employed status**

Union citizens **retain the status of workers and self-employed persons** under certain conditions if they are unable to work as the result of an illness or accident; are in duly recorded involuntarily unemployment or have embarked on vocational training.

**Students ...**

**Students** must be enrolled at an establishment accredited or financed by the host Member State for the principal purpose of following a course of study or vocational training, must 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 members not to become a burden on the social assistance system of the host Member State during their period of residence.

**... and other economically inactive persons**

**Other economically inactive persons must** also have **sufficient resources** for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence (*but in their case declaration is not enough*) and have **comprehensive sickness insurance cover**.

**Rights of your family members**

Your family members as defined in Chapter 2, irrespective of their nationality, also have the right to reside with you provided that you meet the above conditions.

**Exception for students**

The only exception in place is for family members of students as only their spouse, registered partner and their dependent descendents have the "automatic" right of residence. Their other family members, such as parents, only have the right to have their entry facilitated.

## Administrative formalities

**Registration obligation for**

You may be required to register with the relevant authorities for periods of residence longer than three months. Once again, the **Member States have the option not to require Union citizens to**

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| <b>Union citizens</b>  | <b>register.</b> What does registration consist of?  |
| <b>Only for stays of more than three months</b>              | <b>You might be required to register,</b> mostly in order to assure the relevant authorities of the host Member State that you comply with conditions of the right to reside, but <b>only for stays longer than three months.</b>  |
| <b>Registration certificate and deadline for application</b> | The deadline for registration is laid down by each Member State but it may not be less than three months from the date of arrival. The relevant national authority will issue you with a <b>registration certificate immediately</b> stating your name and address and the date of registration, on presentation of the required documents.        |
| <b>Residence permits have been suppressed</b>                | <b>Residence permits for Union citizens have been suppressed by the Directive.</b> The registration certificates which replace them shall be issued in a much faster procedure and reflect better the fact that the right to reside is conferred directly on Union citizens by the Treaty and not by the Member States.                            |
| <b>Documents to prepare</b>                                  | The documents you may be required to produce reflect the conditions listed above.  |
| <b>• ID or passport</b>                                      | You might be required to present a <b>valid identity card or passport.</b><br><br>For the different capacities in which you might exercise the right to move and reside freely, you must also present proof that you comply with the conditions attached to the right of residence for each category.  |
| <b>• for workers</b>   | <b>Workers</b> must produce a <b>confirmation of engagement from the employer or a certificate of employment.</b>  |
| <b>• for self-employed</b>                                   | <b>Self-employed persons</b> must produce <b>proof that they are self-employed.</b>  |
| <b>• for students</b>  | <b>Students</b> must produce a <b>proof of enrolment</b> at an accredited establishment and of <b>comprehensive sickness insurance cover</b> and a <b>declaration</b> or any other equivalent means as they may choose <b>that they have sufficient resources</b> not to become a burden on the social assistance system of the host Member State. |
| <b>• for others</b>  | Others, so called <b>inactive persons,</b> should provide <b>proof of comprehensive sickness insurance cover</b> and of <b>sufficient resources</b> not to become a burden on the social assistance system   |

of the host Member State.

***What are sufficient resources?***

There is no fixed amount of resources which the Member States can impose as "*sufficient*". In all cases it shall not be higher than the threshold below which nationals of the host Member State become eligible for social assistance, or higher than the minimum social security pension paid by the host Member State.

***And family members?***

The legal regime for **your family members** differs with respect to whether or not they are themselves Union citizens.

***They are Union citizens themselves***

If **they are Union citizens**, they will be issued with a **registration certificate** upon presentation of 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 Member State, 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.

In the case of family members who have the right to have entry and residence facilitated, they must present a document issued by the relevant authority of the country of origin stating that they are your dependants or members of your household or proof of the existence of serious health grounds or proof of a durable relationship with you.

***They are not Union citizens***

If **they are not Union citizens themselves**, they will be issued a **residence card** clearly indicating that they are family members of a Union citizen upon presentation of a valid passport, your registration certificate or, in the absence of a registration system, any other proof of your residence in the host Member State, 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.

In the case of family members who have the right to have entry and residence facilitated, they must present a document issued by the relevant authority country of origin stating that they are your dependants or members of your household or proof of the existence of serious health grounds or proof of a durable relationship with you.

