

Free movement of EU citizens and their family members: An overview

SUMMARY

Directive 2004/38/EC (also known as the Citizens' Rights Directive or alternatively the Free Movement Directive) establishes the conditions under which European Union (EU) citizens and their family members, whether they are EU citizens or third-country nationals (TCNs), can exercise the right of free movement within the EU. Before the adoption of this directive, there were several other directives and a regulation that addressed different categories of mobile EU citizens.

The provisions of the directive are specific, meaning that all articles have direct effect and do not allow much flexibility for the Member States in their implementation.

The directive covers not only EU citizenship but also the free movement of workers, establishment and services. Consequently, the directive introduces separate categories of beneficiaries each with their own unique set of specific rights.

This briefing offers an overview of the various conditions and rights outlined in the directive for both EU citizens and their family members.



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Introduction

[Article 21\(1\)](#) of the Treaty on the Functioning of the European Union (TFEU) provides that:

'Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.'

[Directive 2004/38/EC](#) (also known as the Free Movement Directive or the Citizens' Rights Directive. Since the title 'Citizens' Rights Directive' is also used for Directive 2009/136, to avoid confusion, the author of this briefing refers to Directive 2004/38/EC as 'the directive') facilitates freedom of movement within the EU, by laying down the conditions under which EU citizens and their family members, irrespective whether the latter are EU citizens or third-country nationals (TCN), can exercise their right of free movement. Before the adoption of the directive, there were several other directives and a Regulation dealing with separate categories of mobile EU citizens.

Even though the directive had to be implemented by the Member States, its provisions are so specific that each article has [direct effect](#) and does not give the Member States much leeway.

The directive is, however, not solely based on the EU citizenship *acquis*, but also on that of the free movement of **workers, establishment and services**. Consequently, the directive distinguishes between several categories of beneficiaries, each with its specific set of rights.

Article 3(1) of the directive provides that '[t]his Directive shall apply to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members ... who accompany or join them.' Consequently, it is not directly applicable to EU citizens residing in the Member State of their nationality. This allows a Member State to impose more stringent regulations on family reunification for its own nationals – a situation known as **reverse discrimination**. However, this only applies in cases that are purely internal, meaning that there is no connection with EU law. The Court of Justice of the European Union (CJEU, 'the Court') has established [exceptions](#) to this rule through case law, where the directive is still applicable by analogy in a Member State of nationality.

It is important to note that while the rules governing the Schengen area facilitate free movement by abolishing internal border controls, they are not identical to the rules on free movement in the directive. Nationals of Member States that are not in the Schengen area have the same rights to free movement as those from Member States that are in the Schengen area. Equally, Member States outside the Schengen area are bound to accept residence cards issued on the basis of the directive and accept these as proof for visas (C-202/13 [Ambrose McCarthy](#)) and grant a right of residence on the basis of the directive.

Glossary of terms of relevance to the topic

Home Member State: Member State of which the person is a national

Host Member State: Member State in which the person resides and of which (s)he does not have the nationality

Dual EU citizen: person with the nationality of more than one Member State

Single EU citizen: person with the nationality of only one Member State

Returner: EU citizen who has made use of the right of free movement by residing in a Member State of which (s)he does not have the nationality and moves (returns) to a Member State of which (s)he has the nationality.

Types of residence rights

The directive provides for three different types of residence, each associated with a distinct set of rights and conditions:

- short-term residence for up to 3 months, provided for in Article 6;
- residence for more than 3 months, provided for in Article 7; and
- permanent residence after 5 years' residence, provided for in Article 16.

The rights and protection for the different categories vary (see Table 1). It should also be noted that if a person meets the criteria for residence of more than 3 months (e.g. by being employed), the associated rights begin as soon as these criteria are met, which may be sooner than 3 months. Furthermore, there are separate categories within the right of residence for more than 3 months until permanent residence.

