

# EUROPE



SLOVENIA



GREECE

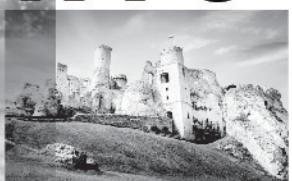
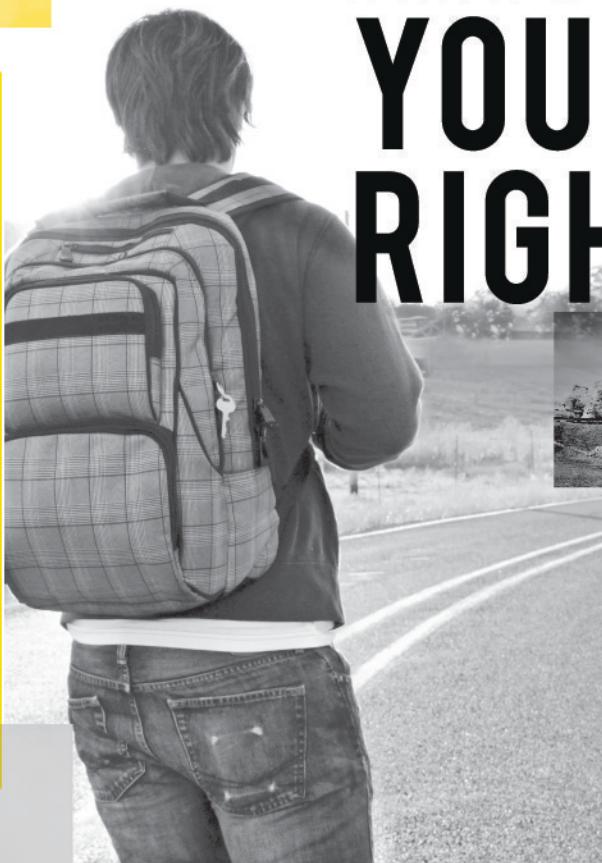


FRANCE

## INFO GUIDE



ITALY



AN INFO GUIDE TO FREE  
MOVEMENT FOR THE THIRD  
COUNTRY FAMILY MEMBERS  
OF EU CITIZENS

OCTOBER 2018

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**Know Your Rights Info Guide**

**Free Movement for the Third Country Family Members of EU Citizens**

This Info Guide has been produced in the framework of the Act for Free Movement Project\*



and is part of the Know Your Rights Campaign



Implemented by:



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\*ACT4FreeMovement is a program funded by the European Program for Integration and Migration (EPIM), a collaborative initiative of the Network of European Foundations, and run by European Alternatives, Krytyka Polityczna, the European Citizen Actions Service (ECAS), the Good Lobby and the EU Rights Clinic. Act4FreeMovement stand for Advocacy, Complaints, and Trainings for Free Movement. Through advocating and campaigning, the project aims to increase the capacity of EU citizens to secure access to and knowledge of their rights and gain support for mobile citizen rights.

## THE KNOW YOUR RIGHTS CAMPAIGN

The **Know your Rights Campaign\*** developed under the **Act4FreeMovement Project** aims at involving citizens to become aware of their mobile rights and lobby for the removal of obstacles to free movement for European citizens and their third country family members, and raise awareness of public authorities/member states about the negative effects of such obstacles. Even though, third country family members are covered by the free movement right if they are accompanying or join an EU citizen in the host member state, in practice the cross border move of this group of people is not going smoothly. On the contrary, non-EU family members still experience a number of practical difficulties and bureaucratic impediments to getting their entry and residence rights fully recognized. One of the problems in the free movement of third country family members is the difficulty to obtain clear and correct information on their specific mobile rights. The Know Your Rights Campaign is running in three different European countries, Italy, Greece and Slovenia and it comes as a necessity to tackle an existing problem – **the misinformation of third country family members about the application of their mobility rights.**

