

Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance)

## CHAPTER IV

### **Right of permanent residence**

#### Section I

#### **Eligibility**

##### *Article 16*

#### **General rule for Union citizens and their family members**

1 Union citizens who have resided legally for a continuous period of five years in the host Member State shall have the right of permanent residence there. This right shall not be subject to the conditions provided for in Chapter III.

2 Paragraph 1 shall apply also to family members who are not nationals of a Member State and have legally resided with the Union citizen in the host Member State for a continuous period of five years.

3 Continuity of residence shall not be affected by temporary absences not exceeding a total of six months a year, or by absences of a longer duration for compulsory military service, or by one absence of a maximum of twelve consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.

4 Once acquired, the right of permanent residence shall be lost only through absence from the host Member State for a period exceeding two consecutive years.

##### *Article 17*

#### **Exemptions for persons no longer working in the host Member State and their family members**

1 By way of derogation from Article 16, the right of permanent residence in the host Member State shall be enjoyed before completion of a continuous period of five years of residence by:

- a workers or self-employed persons who, at the time they stop working, have reached the age laid down by the law of that Member State for entitlement to an old age pension or workers who cease paid employment to take early retirement, provided that they have been working in that Member State for at least the preceding twelve months and have resided there continuously for more than three years.

If the law of the host Member State does not grant the right to an old age pension to certain categories of self-employed persons, the age condition shall be deemed to have been met once the person concerned has reached the age of 60;

- b workers or self-employed persons who have resided continuously in the host Member State for more than two years and stop working there as a result of permanent incapacity to work.

If such incapacity is the result of an accident at work or an occupational disease entitling the person concerned to a benefit payable in full or in part by an institution in the host Member State, no condition shall be imposed as to length of residence;

- c workers or self-employed persons who, after three years of continuous employment and residence in the host Member State, work in an employed or self-employed capacity in another Member State, while retaining their place of residence in the host Member State, to which they return, as a rule, each day or at least once a week.

For the purposes of entitlement to the rights referred to in points (a) and (b), periods of employment spent in the Member State in which the person concerned is working shall be regarded as having been spent in the host Member State.

Periods of involuntary unemployment duly recorded by the relevant employment office, periods not worked for reasons not of the person's own making and absences from work or cessation of work due to illness or accident shall be regarded as periods of employment.

2 The conditions as to length of residence and employment laid down in point (a) of paragraph 1 and the condition as to length of residence laid down in point (b) of paragraph 1 shall not apply if the worker's or the self-employed person's spouse or partner as referred to in point 2(b) of Article 2 is a national of the host Member State or has lost the nationality of that Member State by marriage to that worker or self-employed person.

3 Irrespective of nationality, the family members of a worker or a self-employed person who are residing with him in the territory of the host Member State shall have the right of permanent residence in that Member State, if the worker or self-employed person has acquired himself the right of permanent residence in that Member State on the basis of paragraph 1.

4 If, however, the worker or self-employed person dies while still working but before acquiring permanent residence status in the host Member State on the basis of paragraph 1, his family members who are residing with him in the host Member State shall acquire the right of permanent residence there, on condition that:

- a the worker or self-employed person had, at the time of death, resided continuously on the territory of that Member State for two years; or
- b the death resulted from an accident at work or an occupational disease; or
- c the surviving spouse lost the nationality of that Member State following marriage to the worker or self-employed person.

#### *Article 18*

#### **Acquisition of the right of permanent residence by certain family members who are not nationals of a Member State**

Without prejudice to Article 17, the family members of a Union citizen to whom Articles 12(2) and 13(2) apply, who satisfy the conditions laid down therein, shall acquire the

right of permanent residence after residing legally for a period of five consecutive years in the host Member State.

## Section II

### **Administrative formalities**

#### *Article 19*

#### **Document certifying permanent residence for Union citizens**

- 1 Upon application Member States shall issue Union citizens entitled to permanent residence, after having verified duration of residence, with a document certifying permanent residence.
- 2 The document certifying permanent residence shall be issued as soon as possible.

#### *Article 20*

#### **Permanent residence card for family members who are not nationals of a Member State**

- 1 Member States shall issue family members who are not nationals of a Member State entitled to permanent residence with a permanent residence card within six months of the submission of the application. The permanent residence card shall be renewable automatically every ten years.
- 2 The application for a permanent residence card shall be submitted before the residence card expires. Failure to comply with the requirement to apply for a permanent residence card may render the person concerned liable to proportionate and non-discriminatory sanctions.
- 3 Interruption in residence not exceeding two consecutive years shall not affect the validity of the permanent residence card.

#### *Article 21*

#### **Continuity of residence**

For the purposes of this Directive, continuity of residence may be attested by any means of proof in use in the host Member State. Continuity of residence is broken by any expulsion decision duly enforced against the person concerned.