



Directive 2004/38/EC

The Union has adopted a Directive on the right of citizens of the Union to move and reside freely within the Member States, which brings together the piecemeal measures found in the complex body of legislation that has governed this matter to date. **This Directive 2004/38/EC will have to be transposed to national legislation by 30 April 2006.**

The new measures comprised in this Directive are designed, among other things, to encourage Union citizens to exercise their right to move and reside freely within Member States, to cut back administrative formalities to the bare essentials, to provide a better definition of the status of family members and to limit the scope for refusing entry or terminating the right of residence.

The Directive merges into a single instrument all the legislation on the right of entry and residence for Union citizens, consisting of two regulations and nine directives. This simplification will make it easier not only for the general public but also for public authorities to exercise their rights. The Directive also sets out to reduce to the bare minimum the formalities which Union citizens and their families must complete in order to exercise their right of residence.

General provisions

This proposal is designed to regulate:

- the conditions in which Union citizens - and their families- exercise their right to move and reside freely within the Member States;
- the right of permanent residence;
- restrictions on the aforementioned rights on grounds of public policy, public security or public health.

I- Right to move and right of residence for up to three months

All Union citizens have the right to enter another Member State by virtue of having an identity card or valid passport. Under no circumstances can an entry or exit visa be required. Where the citizens concerned do not have travel documents, the host Member State must afford them every facility in obtaining the requisite documents or having them sent.

Family members who do not have the nationality of a Member State enjoy the same rights as the citizen who they have accompanied. They may be subject to a short-stay visa requirement under Regulation (EC) No 539/2001. Residence permits will be deemed equivalent to short-stay visas.

For stays of less than three months, the only requirement on Union citizens is that they possess a valid identity document or passport. The host Member State may require the persons concerned to register their presence in the country within a reasonable and non-discriminatory period of time.

II- Right of residence for more than six months

The right of residence for more than six months remains subject to certain conditions. Applicants must:

- either be engaged in economic activity (on an employed or self-employed basis);
- or have sufficient resources and sickness insurance to ensure that they do not become a burden on the social services of the host Member State during their stay. The Member States may not specify a minimum amount which they deem sufficient, but they must take account of personal circumstances;
- or be following vocational training as a student;
- or be a family member of a Union citizen who falls into one of the above categories.

Residence permits are abolished for Union citizens. However, Member States may require them to register with the competent authorities within a period of not less than three months as from the date of arrival. Proof of registration will be issued immediately on presentation of:

- an identity card or valid passport;
- a declaration by the citizen that he meets the aforementioned conditions, or any other evidence to be determined by him or her.

Family members of Union citizens who are not nationals of a Member State must apply for a residence permit for family members of Union citizens. These permits are valid for at least five years from their date of issue.

The death of the Union citizen, his or her departure from the host Member State, divorce, annulment of marriage or termination of partnership does not affect the right of family members who are not nationals of a Member State to continue residing in the Member State in question, subject to certain conditions.

III- Right of permanent residence

Union citizens acquire the right of permanent residence in the host Member State after a five-year period of uninterrupted legal residence, provided that an expulsion decision has not been enforced against them. This right of permanent residence is no longer subject to any conditions. The same rule applies to family members who are not nationals of a Member State and who have lived with a Union citizen for five years. The right of permanent residence is lost only in the event of more than two successive years' absence from the host Member State.

The Directive recognises the right of permanent residence for Union citizens who are workers or self-employed persons and for family members before the four-year period of continuous (arising from Directive (EEC) No 1251/7) residence has expired, subject to certain conditions being met.

Permanent residence permits are valid indefinitely and are renewable automatically every ten years. They must be issued no more than three months after the application is made. Citizens can use any form of evidence generally accepted in the host Member State to prove that they have been continuously resident.

IV- Common provisions on the right of residence and right of permanent residence

Union citizens qualifying for the right of residence or the right of permanent residence and the members of their family also benefit from equal treatment with host-country nationals in the areas covered by the Treaty. However, until the right of permanent

residence has been acquired, the host Member State is not obliged to grant entitlement to social security to persons other than employed or self-employed workers and the members of their family. Equally, host Member States are not required to provide maintenance grants to persons with a right of residence who have come to the country in question to study. Family members, irrespective of their nationality, will be entitled to engage in economic activity on an employed or self-employed basis.

V- Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health

Union citizens or members of their family may be expelled from the host Member State on grounds of public policy, public security or public health. Under no circumstances may an expulsion decision be taken on economic grounds. Measures affecting freedom of movement and residence must be based on the personal conduct of the individual concerned; previous criminal convictions do not automatically justify such measures.

Such conduct must represent a sufficiently serious and present threat which affects the fundamental interests of the state. The mere fact that the entry documents used by the individual concerned have expired does not constitute grounds for expulsion.

In any event, before taking an expulsion decision, the Member State must assess a number of factors such as the period for which the individual concerned has been resident, his or her age, degree of integration and family situation in the host Member State and links with the country of origin. Only in exceptional circumstances, for overriding considerations of public security, can expulsion orders be served on a Union citizen if he has resided in the host country for ten years or if he is a minor.

The person concerned by a decision refusing leave to enter or reside in a Member State must be notified of that decision. The grounds for the decision must be given and the person concerned must be informed of the appeal procedures available to them. Except in emergencies, the subject of such decisions must be allowed at least one month in which to leave the Member State.

Lifelong exclusion orders cannot be issued under any circumstances. Persons concerned by exclusion orders can apply for the situation to be reviewed after a maximum of three years. The Directive also makes provision for a series of procedural guarantees.

Final provisions

Member States may adopt the necessary measures to refuse, terminate or withdraw any right conferred by this Directive in the case of abuse of rights or fraud, such as marriages of convenience.

This Directive does not prevent the application of national legislation or administrative arrangements providing for more favourable treatment.

With effect from 30 April 2006, Articles 10 and 11 of Regulation (EEC) No 1612/68 , Directive 64/221/EC , Directive 68/360/EC , Directive 72/194/EEC, Directive 73/148/EEC , Directive 75/34/EEC , Directive 75/35/EEC, Directive 90/364/EEC , Directive 90/365/EEC and Directive 93/96/EEC are withdrawn.