The Know Your Rights Campaign is a **two-module campaign**. The **first module** includes a **one-day information symposium** which was organized in April 2018 in the city of Bari in Italy. In the **Know Your Rights Symposium**, different target groups (non-EU family members of EU citizens, students, academicians, journalists, policy makers, activists, politicians, civil society representatives and local leaders) came together to share information and experiences, as well as to discuss the issue from a provocative approach with respect to the application of movement rights in everyday life of EU citizens' non-EU family members. The **second module** includes the **publication of this info guide**. The **Know Your Rights Info Guide\*\*** is developed with the aim of offering an overview of the scope of application of Directive 2004/38/EC, which defines the right of EU citizens and their family members to move and reside freely within the territory of the Member States. This info guide provides non-EU family members and respective public authorities with a workable tool facilitating the understanding of mobile rights and the proper implementation of the Directive respectively. The Info Guide is divided into 5 five parts, all containing extensive information to important topics such as: the right of EU citizens and their non-EU family members to move freely around Europe, the family member status, the right of entry, the right of residence and the right to permanent residence.

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\*The Know Your Rights Campaign is running in three different European countries by the Multiethnic Cultural Association Mama Africa (IT), the Institute of Research and Training on European Affairs (GR) and the Institute for Sustainable Community Practices (SL).

\*\* This info guide is using information from the 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, the Commission Communication on guidance for better transposition and application of Directive 2004/38/EC as well as from the ECAS's Report "Freedom of Movement in the EU: A Look Behind the Curtain". ECAS is an international, Brussels-based non-profit organization. Its mission is to empower citizens in order to create a more inclusive and stronger European Union by promoting and defending citizens' rights.



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# THE RIGHT OF EU CITIZENS AND THEIR NON-EU FAMILY MEMBERS TO MOVE AND RESIDE FREELY AROUND THE EU

## 1. Who is enjoying the Free Movement Right?

- Any person who holds the nationality of an EU country has the right to move freely around the European Union and settle anywhere within its territory.

## 2. Is the Free Movement Right reserved only for EU citizens?

- No, their family members, irrespective of their nationality, are also covered by the Directive and have the right to accompany or join EU citizens in an EU country other than that of their nationality.



## 3. Under which condition are EU citizens and their non-EU family members benefited from the Directive?

- ⊕ The Directive applies only to EU citizens who move to or reside in a Member State other than that of which they are a national, and to family members who accompany or join them.

- EU citizens residing in the Member States of their nationality do not benefit from the right granted by the Community law on free movement of persons and their third country family members are covered by national immigration laws.
- However, EU citizens who return to their home Member State after having resided in another Member State and in certain circumstances also those EU citizens who have exercised their rights to free movement in another Member State without residing there (for example by providing services) benefit as well from the Directive's rules on free movement.

The relevant legal Framework is **Directive 2014/38/EC**. It became applicable for all EU countries on **30 April 2006**.

The Directive has been transposed by each EU country into their national legislation.

You can download the Directive here:  
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0038&from=en>

## 4. What are the rights of an EU Citizen in the Host EU Member State?

An EU citizen has 5 five key rights in the host EU Member State:

- The right to enter and reside;
- The right to work;
- The right to bring family;
- The Right to equal treatment (as the nationals of the host country);
- The right to accrue permanent residence;

# THE FAMILY MEMBER STATUS

Articles 2 and 3 of the Directive

## 5. Who is a family member?

A family member is defined as:

- the spouse of the EU citizen.
- the partner with whom the EU citizen has contracted a registered partnership on the basis of the legislation of an EU country. **However**, the registered partner has the right to accompany or join the EU citizen only in the EU countries which treat registered partnerships as equivalent to marriage.
- the direct descendants of an EU citizen (i.e. children, grand-children, etc) who are under the age of 21 or are dependents of an EU citizen spouse or registered partner.
- the dependent direct relatives in the ascending line (i.e. parent, grand-parents etc) and those of an EU citizen spouse or registered partner.

Family members enjoy the rights granted by the Directive when they join or accompany an EU citizen and the **EU countries are obliged to recognize their rights**.

