



**DIRECTORATE GENERAL FOR INTERNAL POLICIES**

**POLICY DEPARTMENT**  
**CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS**



***For the Committees on Petitions & Civil Liberties,  
Justice and Home Affairs***

Study on  
***Obstacles to the right of free  
movement and residence for  
EU citizens and their families***

# Objectives of the Study

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- Current state of **transposition and implementation** of Directive 2004/38/EC
- Overview of the **obstacles** that still persist within the EU that hinder the full enjoyment of the right of free movement and residence for EU citizens and their families
  - Barriers to entry and residence
  - Discrimination (nationality, race/ethnicity, sexual orientation/civil status)
  - Abuse of rights measures
  - Expulsions and refusals of entry and residence

# Context

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- 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:
  - Right to **entry**
  - Right to **residence** (up to three months, more than three months and permanent)
  - Possibility for **expulsion** on grounds of public policy, public security and public health

# Introduction

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- Methodology:
  - Selection of **nine Member States** for in-depth research: BE, DE, ES, FR, IE, IT, PL, SE, UK
  - 18 Member States: targeted questionnaires
  - Highly qualified national experts
  - Research techniques: selected transposition provisions/issues, desk research, stakeholders consultations

# Directive 2004/38/EC - Transposition

- **10 selected Articles:**
  - For the most part **in line** with the Directive, but **challenges** remain

MS	Art. 3(2) Beneficiaries	Arts. 5(1), 5(2) Entry	Art. 6 Residence < 3 months	Arts. 7(1), 7(2) Residence > 3 months	Art. 14 Retention of residence	Art. 16 Permanent Residence	Art. 24(1) Equal treatment	Art. 27 Restrictions public policy, security, health	Art. 28 Protection against expulsion	Art. 35 Abuse of rights
BE	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes
DE	No	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
ES	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes
FR	No	No	No	Yes	No	No	Yes	No	Yes	Yes
IE	Yes	No	No	Yes	No	Yes	Yes	No	Yes	Yes
IT	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes	Yes
PL	No	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes
SE	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
UK	No	Yes	Yes	Yes	No	Yes	No	No	Yes	No

# Directive 2004/38/EC - Transposition

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- **Transposition issues** have been identified for all the 10 selected provisions except for Article 28 (protection against expulsion)
- Article 14 (retention residence right) most problematic
- Broad terms:
  - Sufficient resources, unreasonable burdens, dependent family members, durable relationship, genuine chance of being engaged

# Main barriers to free movement

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- Difficult implementation
- Main persisting obstacles:
  - Administrative burdens/bureaucracy
  - Misinformation/lack of cooperation

# Main obstacles: Entry

Obstacle	Member States	Example
Right to <b>accelerated procedure</b> for entry visas refused	BE, EE, ES, IE, IT, MT, PT, SK, SI	<b>IE:</b> There is a failure to provide visa processing facilities at airports. <i>Raducan v Minister for Justice, Equality and Law Reform</i>

- Bureaucratic issues

Obstacle	Member States	Example
<b>Excessive delays</b>	BE,CZ,DE,EL,HU,IE,IT,MT,NL,SE,UK	12 weeks to several months
<b>Excessive documentation requirements</b>	AT, BE, BG, CZ, DE, EE, ES, EL, FI, FR, IE, IT, MT, NL, PL, PT, UK	<b>IT:</b> healthcare insurance, proof of accommodation, invitation from a national of the country concerned, flight details, hotel reservation, sum of money available in a bank account or other sufficient resources, residence card
<b>Visas not issued free of charge</b>	CY, DE, ES, IT, MT, NL, UK	<b>MT:</b> TCN family members were not allowed to apply for a visa free of charge on the basis that the right of family members to obtain a visa free of charge only applies to EU citizens who were married within the EU