Table 1 – Overview of rights based on purpose of residence

Type of Residence	Duration	Type/purpose of residence	Conditions	Equal treatment	Grounds for expulsion
Short-term residence (Article 6)	< 3 months	n.a.	Passport/ ID card	No social benefits (Article 24(2))	Public policy, public security or public health
Residence for more than 3 months (Article 7)	> 3 months	Worker & Self-employed (Article 7(1)(a))	Being a worker or self-employed	Full equal treatment (Article 24(1))	Public policy or public security (Article 28(1))
		Sufficient resources (Article 7(1)(b))	Sufficient resources Comprehensive sickness insurance	No maintenance aid for studies (Article 24(2))	
		Study (Article 7(1)(c))	Sufficient resources Comprehensive sickness insurance	No maintenance aid for studies (Article 24(2))	
Permanent residence (Article 16)	> 5 years	n.a.	5 years' residence	Full equal treatment (Article 24(1))	Only serious grounds of public policy or public security (Article 28(2))
	> 10 years	n.a.	10 years' residence		Only imperative grounds of public security (Article 28(3)(a))

Short-term residence

Article 6 of the directive provides for short-term residence, allowing individuals to reside (for up to 3 months) for purposes such as holidays or work trips. The condition is that the EU citizen and their family members must have valid identity documents. During their stay, they do not have access to social benefits in the host Member State.

Residence for more than 3 months until permanent residence

Worker

The definition of a **worker** has been established in [case law](#). The Court has [stated](#) that 'any person who pursues activities that are real and genuine, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary, must be regarded as a "worker". The essential feature of an employment relationship is, according to that case-law, that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration'. Consequently, **part-time employment** also constitutes work.

Workers and their family members are entitled to full equal treatment with nationals. Workers' rights to equal treatment are further defined in [Regulation 492/2011](#).

Students who work during their studies are also considered workers, and are therefore able to access study grants in the Member State of residence, which they would not have access to if they were solely students.

Jobseekers, that is, EU citizens arriving in a Member State to search for employment, can reside in that Member State for more than 3 months if they can prove that they are actively seeking employment and that they have a genuine chance of being employed. During that period, jobseekers are not entitled to social assistance from the host Member State (C-67/14 [Alimanovic](#)), and therefore need to have sufficient resources (this could include export of unemployment benefits from another Member State in accordance with Article 64 of [Regulation 883/2004](#)). This situation should be distinguished from that of EU citizens who were workers or self-employed and then **became involuntarily unemployed**. These EU citizens retain their worker status and full equal treatment rights if they worked for at least 1 year and registered as jobseekers with the relevant employment office. If they were employed for less than a year, they are entitled to keeping their worker status for at least 6 months, provided they registered as jobseekers with the relevant employment office.

The rules on social security of workers and their family members were the subject of the very first substantive rules of the EEC, laid out in [Regulation No 3](#) of 1958 (after Regulation 1 on languages of the EEC and Regulation 2 on Laissez-passer for Members of the Assembly).

Sufficient resources

Another category includes EU citizens who have **sufficient resources** while not being employed in the Member State of residence, known as 'economically inactive mobile EU citizens'. This category includes, for example, **pensioners** receiving a pension from another Member State, **frontier workers** employed in a different Member State from the one they reside in, and **EU citizen children residing in a Member State other than the one of nationality with a third-country national (TCN) carer**. It is important to note that EU citizen children residing in their Member State of nationality with a TCN carer are a separate category under Article 20 TFEU).

The sufficient resources do not have to be a regular income; they can also be accumulated wealth. These resources do not necessarily have to originate from the EU citizen themselves, but can be provided, for instance, by a TCN parent or spouse (C-200/02 [Zhu and Chen](#), C-86/12 [Alokpa](#), C-218/14 [Kuldip Singh](#)). The host Member State cannot set a specific minimum amount but must take the individual's personal situation into account. Additionally, the amount considered to constitute sufficient resources may not exceed the threshold for social assistance eligibility for nationals of the host Member State or, if that criterion is not applicable, the minimum social security pension paid by the host Member State (C-140/12 [Brey](#)).