## 6. What about other family members?

There is a second category of extended family members that can be included if the national legislation provides for it. Family members such as siblings, cousins, aunts and uncles and other relatives have the right to have their movement facilitated by the host EU country if:

- they are dependent on the EU citizen; or
- they are members of the household; or
- serious health grounds strictly require EU citizen personal care.

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



**IMPORTANT:** The group comprising **other family members** and partners **has no automatic right to accompany you to the host EU country or join you there**. They **have the right to have entry and residence facilitated** compared with applications for entry and residence of other non-EU nationals. The host EU country should examine the family ties this group of people has with the EU citizen.

# THE RIGHT OF ENTRY

## Article 5 of the Directive

### 7. Is the right of entry recognized to third country family members of EU citizens?



- Yes, family members who are not nationals of an EU country may enter the host EU country with a valid passport.



- If family members come from certain countries which are subject to visa obligations, they may be required to have an entry visa. Member states must grant family members every facility to obtain the necessary visas. This distinguishes them from other third country nationals, who have not such a right.

### 8. Which visa category should non-EU family members apply?

- The authorities of the Member States should guide the family members as to the type of visa they should apply for. In any case, they cannot require them to apply for long-term residence or family reunification visas.

**Bad Practices:** The main problem non-EU family members are facing is the difficulty to obtain clear and correct information on the specific entry rules that apply to non-EU family members from consulates and their visa service providers. In many cases consulates do not make the distinction between applicants who are family members of EU nationals and those who are not, wrongly advising them to apply for a tourist, long-term or family reunification visas and not for a short-term visa. The application process for these visas categories is cumbersome.

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### 9. What kind of documents should non-EU family members submit in order to obtain a visa?



- The right of entry for non-EU family members is derived from the family ties they have with an EU citizen. Therefore, consular officials may require only the presentation of a valid passport and a document establishing applicant's family ties with the EU citizen (i.e. marriage or birth certificate, proof that they are living in the host EU country or a declaration that they will move there once the visa is issued, proof of dependence etc).
- **NO additional documents, such as travel tickets, proof of accommodation, employment certificate, pay slips, bank statements, letter of invitation, means of subsistence or medical certificates, can be required by third country family members of an EU citizen.**

**Bad Practices:** In many cases, non-EU family members have been asked to provide consular services with excessive documents (e.g. proof of accommodation, health insurance, sufficient resource, justification of the purpose of the trip, proof of return travel etc) even though this is not foreseen by the Directive. In addition, consular staff and visa service providers are not accepting a number of documents such as marriage certificates issued in non-EU countries.

ECAS Report

## 10. Is the visa application for non-EU family members free of charge?

- ✗ **→ Yes, third country family members should be issued as soon as possible and on the basis of an accelerated procedure with a free of charge short-term entry visa.**

**Bad Practices:** Non-EU family members cannot obtain a visa quickly and for free, despite being entitled to under EU rules. No direct access to the consulates of the destination countries is possible and therefore, family members are obliged to use the private visa service providers, paying the relevant fees. The visa accelerated process is not recognized and citizens are waiting for a long period in order to obtain their visas. In many cases, applications have been processed after the travel date of the applicant. Non-EU family members have to comply with all the formalities and provide the same documents required from non-EU applicants who are not related to EU citizens.

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## 11. Is visa always required?

- ✗ **→ No, possession of a valid residence permit issued by any Schengen EU country exempts the family member from the visa requirement when they travel together with the EU citizen or join him/her in the host Member State.**
- ✗ **→ If non-EU family members move between a Schengen EU country and a non-Schengen EU country, they can also be exempted from the visa requirement if they travel with an EU citizen or join him/her and have a valid residence card issued to them as family members by an EU country other than that of their nationality.**

**Bad Practices:** Visa exemption is not recognized in many cases. A visa is required when it should not be from non-EU family members who hold a family member's residence card issued by an EU country on the basis of an EU Law as well as from non-EU family members whose EU residence card will expire less than three months after their intended date of departure from the destination country.

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## THE RIGHT OF RESIDENCE

Articles 6, 7, 8, 9 and 10 of the Directive

### 12. Is the right to residence recognized for non-EU family members?



- Non-EU family members who accompany or join an EU citizen can reside with him/her in another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid passport.