***Obligation to apply for a residence card***

Your family members who are not Union 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.

***Residence card for these family members***

The **residence card is issued within six months from application** with validity of five years from the date of issue or for the envisaged period of your residence, if this period is less than five years. A **certificate of application will be issued immediately**.

***Non-discriminatory fees***

All documents such as registration certificate or residence card 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.

***It is a personal right, it is not granted by decision of a Member State!***

The **right to reside in another Member State** is your fundamental and personal right and **is conferred directly on you by the Treaty** establishing the European Community.

The **right is therefore not dependent upon your 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 given to you by a decision of the host Member State. The documents you or your family members might be issued with by the host Member State merely acknowledge that you have the right ... so if you fail to register or your family member's residence card expires; you still have the right to reside if you still meet the conditions, and your residence cannot be terminated due to this administrative problem but you may be subject to a proportionate and non-discriminatory sanction for your failure to observe the national rules.

## Sanctions

***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 be liable to proportionate and non-discriminatory sanctions. In any case, you cannot be expelled for mere violation of this rule.

***Can you be obliged to carry the documents with you?***

The **Member States may provide 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.

***What are possible***

In the event of failure to comply with this requirement, Member States may impose the same administrative sanctions as those

**sanctions?**

imposed on their own nationals for failure to carry their identity card.

## Keeping the 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 it 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 burden on the social assistance system of the host Member State during the period of residence (*i.e. when you study or are an inactive person there*), **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.** However, in this case the host Member State is entitled to examine whether it is a case of temporary difficulties and after taking into account the duration of your residence, the personal circumstances and the amount of aid granted, it may consider that you have become an unreasonable burden on its social assistance system and proceed to your expulsion. 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 Member State cannot impose a ban on the entry and you can return back at any time and enjoy the right to reside if you meet the conditions described above.

**Economically active persons are exempted**

As stressed above, this limitation does not apply to categories where the right to reside is not subject to the condition of sufficient resources, such as workers or self-employed persons.

## Retention of the right to reside by the family members

**Retention of the residence by family members**

In order to **strengthen the protection of family life** and in light of the importance Community legislation attaches to fundamental rights, the Directive provides under certain conditions for **retention of the right to reside** by your family members **in event of your death, departure or termination of family ties** (*divorce,*

*annulment of marriage or termination of registered partnership).*

***Their right is derived from your right***

As the right of your family members to accompany or join you in the host Member State 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 Member State.

***They can acquire an autonomous right to reside***

The Directive provides that your family members can continue to enjoy the right to reside on their own in certain cases. They **retain such right of residence exclusively on a personal basis**.

Once again, the situation of your family members differs with respect to whether they are themselves Union citizens or not.

***They are Union citizens themselves***

If **they are Union 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 a Union citizen who meets these conditions (*e.g. family members who are dependent*).

***They are not Union citizens***

If **they are not Union citizens themselves**, 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 the conditions below.

***Death or departure of the Union citizen***

Your death shall not entail loss of the right of residence of your third country family members provided that they have been residing in the host Member State as your family members for at least one year before your death.

In case of your departure, they do not retain their right of residence.

***School children and their parent***

In any case, 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 Member State.

***Custody of the Union citizen's children or access to them***

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 Member State.

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

***Victims of domestic violence***

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 while the marriage or registered partnership was subsisting.

**Chapter 7**

**Right of permanent residence**

***Right of permanent residence***

For the first time, the **Directive provides for a right of permanent residence for Union citizens and their family members.**

***How do Union citizens acquire it?***

All you need is **five years of continuous legal residence in the host Member State** and you are entitled to reside there on permanent basis! Once again, **this right is conferred directly on you** by Community legislation.

***Acceptable absences***

**Continuity of residence** is not affected by temporary absences not exceeding a total of six months a year, or by absences of a longer duration for compulsory military service, or by 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 Member State or a third country.

***How do family members acquire it?***

Your family members who have legally resided with you in the host Member State for five years acquire the right of permanent residence too. Family members who retained an autonomous right to reside in the host Member State in event of your death, departure or termination of family ties, may also acquire the right of permanent residence on their own under the same conditions.