In C-333/13 [Dano](#), the CJEU ruled that a Member State must have the possibility 'of refusing to grant social benefits to economically inactive Union citizens who exercise their right to freedom of

movement solely in order to obtain another Member State's social assistance although they do not have sufficient resources to claim a right of residence'. Granting social benefits to cover living costs would automatically meet the 'sufficient means' criterion. Therefore, such an EU citizen would not fulfil the conditions for sufficient means and would be disqualified from **the right of residence under the directive**, which means that the equal treatment provision would also be inapplicable.

Consequently, '**social benefits tourism**' is **not possible** under EU law, [unless national law](#) allows it.

Permanent residence

Generally, EU citizens and their family members acquire permanent residence after **5 years** of residing in a country. However, this duration is shorter for individuals in the following cases:

- a person who stops working due to retirement. Such persons can immediately obtain permanent residence if they had 3 years of residence and worked in the previous 12 months;
- a person who stops working due to permanent incapacity after 2 years' residence in a given Member State. If this incapacity is due to an **accident at work** or an occupational disease, there is no duration of residence required and the permanent residence status is acquired immediately;
- a person who becomes a frontier worker after 3 years' residence while remaining resident in the host Member State. Such persons directly become long-term residents.

For workers, acquiring permanent residence does not affect their equal treatment rights and solely offers them greater protection from expulsion. However, for those residing on the basis of sufficient resources or studies, acquiring permanent residence makes a big difference. As stated above, an EU citizen who resides solely on sufficient resources would be considered not to have a right of residence under the directive if those sufficient resources were obtained through social benefits. Consequently, until they have acquired permanent residence, EU citizens living solely on sufficient resources cannot apply for social benefits. After a total of 10 years of residence, including 5 years of permanent residence, protection against expulsion is even stronger.

Categories of family members

The directive distinguishes between two categories of family members (see box): **privileged family members** (listed under Article 2(2)), who have an automatic derived right of residence, and **other family members** (listed under Article 3(2)), for whom residence should be facilitated. Once residence is granted to a family member in accordance with Article 3(2), they have the same rights as those under the privileged category.

If a family member needs a **visa**, it will be issued through an accelerated procedure and free of charge. Once a residence card is obtained under the directive, a visa is no longer necessary.

It is important to note that the right to residence is **derived** from the EU citizen's right of residence. Therefore, if the EU citizen leaves the Member State, this residence right is immediately lost for TCN family members. This also applies if divorce proceedings – which would allow retention of the right of residence under certain circumstances while the EU citizen is still present (see below) – are initiated immediately afterwards (C-218/14 [Kuldip Singh](#), C-115/15 [NA](#)).

One of the documents required for family reunification is proof of the family relationship, as required under Article 8(5). The recognition of this family relationship is – in principle – based on the host country's private international law. [Regulation 2016/1191](#) applies to the documents themselves, but not their content. It states that no legalisation or similar practice is required for documents issued by a Member State's authority and also provides for the use of multilingual standard forms.

Family members can either accompany the EU citizen, meaning that they travel together, or join them later. As long as the EU citizen moves to or resides in a Member State of which they are not a

national, it is irrelevant whether the family member arrives from another Member State or a third country.¹

Categories of family members

According to Article 2(2) of the directive, 'family member' means:

(a) the spouse;

(b) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State;

(c) the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined in point (b);

(d) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b);

Article 3(2) provides:

Without prejudice to any right to free movement and residence the persons concerned may have in their own right, the host Member State shall, in accordance with its national legislation, facilitate entry and residence for the following persons:

(a) any other family members, irrespective of their nationality, not falling under the definition in point 2 of Article 2 who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen;

(b) the partner with whom the Union citizen has a durable relationship, duly attested.

The host Member State shall undertake an extensive examination of the personal circumstances and shall justify any denial of entry or residence to these people.

Privileged family members

Spouse

The spouse, being the person with whom the EU citizen has entered into marriage, is considered a privileged family member. In the context of the directive (and Article 21 TFEU), the term spouse includes **both a different-sex and a same-sex spouse**, even in Member States where same-sex marriage is legal. This followed on from the [Coman](#) judgment.