### 13. Is the presence reporting for EU citizens and their family members mandatory?

- EU citizens and their family members might be required to report their presence within a reasonable period of time after their arrival in the host country.
- ⊕ **The deadline for registration may not be less than three months from the date of arrival.** A registration certificate shall be issued immediately, stating the name and the address of the person registering and the date of registration.

**Bad Practices:** Citizens who arrive in their host Member States sometimes have to wait a long time to even get an appointment to register. These delays have caused particular problems to non-EU family members who are not always able to obtain an appointment before their entry visa expires.

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### 14. What happens if EU citizens and family members do not report their presence?

- If EU citizens or their family members fail to comply with the requirement to report their presence, they can be liable to proportionate and non-discriminatory sanctions.
- ⊕ **In any case, they cannot be expelled for only violating this rule.**

### 15. Can the non-EU family members reside for more than three months in the host EU Member state?

**Yes**, in the case the planned period of residence is for more than three months, the member state should issue a residence card to a non-EU family member of an EU citizen. Some Member States require family members to obtain long-term visas instead of short-term visas when the purpose of their travel is to settle in that country.

**Bad Practices:** EU citizens and their non-EU family members are misinformed by the Consulates about the kind of visa they need in order to obtain a residence card. In many cases, they are told that a visa is not necessary or that they should apply for a short term visa. Upon arrival in the host country, they were unable to obtain a residence card as they did not have the required long term visa and were told to return to the country of origin in order to obtain a long-term visa and then submitting their application for a residence card.

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## 16. What kind of document should non-EU family members submit to obtain the residence card?

- For the residence card to be issued, non-EU family members should submit the following documents:
  - A valid passport
  - A document attesting to the existence of a family relationship or of registered partnership
  - The registration certificate of the person accompanying or joining, or any other proof of residence in the host Member State.
- ✚ Authorities can require additional documents based on the status relationship between the family member and the EU citizen (i.e. a document issued by authorities of the country of origin stating that the applicant is dependant or a member of the Union citizen's household, proof of the existence of serious health grounds, proof of durable relationship with the EU citizen etc.).
- ✚ Only an apostille stamp (or legislation) and a certified translation should be required for a non-EU marriage certificate (or other public document) to be accepted as proof of a family link when non-EU family members apply for entry visas or residence cards.

**Bad Practices:** Excessive requirements, beyond those permitted by the Directive, are obstructing the process of obtaining a residence document by EU citizens and their non-EU family members. EU nationals and their family members, whose marriage or birth certificates have been issued by a non-EU country, have been facing serious difficulties when trying to apply for a residence card for their non-EU family members. Documents issued by non-EU countries have not been recognized in many cases while birth and family certificates must be dated in the last 90 days. This requirement adds a significant administrative cost.

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## 17. When should non-EU family members apply for the residence card?

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

## 18. How long is the residence card valid?

- The residence card is issued within six months from application and is valid for five years or for the duration of the envisaged period of their residence if this is less than five years.
- The maximum period of six months is justified only in cases where examination of the application involves public policy considerations.

**Bad Practices:** Delays in processing applications and issuing residence documents have been a long standing issue. The consequences of these delays are manifold, especially for non-EU family members who have faced expiring visas and the inability to work, to travel visa-free in the EU, to open a bank account, and to obtain a personal identification number.

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## 19. What is the residence card fee?

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

## 20. What kind of financial resources should have applicants in order to apply for a residence document?

Article 8 of the Directive

- The Directive expressly prohibits Member States from laying down a fixed amount which they regard as "sufficient resources" that an EU national must have in order to be able to stay in their country for more than three months. The authorities cannot require an EU citizen to demonstrate having an income higher than the thresholds below which nationals are eligible for social assistance of higher than the level of the social pension.

In addition:

- ⊕ The authorities of the Member States must take into account the personal situation of the individual concerned.
- ⊕ Resources from a third person must be accepted.
- ⊕ The resources do not have to be periodic and can be in a form of accumulated capital.