***This right is unconditional***

**Once acquired, this right is not subject to the conditions** foreseen under Chapter 6.

***Acquisition of the right before***

The Directive provides for **more favourable treatment for certain**

***five years by workers and self-employed***

**categories** of Union citizens and their family members. 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 cases:

***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 Member State for at least the preceding twelve months and have resided there continuously for more than three years.

If the law of the host Member State 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.

***Permanent incapacity to work***

If you have stopped working in the host Member State as a result of permanent incapacity to work, provided that 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, the condition on length of residence is not applicable.

***Frontier workers***

If after three years of continuous employment and residence in the host Member State, you work in another Member State, while retaining your place of residence in the host Member State, to which you return each day or at least once a week. In this case, for the purposes of acquiring your right to permanent residence in the host Member State due to having reached the age of entitlement to an old age pension or early retirement or due to a permanent incapacity to work, the periods of employment spent in the Member State of work shall be regarded as having been spent in the host Member State.

***Family members***

In the above cases, your family members who are residing with you in the host Member State acquire the permanent right of residence when you acquire it.

In case of your death before you acquire the permanent right of residence, your family members who were residing with you can acquire this right if you had, at the time of death, resided in the host Member State continuously for two years or the death resulted from an accident at work or an occupational disease or even if the surviving spouse lost the nationality of that Member State following marriage to you.

*Can you lose the right of permanent residence?*

**You can lose this right only through absence for a period exceeding two consecutive years.**

## **Administrative requirements**

*What document will be issued to you?*

Your right of permanent residence as a Union citizen is evidenced by a **document certifying permanent residence** which must be **issued as soon as possible upon application**. You may not be 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 Union citizens themselves, will get the same document.

*Permanent residence cards for third country family members*

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

*Sanctions*

If your 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. In any case, they cannot be expelled for mere violation of this rule.

## **Chapter 8**

## **Equal treatment and other rights**

*What other rights does the right of residence give you?*

As well as the above rights which you can enjoy on the grounds of your having exercised the right to move and reside freely, you also get 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** which is the corollary to the right of free movement and residence. The Treaty establishing the European Community prohibits discrimination on grounds of nationality within its scope of application and without prejudice to any special provisions contained therein. The Directive recalls this right and provides that Union citizens and their family members residing in the territory of the host Member State enjoy equal treatment with the nationals of that Member State within the scope of the Treaty and extends this

right to family members.

***Integration into the host society supported***

Thanks to the principle of equal treatment **you are entitled to most of the advantages and benefits** (*including notably all the social and tax advantages*) as granted by the host Member State to its own nationals.

***Examples***

Need some examples?

***Subsidised travel fare***

If the host Member State supports its pensioners or big families by the means of **subsidised travel passes** then you are entitled to them as well if you meet the conditions regardless of the fact that you are not national of that Member State.

***Registration and tuition fees***

Education also comes under the scope of the Treaty and so you are entitled to have **access to education** under the very same conditions as nationals (*no registration or tuition fees if nationals have no fees and no numerical quotas for Union citizens in order to make sure that nationals of that Member State have preferential access to the education system*).

***Social assistance for low-income families***

**Social assistance** comes under the scope of the Treaty because it is a social advantage. You are therefore entitled to invoke equal treatment in the host Member State.

Does the host Member State 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.

***Becoming an unreasonable burden to the social assistance system***

When you reside in the host Member State as a student or an inactive person your right of residence is conditional upon you having sufficient resources not to become a burden on its public finances.

On the other hand, thanks to your right to be treated equally, you are entitled to request social assistance should you so require. But once you become dependent on the social assistance system for a certain time and you become an unreasonable burden on their public finances, the Member State may decide that you no longer meet the condition of your right to reside and proceed to your expulsion (*see “Keeping the right to reside” in Chapter 6*).

However, once you acquire the right of permanent residence your right to reside is no longer conditional upon having sufficient resources.

**Exception – access to social assistance during first three months**

However, by way of explicit derogation from the rule of equal treatment, the **Member States 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*) if you are not a worker, a self-employed person or a person retaining such status.

**Exception – maintenance aid for students**

The **Member States may also decide not to grant students maintenance aid** in the form of student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families.

However, this exception cannot be invoked once you acquire the right of permanent residence.

**Access to the labour market**

Under the Directive **your family members**, irrespective of their nationality, **are entitled to take up employment or self-employment** in the host Member State. 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.