Coman, a returner, initially resided in a Member State of which he did not have the nationality (Belgium), where he married a TCN of the same sex, and later returned to his Member State of nationality (Romania). As Romania had neither legalised registered partnerships or same-sex marriage, it refused to recognise the marriage. Since this involved a return case, the directive was applicable by analogy through Article 21 TFEU.

The CJEU considered that the term 'spouse' is gender-neutral and, unlike Article 2(2)(b) on registered partnerships, does not include a reciprocity clause (see more below), and that the duty to recognise a same-sex marriage established in another Member State for the sole purpose of obtaining a residence permit does not entail a duty for the receiving Member State to introduce same-sex marriage.

The Court therefore concluded that:

in a situation in which a Union citizen has made use of his freedom of movement by moving to and taking up genuine residence, in accordance with the conditions laid down in Article 7(1) of Directive 2004/38/EC ... in a Member State other than that of which he is a national, and, whilst there, has created or strengthened a family life with a third-country national of the same sex to whom he is

joined by a marriage lawfully concluded in the host Member State, Article 21(1) TFEU must be interpreted as precluding the competent authorities of the Member State of which the Union citizen is a national from refusing to grant that third-country national a right of residence in the territory of that Member State on the ground that the law of that Member State does not recognise marriage between persons of the same sex.

Several [commentators](#) noted that the Court's decision limited the duty of recognition to same-sex marriages concluded in any one of the EU Member States, as well as introducing a requirement that the marriage in the Coman case should have been concluded in an EU Member State during a period of habitual residence. This, some [commentators](#) argued, could lead to misinterpretation, as it seemed to exclude marriages concluded in a third country. A [study](#) for the European Commission on the implementation of the Coman judgment pointed out that the requirement that the marriage should be concluded in a Member State during habitual residence actually has nothing to do with the duty of recognition, but is simply a requirement for the continuity of rights derived from the directive, as established in the return case law, and should therefore be considered only for this aspect and not as a condition for recognition. It was also noted that in C-127/08 [Metock](#), the CJEU had already decided that a spouse can derive rights 'irrespective of when and where their marriage took place', and that not accepting marriages concluded in third countries would clearly be at odds with European Court of Human Rights' (ECtHR) case law. However, the study found that this restrictive interpretation of the Coman case was interpreted quite literally by some Member States (Romania and Bulgaria), while others that did refer to the ECtHR, such as Lithuania, recognised marriages established in third countries.

According to the Commission's [2023 Guidance on the right of free movement of EU citizens and their families](#), **forced marriages** are not protected under international or EU law, but should be distinguished from **arranged marriages**, which can benefit from such protection. Additionally, Member States are not obliged to recognise **polygamous marriages**. A **marriage of convenience** would constitute an abuse. This is a marriage contracted for the sole purpose of conferring a right of residence under EU law on a non-EU national who would otherwise not be able to benefit from such a right. In 2014, the Commission issued a [handbook](#) providing guidance on this matter.

In the case of **divorce** (or **dissolution of a registered partnership**), the former spouse or partner may retain an individual right of residence in accordance with Article 13 of the directive in the following cases:

- the marriage (or registered partnership) lasted for at least 3 years, one of which was spent in the relevant Member State; or
- the TCN former spouse or partner holds custody of the EU citizen's child(ren) or has the right of access to the children and a court has ruled that such access must be in the Member State; or
- the TCN former spouse or partner faced particular difficult circumstances, such as being the victim of domestic violence during the marriage/registered partnership.

The TCN former spouse or partner must, until obtaining permanent residence, be a worker or self-employed, or have sufficient means and comprehensive sickness insurance.