**Bad Practices:** Consulates require citizens to provide evidence of a set amount of minimum financial resources in order to be able to apply, when this is expressly prohibited by the Directive. In addition, in many cases authorities show reluctance and unwillingness to accept evidence of sufficient resources when this comes from a non-EU spouse, a partner or another family member.

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## 21. What happens to non-EU family members if EU citizens lose their right to reside?

Articles 12 and 13 of the Directive

- The residence right is not affected if non-EU citizens meet the conditions of the right to reside on their own or if they are family members of a person meeting these conditions. Depending on the circumstances, non-EU citizens must meet additional conditions as described above:

### ⊕ Death or departure of the EU citizen

- The death of an EU citizen will not lead to the loss of the right of residence of his/her non-EU family members with the provision that they have been residing in the host EU country as EU citizen family members for at least one year before his/her death.

### ⊕ School children and their parents

- In case of EU citizen departure, the non-EU family members in principle do not retain their right of residence. But the death of the EU citizen should not affect the right of residence of their children or of the parent who has the actual custody of the children, if the children are enrolled at an educational establishment, until the completion of their studies.

### ⊕ Divorce or termination of registered partnership

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

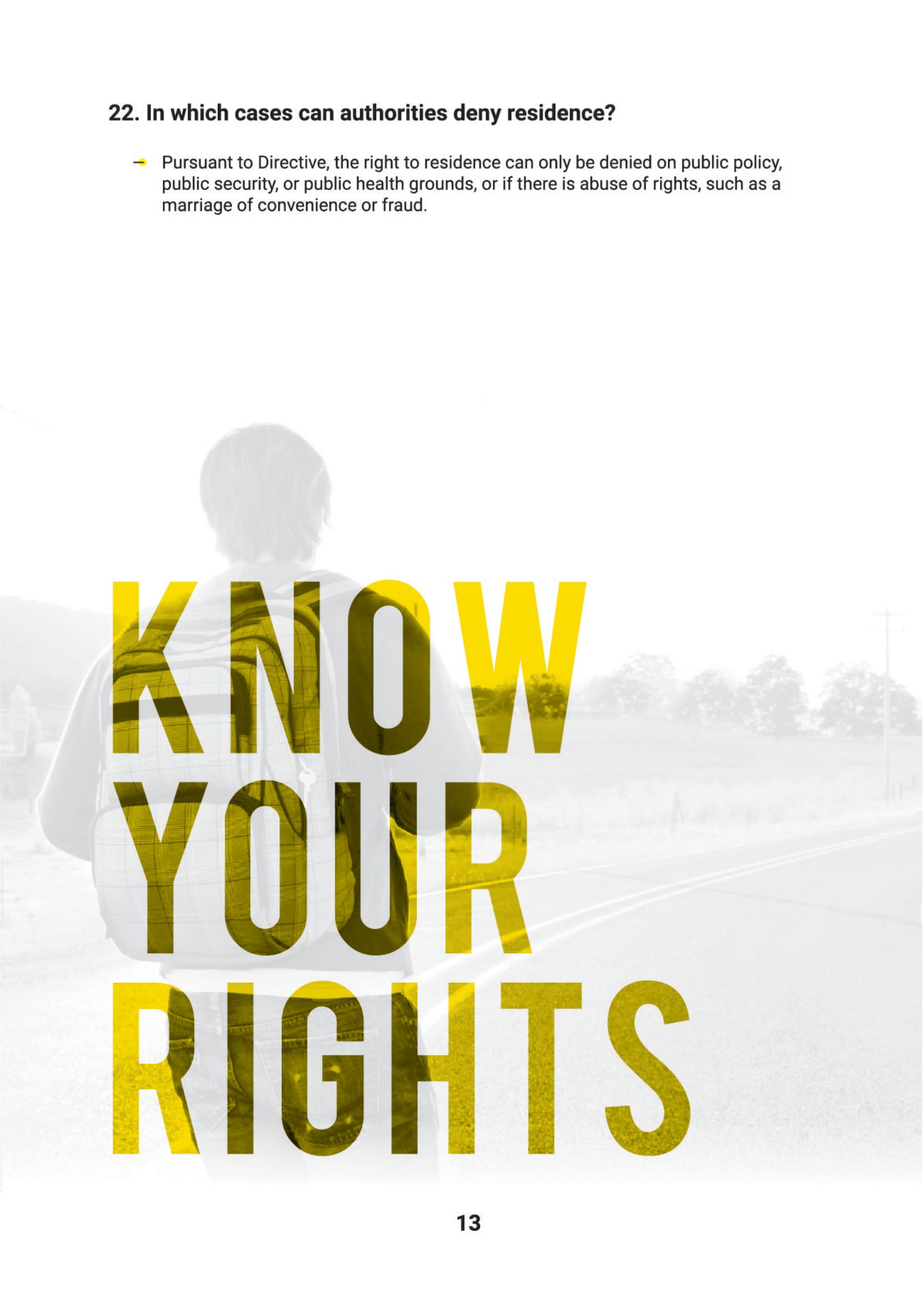
### ⊕ Custody of or access to the EU citizen's children