# Main obstacles: Entry

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Obstacle	Member States
<b>Refusal of visa on invalid grounds/without a justified reason</b>	BE, CY, DE, EL, ES, FI, IE, IT, NL, SI, UK
<b>Scarce/confusing information regarding visas</b>	CY, CZ, DE, ES, EL, FI, IE, IT, PL PT, RO

# Main obstacles: Residence

- Bureaucratic issues

Obstacle	Member States	Example
<b>Excessive delays</b>	AT, BE, CY, CZ, DK, FR, IE, IT, MT, NL, SE, UK	<b>BE:</b> EU citizens and their family members are sometimes required to make an <b>appointment</b> with the appropriate local authority in order to register their residence and to apply for a residence card. The Integration and Civil Integration Agency of the Flemish Government confirms that this procedure generated problems for EU citizens in 2015. Because of a <b>six-month backlog</b> of appointments, EU citizens residing in Belgium for longer than three months did not have proof of registration
<b>Excessive documentation requirements</b>	AT, BE, CY, ES, FR, HU, IE, IT, MT, PT, SK, UK	To issue a residence card, <b>Irish</b> authorities require extra documents than those listed by the Directive: details of the occupation of the applicant, the Personal Public Service (PPS) number, the declaration of any criminal record and the immigration history

# Main obstacles: Residence

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- Lack of information available

***Example:***

*In **Finland** and **Slovenia**, on several occasions the authorities appeared to be of the mistaken belief that only an employment relationship or enrolment at an educational establishment confers on an EU citizen a right of residence for a period exceeding three months. Consequently, they fail to inform people about the right of residence solely based on having sufficient funds and comprehensive insurance cover.*

# Main obstacles: Residence

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- Denial of the right of residence on invalid grounds

***Example:***

*In **Greece**, a case was reported of an EU citizen who legally resided, worked, was insured, and paid taxes in Greece for over ten years. Although he lost his job in 2010, he found another job in November 2013 and started working again. However, the renewal of his residence permit was refused.*

- Restrictive interpretation of proof of health insurance

***Example:***

*The Swedish Tax Authority only accepts the EU standard S1 form as proof of health insurance. If an EU citizen cannot produce the S1 form they will not be registered as living in **Sweden** and will not be given a personal number (necessary in order to access various services).*

# Refusals of entry, residence and expulsions

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- **Very limited data** collected / available
- Main reasons:
  - Entry: lack of sufficient resources, travelling without EU citizen
  - Residence: unreasonable burden, public policy, security, health, lack of valid travel documents, etc.
  - Expulsion: public order and security, crimes, unreasonable burden, etc.

# Refusals of entry, residence and expulsions

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- Main problems identified:
  - Lack of sufficient resources
  - Public policy and public security
  - Increasing level of protection
  - Vagueness of grounds justifying refusals of entry, residence and expulsions
  - Safeguards

# Main obstacles: Social Security

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- Old age pensions, healthcare, unemployment & family benefits
- Main types of obstacles:
  - Lack of coordination & communication between national authorities
  - Issues with European Health Insurance Card
  - Social security contributions
  - Ignorance of rules determining the applicable legislation

# Main obstacles: Discrimination

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- Nationality
  - Accessing employment, education/schools
  - Fee differences
  - Discrimination by banks, price discrimination
- Civil status / Sexual orientation
  - Lack of consistent approach to recognition of partnerships  
→ free movement rights
- Ethnic origin/race
  - Discrimination against Roma



# Measures to counter abuse of rights

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- Marriages of convenience
- Fraud
- Negative impact on free movement
  - Limited data available
  - Inversion of the burden of proof > e.g. UK

# Recommendations to the EU

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- **Collect more systematic and comparable information** and data at Member State level
- Ensure proper **enforcement** to achieve better **transposition and implementation**
- **Clarify terms:** dependents, durable relationship, as soon as possible, sufficient resources, unreasonable burden, genuine chance of being engaged
- **Address citizens' complaints** as a priority and supplement SOLVIT with a hotline
- **Raising awareness** about rights

# Presentation by

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