



13.3.2024

## NOTICE TO MEMBERS

**Subject: Petition No 0869/2023 by F.M. (Italian) on difficulties registering as a foreign resident in Spain**

### 1. Summary of petition

The petitioner complains that it is very difficult to make an appointment on the online portal to obtain an electronic identity card for foreign citizens legally residing in Spain. In particular, it appears to be impossible to obtain it through official channels, and to be possible only by means of private agencies that pay for slots. What is more, the petitioner states that as he did not have access to employment services because he did not have an ID card of that kind, he had to give up employment opportunities. He therefore considers the Spanish procedure to be an infringement of EU citizens' freedom of movement and calls on the EU institutions to remove that obstacle and create a recognition document that is valid in all the Member States.

### 2. Admissibility

Declared admissible on 6 December 2023. Information requested from Commission under Rule 227(6).

### 3. Commission reply, received on 13 March 2024

Article 21(1) of the Treaty on the Functioning of the European Union stipulates 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". Under EU law, the respective limitations and conditions are to be found in 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<sup>1</sup>. According to Article 8 of Directive 2004/38/EC, the host Member State is entitled to require EU citizens,

<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004L0038>

who intend to reside on its territory for a period longer than 3 months, to register with the competent authorities. Paragraph 2 of Article 8 of Directive 2004/38 states that “[t]he 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 address of the person registering and the date of the registration.”. Similarly, pursuant to Article 19(2) of the Directive, for EU citizens having acquired permanent residence, Member States must issue, upon application, the document certifying permanent residence ‘as soon as possible’.

Article 25 of the Directive provides that possessing a residence document - such as a registration certificate - may under no circumstances be made a precondition for the exercise of a right or the completion of an administrative formality. This would include the right to search for a job in another Member State. According to Article 25, entitlement to rights (e.g. when seeking the assistance of public employment agencies, or the affiliation to the public health insurance scheme) may be attested by any other means of proof. This is because residence documents are declaratory in nature<sup>2</sup> that is, they do not create rights but serve to certify the existence of rights under EU free movement law. Compliance with administrative procedures or the possession of a residence document are thus not a prerequisite for lawful residence or enjoyment of rights in accordance with EU law on free movement of EU citizens and their family members<sup>3</sup>.

In this context, the Commission services understand that the registration certificate issued by the Spanish authorities based on Article 8 of Directive 2004/38/EC contains the NIE. Hence, inasmuch as the NIE is contained in the registration certificates issued by Spain, and it is required for a number of transactions while residing in Spain, EU citizens could see the rights regulated by Directive 2004/38/EC severely affected by significant difficulties and delays in obtaining such documents and thus in complying with the additional requirement of possessing the NIE. This would be the case, for instance, if they would not be allowed to obtain a health insurance card or to open a bank account without a NIE. This would be even more the case if EU citizens would need the NIE to carry out transactions in Spain at the beginning of their stay. Spain has transposed Directive 2004/38/EC into national law through Royal Decree 240/2007 of 16 February 2007<sup>4</sup>. For a residence in Spain exceeding three months, Article 7(5) of the Royal Decree 240/2007 of 16 February 2007 stipulates that EU citizens are required to apply in person to the office of foreigners in the province where they intend to stay or establish their residence or, failing that, to the relevant police station, to be registered in the Central Register of Foreigners. Such an application must be submitted within three months of the date of entry into Spain. A registration certificate stating the name, nationality and address of the registered person, the person’s identity number and the date of registration must be issued immediately. For permanent residence, Article 10(1) of the Royal Decree 240/2007 of 16 February 2007 stipulates that upon request of the EU citizen, the office of foreigners in the province where the person is resident, or, failing that, the police station concerned, shall, as soon as possible and after verifying the duration of residence, issue a certificate of the right of permanent residence. Having received multiple complaints denouncing the difficulties encountered by EU citizens and their family members residing in Spain to get appointments with the national authorities to obtain and renew their residence documents (i.e. registration certificate of a Union citizen, residence card of a family member of a Union citizen) as well the NIE, the Commission initiated a dialogue with the Spanish authorities. In that framework, the

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<sup>2</sup> In the context of free movement of workers, services and freedom of establishment, see judgment in case 48/75, *Royer*, ECLI:EU:C:1976:57.

<sup>3</sup> See also Recital 11 of Directive 2004/38/EC.

<sup>4</sup> <https://www.boe.es/eli/es/rd/2007/02/16/240/con>

Spanish authorities have explained that the NIE is a means of equipping a person present in Spain, both regularly and irregularly, with a personal sequential number for the sole purpose of identification. In parallel to this inquiry, the Commission services raised the issue of delays (including the difficulties in obtaining appointments) to obtain the registration certificate at the last meeting of the Expert Group on the right to free movement of persons (Free Movement Expert Group) (13 December 2023). The agenda for this meeting included delays in the issuance of passport/ID cards, visas and residence documents. The discussions held during that meeting enabled to facilitate an exchange of best practices among Member States. The agenda and the minutes of the Free Movement Expert Group meetings are publicly available<sup>5</sup>. The Commission services intend to ensure a follow up of that meeting with the Spanish authorities.

In any event, mobile EU workers should benefit from the rights linked to the principle of freedom of movement of workers enshrined in Article 45 TFEU. Possession of a personal identification number must not be a pre-condition for an EU citizen to have the right to work in the host Member State and must not constitute an impediment to the exercise of an EU citizen's free movement rights. This being said, both Article 45 TFEU and Regulation 492/2011<sup>6</sup> are directly applicable in the Member States. This means that every worker can invoke them before national authorities and courts. Lastly, on 8 November 2023, the European Parliament and the Council reached a political agreement on the Regulation establishing a framework for a European Digital Identity, as proposed by the Commission in June 2021<sup>7</sup>. The framework requires Member States to make European Digital Identity Wallets (EDIWs) available to all EU citizens, residents, and businesses, allowing them to identify themselves online and offline seamlessly across borders for public and private services. The new regulation will establish a harmonised secure framework where citizens can link their national digital identities with digital attributes and credentials (e.g. professional qualifications or diplomas) that will enable them to replace a variety of physical cards and passes and sign electronically, thus simplifying their everyday lives. For example, travelling will be made significantly easier as the EDIWs can be used for checking in to a hotel or renting a car in all Member States. It will also have positive effects in terms of professional mobility: when starting a new job in another Member State, the EDIWs will make it much easier to sign an employment contract, deregister from the previous place of residence and register at a new address. Other administrative steps, such as registering a car, could also be supported by the EDIWs. The EDIWs will provide more convenient, secure and privacy-enhancing alternatives to private identity solutions offered by the platforms.

## Conclusion

The Commission is in dialogue with the Spanish authorities regarding the difficulties that exist to obtain appointments to submit the applications for registration certificates and NIE. It will continue to monitor the situation.

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<sup>5</sup> <https://ec.europa.eu/transparency/expert-groups-register/screen/meetings?lang=en>

<sup>6</sup> Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union Text with EEA relevance (*OJ L 141*, 27.5.2011, p. 1–12), <https://eur-lex.europa.eu/eli/reg/2011/492/oj>

<sup>7</sup> Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 910/2014 as regards establishing a framework for a European Digital Identity, COM (2021) 281 final, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM%3A2021%3A281%3AFIN> .