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



## 22. In which cases can authorities deny residence?

- Pursuant to Directive, the right to residence can only be denied on public policy, public security, or public health grounds, or if there is abuse of rights, such as a marriage of convenience or fraud.



**KNOW  
YOUR  
RIGHTS**

## THE RIGHT TO PERMANENT RESIDENCE

Articles 20 and 21 of the Directive

### 23. Are non-EU family members eligible for permanent residence?

- Yes, the non-EU family member of EU citizens who have legally resided with them in the host EU country for 5 years acquire the right of permanent residence too.
- ⊕ **Non-EU family members have to apply for the permanent residence card before their standard residence card expires.**
- ⊕ **Non-EU family members should be issued by the host country authorities with a permanent residence card within six months from the date of application. The maximum period of six months is justified only in cases where examination of the application involves public policy considerations.**
- ⊕ **The permanent residence card is automatically renewable every ten years.**

After 5 years of lawful, uninterrupted residence in their host Member State, EU nationals and their family members have the right to remain there indefinitely and unconditionally.

**Bad Practices:** As regards permanent residence documents, Directive provides that these must be issued to EU nationals as soon as possible and to their family members within six months of the submission of their application. Member states do not always respect these rules. There are delays in processing applications in a number of issues:

- Registrations certificates to EU nationals
- Certificates of application to non-EU family members
- Residence cards
- Permanent residence documents

According to the Directive, permanent residence cards must be valid for 10 years and renewable automatically. Despite this rule, non-EU family members of mobile EU citizens have had the duration of their residence documents limited:

- to the length of their EU spouse's employment situation;
- to the remaining period of validity on their passports; and
- or, for no apparent reason.

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## 24. In which case can non-EU family members lose their right to permanent residence?

- EU citizens and their non-EU family members can lose their right to permanent residence if they live outside the host country for more than two consecutive years. Interruption in residence not exceeding two consecutive years should not affect the validity of the permanent residence card.

## 25. In which cases the continuity of residence is not affected?

Continuity of residence is not affected by:

- Temporary absences (less than six months per year)
- Longer absences for compulsory military service
- One absence of 12 consecutive months, for important reasons such as pregnancy and childbirth, serious illness, work, vocational training or a posting to another country.

**Bad Practices:** Even though the fact that a citizen has spent 5 years in the host member state, the authorities are imposing arbitrary requirements for the renewal of this residence card such as:

- Sufficient resources (in some cases by way of a minimum set income or bank account deposit) or healthcare cover.
- Working or having paid social security contributions during the five years even though the citizen had sufficient resources during that time.
- Knowledge of local language and culture.
- Notarized conformation from neighbors attesting to the continuity of residence.

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## 26. What rights have EU citizens and their family members when they move to live or work in another EU country?