As mentioned earlier, if the EU citizen leaves the Member State before divorce proceedings have been initiated the TCN family member loses the right of residence. In 2016, the Court considered in case C-115/15 [NA](#) that this was also applicable where the TCN family member was subject to **domestic violence**. However, the Court overruled this in 2021 in C-930/19 [X v. Belgian State](#) considering that

the requirement that the divorce proceedings be initiated before the departure of that Union citizen from the host Member State in order for the third-country national who has been the victim of acts of domestic violence committed by his or her spouse who is a Union citizen to retain the right of residence could provide that Union citizen with a means of exerting pressure which would clearly be contrary to the objective of ensuring the protection of the victim of such acts and thereby open ... that victim to blackmail

accompanied by threats of divorce or departure.' (para. 42) Consequently, in the case of domestic violence, the family member can retain the right of residence even if the divorce proceedings have not been initiated before the departure of the EU citizen *'in so far as those proceedings are initiated within a reasonable period following such departure* (para. 43).

Registered partner

Another privileged family member under Article 2(2)(b) is the registered partner. Contrary to the spouse, the registered partner is subject to several conditions.

A [study](#) for the European Commission from 2020 on the implementation of this article considered that it contains three cumulative conditions:

- the registered partnership must have been established in a Member State.
- the host Member State recognises the registered partnership as equivalent to marriage;
- the registered partnership meets the requirements set forth in the relevant legislation of the host Member State.

The study made it clear that there were a number of issues.

First of all, regarding **equivalence**, the study noted that the only case that ever raised a preliminary question about the meaning of equivalence in the context of the directive, C-459/14 [Cocaj](#), was withdrawn a judgment was made. As a result, the study interpreted the meaning of equivalence from case law on equivalence, incorporated into Directive 2000/78/EC. In those cases, the Court had held that where a registered partnership is the maximum status attainable for same-sex couples, it is automatically considered to be equivalent to marriage. The study suggested that '[i]t could, therefore, be considered that when a Member State has not opened marriage to same-sex couples, but has introduced a different status which is open to same-sex couples, and is consequently, the maximum status attainable to such couples, not bringing such a status within the ambit of Article 2(2) of Directive 2004/38/EC could constitute direct discrimination based on sexual orientation. This line of reasoning would also be in accordance with the jurisprudence of the ECtHR'. However, the study also noted that once a Member State has opened marriage to same-sex couples, the registered partnership may no longer be considered equivalent.

In its [2023 guidance](#), the Commission only stated regarding equivalence that when a Member State does not provide for registered partnerships, it is not required to recognise registered partnerships concluded in other Member States as equivalent to marriage. The Commission also provided the following example:

T. is a non-EU citizen and P. is an EU citizen who holds the nationality of Member State A. In 2020, they concluded a registered partnerships on the basis of the legislation of Member State A. They now intend to relocate to Member State B which does not provide for registered partnership under its national legislation. Member State B does not have to recognise the registered partnership. However, a potential right of entry and residence of T. should be assessed under Article 3(2)(b) of Directive 2004/38/EC.

It should be noted that if Member State B in the example has not opened marriage to same-sex couples it is without any doubt in **violation of the European Convention on Human Rights**, which requires that all Member States have at least a registered partnership for same-sex couples if they do not open marriage.

The study further noted that it is often unclear which registered partnerships from other Member States will be recognised. This is partly due to the fact that the conditions and rights of certain partnerships are much weaker and would not be considered equivalent. Most Member States apply **private international law** to the recognition of registered partnerships, but some Member States provide for **specific lists** of registered partnerships that they consider equivalent. However, the study also noted that these lists are often not regularly updated, especially after the Member State introduces same-sex marriage. In some cases, the study noted, this might constitute **indirect**

discrimination on grounds of nationality. This is because a national from a Member State that introduced a registered partnership later is more likely to have this registered partnership not recognised for the purpose of free movement. Additionally, the position of **different-sex registered partnerships** is uncertain, as several Member States (known as [dualistic states](#)) will only recognise same-sex registered partnerships.

Often, when the registered partnership is not recognised for the purpose of Article 2(2)(b), it will (and 'should' in accordance with the Commission guidance) be considered for the purpose of durably attested relationships under Article 3(2)(b) (see below).