**Other rights of Union citizens**

Union citizenship also grants you other rights; some of them are linked to free movement, some are not.

**Right to vote and stand as a candidate**

Union citizens also have the **right to vote or stand as a candidate in elections to the European Parliament and in municipal elections** in the Member State of which they are not a national, if they reside there.

**Diplomatic and consular protection**

Union citizens are entitled to **protection by the diplomatic or consular authorities of any Member State** in the territory of a third country in which their home Member State is not represented.

**Petitions and Ombudsman**

Moreover, Union citizens have the **right to petition** the European Parliament, to apply to the Ombudsman or **to write to any of the European Union’s institutions or bodies** in one of the official languages of the Union and have an answer in the same language.

## Chapter 9

### **Restrictions of free movement and residence rights on grounds of public policy, public security or public health**

**Public policy, public security and public**

The Treaty establishing the European Community provides that **Member States may impose restrictions upon the right of free movement and residence** of Union citizens where this is justified

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| <b>health grounds</b>                                      | <p>on grounds of public policy, public security or public health.</p> <p>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.</p>   |
| <b>Safeguards in place</b>                                 | <p>The Directive offers <b>significant safeguards to make sure that this entitlement is exercised correctly by the Member States.</b></p>  |
| <b>Proportionality of restrictive measures</b>             | <p>When it comes to public policy and public security, measures taken on these grounds must be <b>proportionate</b> (<i>expulsion is a very harsh interference in a person's life and has to be proportionate to the gravity of the breach of public policy or public security</i>) and <b>based exclusively on the personal conduct</b> of the individual concerned.</p>  |
| <b>Further safeguards</b>                                  | <p>Moreover, this personal conduct must represent a <b>genuine, present and sufficiently serious threat</b> affecting one of the fundamental interests of society. 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 only.</p> <p>Member States are entitled to consult your previous police record but may not require from you such a document or a certificate of good conduct.</p>  |
| <b>Integration into the society taken into account too</b> | <p><b>Before taking an expulsion decision</b> on grounds of public policy or public security, the host Member State must take account of considerations such as how long the person concerned has resided on its territory, his age, state of health, family and economic situation, social and cultural integration into the host Member State and the extent of the links with the country of origin.</p>  |
| <b>Permanent residents and minors</b>                      | <p>Furthermore, Union citizens and their family members who have the <b>right of permanent residence have increased protection against expulsion</b> as they can be expelled only on serious grounds of public policy or public security.</p> <p>When it comes to those Union citizens who have resided in the host Member State <b>for the previous 10 years</b> or are <b>minors</b>, the expulsion can be justified only on imperative grounds of public security (<i>in the case of minors an expulsion may also be justified when it is necessary for the best interests of the child</i>).</p> |

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| <b><i>Public health</i></b>   | <p>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.</p> <p>In any case, diseases occurring after a three-month period from the date of arrival do not constitute grounds for expulsion.</p>   |
| <b><i>Procedural safeguards</i></b>                                   | <p>Union citizens and their family members are also protected by <b>procedural safeguards</b>.</p>  |
| <b><i>Notification in writing</i></b>                                 | <p>In any case, if they are expelled or denied entry, the <b>decision must be notified in writing</b> and in a way that they are able to <b>comprehend its content and the implications</b>. The decision must include precise and full information of the grounds on which the decision is based and it must also <b>specify the court or administrative authority</b> with which they may lodge an <b>appeal</b> and the <b>time limit for the appeal</b>.</p>  |
| <b><i>Access to judicial redress</i></b>                              | <p>The persons concerned must have <b>access to judicial and where appropriate administrative redress procedures</b> 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.</p> <p>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 can not take place as a general rule until the decision on the interim order is taken.</p> |
| <b><i>Exclusion ban</i></b>   | <p>Expelled Union citizens and their family members may also be <b>excluded on grounds of public policy or public security</b> 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.</p>   |
| <b><i>Expulsion as a legal consequence of a custodial penalty</i></b> | <p>If an expulsion order issued as a penalty or legal consequence of a custodial penalty is enforced more than two years after it was issued, the host Member State is obliged to check that the person concerned is currently and genuinely a threat to public policy or public security before expelling him and shall assess whether there has been a material change in the circumstances before expelling them or their family member.</p>   |
| <b><i>Abuse and</i></b>   | <p>Member States also may adopt the necessary measures to refuse,</p>   |

*fraud*

terminate or withdraw any right conferred by the Directive in the case of **abuse of rights or fraud, such as marriages of convenience**.