Article 23 and 24 of the Directive

- When EU citizens and their family members move to live or work in another EU country enjoy a whole set of additional rights such as:
  - Family members, irrespective of their nationality, are entitled to take up employment or self-employment in the host EU country.
  - They have access to education under the very same conditions as nationals. **EU countries may decide not to grant maintenance aid for studies to persons other than workers, self-employed persons, those who retain such status and members of their families. The aid must be granted once the EU citizens and their family members acquire the right of permanent residence.**
  - They are entitled to receive social assistance on the same grounds as nationals in the host EU country. **EU countries may decide that they will not confer entitlement to social assistance during the first three months of residence but only if they are not workers or self-employed persons.**

## 27. Are EU citizens and their family members protected from expulsion?

Articles 27 and 28 of the Directive

- Yes, EU citizens and their family members who have the right of permanent residence enjoy increased protection against expulsion as they can be expelled only on serious grounds of public policy or public security.
- Before taking an expulsion decision on grounds of public policy or public security, the host member state shall take of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host Member State and the extent of his/her links with the country of origin.
- Member States may deny EU nationals and their family members the right to residence if they no longer satisfy the Directive's conditions and become an "unreasonable burden" on their social system.
- Expulsion, however, cannot be an automatic consequence of the EU citizen or their family member seeking social assistance. Moreover, EU nationals who are worker, self-employed or active jobseekers who demonstrate that they have a genuine chance of finding a job, cannot be expelled on economic grounds and neither can their family members.

**Bad Practices:** EU nationals and their family members continue to have their residence rights denied and to be threatened with expulsion on economic grounds. Several jobseekers were told to leave or were served with an expulsion order if they did not find a job in a certain period of time.

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# HOW CAN EU CITIZENS AND THEIR NON-EU FAMILY MEMBERS PROTECT THEIR RIGHTS?

## Where EU citizens and their non-EU family members can find more information?

1. If you would like to find more detailed information about EU provisions and legislation on free movement, you can access directly the Directive 2004/38/EC here: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0038&from=en> and Communication from the Commission to the European Parliament and the Council on guidance for better transposition and application of Directive 2004/38/EC here: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009DC0313&from=EN>
2. If you would like to be informed on the obstacles and the restrictions imposed by the Member States on the Free Movement of EU citizens and their non-EU family members, you can access the ECAS Report "Freedom of Movement in the EU: A Look Behind the Curtain" here: <https://ecas.org/wp-content/uploads/2018/03/ECAS-Long-report-final.pdf>
3. If you think that your right to move and reside freely has been violated, you should appeal before the competent national courts, the Ombudsman or administrative bodies.
  - The Greek Ombudsman - <https://www.synigoros.gr/?i=stp.en.home>
  - The Slovenian Ombudsman - <http://www.varuh-rs.si/>
  - The Italian Ombudsman System - <https://www.difesacivicaitalia.it/>
4. If you want legal advice from a legal expert on your free movement rights within the European Union, you can use Your Europe Advice to submit your inquiries. Responses are provided free of charge, within a week, and in any of the official languages of the European Union. For more information, go to [https://europa.eu/europeweb/citizens/index\\_en.htm](https://europa.eu/europeweb/citizens/index_en.htm)
5. If you think that your free movement problem was caused because national public authorities incorrectly applied their own national and also EU law, you can use the SOLVIT system. For more information, go to [http://ec.europa.eu/solvit/index\\_en.htm](http://ec.europa.eu/solvit/index_en.htm)



# Know Your Rights – An Info Guide to Free Movement for the Third Country Family Members of EU Citizens

Athens, 15 October 2018

DO YOU WANT A BETTER FUTURE WITHOUT  
BARRIERS IN YOUR MOVEMENT WITHIN THE EU?  
THEN, BETTER INFORM YOURSELF!  
INFORMED CITIZENS MAKE THE WORLD MOVE



The Know Your Rights Campaign is running by:

*Bledar Feta, Policy Expert & Political Scientist, IRTEA, Greece*

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*Stephen Ogbonna, President, Mama Africa Cultural Association, Italy*





# KNOW YOUR RIGHTS

AN INFO GUIDE TO FREE MOVEMENT FOR THE THIRD  
COUNTRY FAMILY MEMBERS OF EU CITIZENS