Direct descendants

Another category of privileged family member are children under the age of 21 or those who are dependent. These include: 1) the common child of a EU citizen and their spouse/partner; 2) the child of a EU citizen; and 3) the child of the spouse/partner. According to the Court in C-129/18 [SM](#), this category relates to both the biological² and the legal child. **Adopted children** are also covered.

Dependent children over the age of 21 can also be covered. In such cases the existence of a situation of real dependence must be established (C-1/05 [Jia](#)). The Court considered that *the host Member State must assess whether, having regard to his financial and social conditions, the direct descendant, who is 21 years old or older, of a Union citizen, is not in a position to support himself. The need for material support must exist in the State of origin of that descendant or the State whence he came at the time when he applies to join that citizen, but cannot require proof that the direct descendant unsuccessfully applied for a job in the state of origin.* Additionally, the dependence must exist in the state of origin and does not require that the dependence continues upon residence (and the right to work) having been granted (C-423/12 [Reyes](#)). As the [2023 guidelines](#) state 'determination of whether a person is the 'dependent' of an EU citizen must be based on an assessment of the situation **at the time** when the family member seeks to accompany or join that EU citizen.'

While the Commission's [2009 guidelines](#) still considered that children under **permanent guardianship** were also covered by this article, the Court denied this in *SM*, considering that the children in question should be treated under 'other family members' in Article 3(2)(a).

Concerning children of [rainbow families](#), in C-490/20 [V.M.A.](#) the Court held that '*A child, being a minor, whose status as a Union citizen is not established and whose birth certificate, issued by the competent authorities of a Member State, designates as her parents two persons of the same sex, one of whom is a Union citizen, must be considered, by all Member States, a direct descendant of that Union citizen within the meaning of Directive 2004/38 for the purposes of the exercise of the rights conferred in Article 21(1) TFEU and the secondary legislation relating thereto.*'

The Commission's 2022 [proposal](#) for regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and creation of a European Certificate of Parenthood should further facilitate this.

Direct ascendants

Equally dependent **direct ascendant** family members (parents, grandparents, etc.) of the EU citizen and their spouse/partner are considered privileged family members. According to the judgment of December 2023 in C-488/21 [GV](#) and the 2023 guidelines, the same principles apply regarding dependency as to dependent children above the age of 21. Dependency must be demonstrated at the time of accompanying or joining the EU citizen. Subsequent access to benefits where the EU citizen is a worker does not dissolve the dependency.

Facilitated family members

Other family members, aside from the privileged family members mentioned above, do not have a right of residence, but their residence may be **facilitated** on the basis of Article 3(2). In C-83/11

Rahman, the Court explained that 'shall facilitate' means that it 'imposes an obligation on the Member States to confer a certain advantage, compared with applications for entry and residence of other nationals of third States, on applications submitted by persons who have a relationship of particular dependence with a Union citizen'. Therefore, the Member State must 'obtain a decision on their application that is founded on an extensive examination of their personal circumstances and, in the event of refusal, is justified by reasons'. There should also be a redress procedure against this decision, which must ascertain in particular whether the contested decision is based on a sufficiently solid factual basis (C-89/17 *Banger*). While the Member States maintain broad discretion as regards the factors to be taken into account, the criteria applied should be consistent with the normal meaning of 'facilitate' and should not deprive the Article 3(2) of the directive of its effectiveness.

Other family members

The first category of facilitated family members is listed in Article 3(2)(a). These include other persons:

- who are dependents; or
- who are members of the household of the EU citizen with the primary right of residence; or
- for whom serious health grounds strictly require the personal care for the family member by the EU citizen.

The dependency rules are in essence the same as those applicable to dependent relatives in the ascending or descending line in Article 2(2)(c) and (d). Dependency must have existed at the time the family member arrives and in the country from which they arrive.

Members of the household stands for persons 'who have a relationship of dependence with that citizen, based on close and stable personal ties, forged within the same household, in the context of a shared domestic life going beyond a mere temporary cohabitation entered into for reasons of pure convenience'. (C-22/21 *Minister for Justice and Equality*).

Regarding **health grounds**, the Commission guidance notes that there is currently no case law covering these situations, but it also mentions that it refers to 'physical dependence' and requires an overall assessment on a case-by-case basis.