## Chapter 10

### Transitional arrangements on free movement of workers

**Transitional arrangements on free movement of workers**

**The 2004 enlargement** when the European Union became a family of 25 Member States also gave the possibility to the Member States forming part of the European Union before 1 May 2004 (*EU-15*) to restrict access to their labour markets by delaying the application of Community law guaranteeing free access to employment. They can instead apply national rules.

Workers from the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia (*EU-8*) can be required to obtain a work permit in order to take up employment in one of the EU-15 Member States. No transitional arrangements apply with regard to workers from Cyprus and Malta.

**Reciprocity allowed**

The EU-8 Member States can apply reciprocal restrictions towards the nationals of the EU-15 Member States which apply restrictions for their own nationals.

**Different phases of restrictions**

The transitional arrangements are now in their **second phase** which started on 1 May 2006 and will come to an end on 30 April 2009, after which it will be possible to continue to apply them only in case of serious disturbances (*or a threat thereof*) of the labour markets for maximum of two years. Free movement of workers within 25 Member States of the European Union will be established by 30 April 2011 at the latest.

**Working only with work permit**

Where the host Member State **restricts access to its labour market** on grounds of transitional arrangements, your right to look for a job or take up employment may be restricted, for example, by a requirement to **obtain a work permit** beforehand.

**Once you start working, you are entitled to full equal treatment**

Once you have your work permit and start working, you benefit from provisions of Community legislation on equal treatment in all areas, such as working conditions (*salary, dismissal, reinstatement ...*), access to social and tax advantages (*public transport fare reductions for large families, child allowances, funeral payments, minimum subsistence payments, tax deductions in relation to contributions for an occupational pension and private sickness and invalidity insurance ...*), access to training, membership of trade



unions and many more.

***You gain free access to the labour market after one year***

Those workers, who have been admitted to the labour market of a Member State for an **uninterrupted period of 12 months or longer**, have direct access to the labour market of that Member State but not to the labour markets of other Member States.

***Are family members restricted as well?***

**Your family members, legally residing with you** have free access to the labour market of the Member State concerned without work permits once they have been resident there for at least eighteen months or from 1 May 2007, whichever is the earlier. If they do not meet this condition, they still may work, but they need to acquire a work permit.

***The 2007 enlargement***

Similar rules are in place with regard to **Bulgaria and Romania** that acceded to the European Union in January 2007.

During the **first phase** of application of the transitional arrangements (*that will end on 31 December 2008*) the Bulgarian and Romanian workers can be required to obtain a work permit in order to take up employment in one of the EU-25 Member States on grounds of national legislation.

The second phase will start on 1 January 2009 and will come to an end on 31 December 2011, after which it will be possible to continue to apply the restrictions only in case of serious disturbances (*or a threat thereof*) of the labour markets for maximum of two years.

***Where to find more information?***

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

## **Chapter 11**

## **How to protect your rights**

***Where to get free information?***

Citizens Signpost Service is a Europe-wide service that offers you custom-made information and advice on your rights within the European Union. Where appropriate, you would be directed or “signposted” to the most relevant body (*at local, national or European levels*) to solve your particular problem.

A team of legal experts operating in all official languages of the European Union will answer all questions within 8 calendar days. The service is entirely free. For more information, please go to

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

***Do you think  
that your rights  
were violated?***

If you think that **your right to move and reside freely has been violated**, you should seek redress before the competent national courts or administrative bodies.

If your problem was caused by the **misapplication of Community law by national public authorities**, you can use the SOLVIT system, an on-line problem solving network in which Member States work together to solve problems without legal proceedings. For more information, please go to <http://ec.europa.eu/solvit>.

You can lodge a **complaint with the European Commission** at [http://ec.europa.eu/community\\_law/complaints/form](http://ec.europa.eu/community_law/complaints/form). In order to lodge a **petition with the European Parliament**, please go to [www.europarl.europa.eu/parliament/public/staticDisplay.do?id=49&language=EN](http://www.europarl.europa.eu/parliament/public/staticDisplay.do?id=49&language=EN).