Durably attested relationships

The partner with whom the EU citizen has a durable relationship, duly attested under Article 3(2)(b), constitutes the second category of facilitated family members. While the durably attested relationship as a family member was only introduced in Directive 2004/38/EC, Regulation 1612/68 possibly provided grounds for a residence right. The Court considered in case 59/85 *Reed* that 'a Member State which permits the unmarried companions of its nationals, who are not themselves nationals of that Member State, to reside in its territory cannot refuse to grant the same advantage to migrant workers who are nationals of other Member States'.

Member States have some discretion in setting the conditions as to what constitutes a durably attested relationship, leading to many different standards that typically require a certain duration of relationship or cohabitation. For example, [France has a requirement of](#) up to 5 years of cohabitation requirement. In the Netherlands, the [courts](#) considered a cohabitation requirement to be too restrictive, especially in the context of long-distance relationships. The 2023 guidance considers that '[n]ational rules on durability of partnership can refer to a minimum amount of time, set in line with the principle of proportionality, as a criterion for whether a partnership can be considered as durable. However, in this case, national rules would need to provide that other relevant aspects ... are also taken into account.'

As mentioned earlier, when a registered partnership is not considered for the purpose of Article 2(2)(b) it must be taken into account for the purpose of Article 3(2)(b). In France, for example, a registered partnership lowers the cohabitation requirement from 5 years to 1 year.

Required documents under the directive

Obtaining a registration certificate (Article 8) or a residence card (Article 10) may require that certain documents be presented. According to the directive, the following documents may be requested for EU citizens (not family members)

- Workers and self-employed individuals need to present a valid identity card or passport, a confirmation of engagement from the employer or a certificate of employment, or proof of self-employment.
- Persons with sufficient means need to present a valid identity card or passport and provide proof that they satisfy the conditions;
- Students need to present a valid identity card or passport, proof of enrolment at an accredited establishment and of comprehensive sickness insurance cover, and the declaration or equivalent means referred to in point (c) of Article 7(1). Member States may not require this declaration to specify any particular amount of resources.

For family members, the following documents may be required:

- a valid passport;
- a document attesting to the existence of a family relationship or registered partnership;
- the registration certificate or, in the absence of a registration system, any other proof of residence in the host Member State of the EU citizen they are accompanying or joining;
- in cases under points (c) and (d) of Article 2(2), documentary evidence that the conditions laid down therein are met;
- in cases under Article 3(2)(a), a document issued by the relevant authority in the country of origin or country from which they are arriving certifying that they are dependants or members of the household of the EU citizen, or proof of serious health grounds that strictly require that the EU citizen take personal care of the family member;
- in cases under Article 3(2)(b), proof of the existence of a durable relationship with the EU citizen.

These lists of documents are **exhaustive** and no other proof may be requested. If a document proving a family relationship is issued by the authorities of a Member State, it is exempted from any form of legalisation or apostille under [Regulation 2016/1191/EU](#). If the document is from a third country, a translation may be required if the language is not understood by the authorities of the Member State. The document may also need to be legalised (in principle only for states not party to the [Apostille Convention](#) or where the Member State has issued a reservation regarding the third countries' accession to the convention), or an apostille.

ENDNOTES

- ¹ This used to be different under the C-109/01 [Akrich](#) case law in which prior legal residence in another Member State was required. The CJEU, however, overturned this line of case law in C-127/08 [Metock](#) stating '*It is true that the Court held in paragraphs 50 and 51 of Akrich that, in order to benefit from the rights provided for in Article 10 of Regulation No 1612/68, the national of a non-member country who is the spouse of a Union citizen must be lawfully resident in a Member State when he moves to another Member State to which the citizen of the Union is migrating or has migrated. However, that conclusion must be reconsidered. The benefit of such rights cannot depend on the prior lawful residence of such a spouse in another Member State*'
- ² The use of biological in the case is a bit unclear, since a [child](#) might have a biological link to a parent without a legal link and family life relationship.

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