



**FEANTSA Toolkit**

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**Free Movement of EU citizens  
and access to social assistance  
Guidance for Homeless Service Providers**

The right to free movement between European Union (EU) Member States is one of the fundamental rights EU citizens have. Many people make use of this right every day and many people have permanently established a new life abroad, thus contributing to the wealth and growth of the host society. However, free movement rules might sometimes appear difficult to interpret and they can be very imprecisely implemented, particularly regarding what happens when EU citizens become destitute in a Member State other than the one they are a nationals of. Therefore, the main objective of this document is to provide answers to questions that homeless service providers are often asked when they provide services to an EU citizen who, whilst exercising the right to free movement, becomes destitute.

The aim is to regularly update this document with new legislation and case-law that relate to free movement. However, this document intends to provide initial and general guidance - if you think your country is not implementing free movement rules appropriately, you are advised to contact a lawyer in the Member State where you reside or to contact Mauro Striano [mauro.striano@feantsa.org](mailto:mauro.striano@feantsa.org) - FEANTSA Migration Policy Officer - who will help you find more information.

1. What are the rights guaranteed by citizenship of the European Union?
2. What do EU citizens and their family members need if they want to reside in another Member State?
3. Who retains the status of 'worker' or 'self-employed person' if they lose their job?
4. What is the definition of 'worker' in European Union law?
5. Does it need to be full-time work?
6. Is the level of remuneration important?
7. What does 'equal treatment' mean?
8. Can EU citizens move to another Member State to look for a job?
9. Can job-seekers access the labour market?
10. Can job-seekers access benefits?
11. For how long can EU citizens be jobseekers in another Member State?
12. Can EU citizens be expelled because they have recourse to the social assistance system of the host Member State?
13. How does a Member State assess whether someone with the right to reside there is a burden on the social assistance system?
14. For which reasons can EU citizens be expelled?

## 1. What are the rights guaranteed by citizenship of the European Union?

- ✓ freedom of movement and residence throughout the Union
- ✓ the right to vote and stand as a candidate in municipal elections and in elections to the European Parliament in the state where he/she resides
- ✓ protection by the diplomatic and consular authorities of any Member State where the State of which the person is a national is not represented in a non-member country
- ✓ the right to petition the European Parliament and apply to the Ombudsman

### Concept of EU Citizenship

EU citizenship as a distinct concept was first introduced by the Maastricht Treaty in 1992. Prior to the 1992 Maastricht Treaty, the European Communities treaties provided guarantees for the free movement of economically active persons, but not, generally, for others. The interpretation of Treaty provisions on free movement has been very important since they considered **free movement not as having a narrow economic purpose, but rather a wider social and economic purpose**. In the *Levin* ruling, the Court found that the "freedom to take up employment was important, not just as a means towards the creation of a single market for the benefit of the Member State economies, but as a right for the worker to raise her or his standard of living". (see *Case 53/81 Levin v Staatssecretaris van Justitie*)

## 2. What do EU citizens and their family members need if they want to reside in another Member State?

### For up to three months:

- ✓ A valid identity card or passport

### For more than three months:

- ✓ They have to be workers or self-employed, or
- ✓ They must have sufficient resources not to become a burden on the social assistance system and must have comprehensive sickness insurance cover, or
- ✓ They have to be students, have sufficient resources not to become a burden on the social assistance system and have

### Who is considered a 'family member'?

- The Union citizen's spouse;
- the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of an EU Member State
- the direct descendants of the Union citizen who are under the age of 21 or are dependants and those of the spouse or partner
- the dependent direct relatives in the ascending line and those of the spouse or partner

comprehensive sickness insurance cover.

### 3. Who retains the status of 'worker' or 'self-employed person' if they lose their job?

- ✓ Those who are temporarily unable to work because of an illness or an accident
- ✓ Those who are involuntarily unemployed after having been employed for more than 12 months and have registered as job-seekers
- ✓ Those who are involuntarily unemployed after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first twelve months and having registered as job-seekers → **In this case, 'worker' status is retained for no less than six months**
- ✓ Those who embark on vocational training → **the training must be related to the individual's previous employment, unless the person concerned is involuntarily unemployed.**

### 4. What is the definition of 'worker' in European Union law?

The essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for remuneration. Someone in this kind of relationship is defined as a 'worker'.

### 5. Does it need to be full-time work?

- ✗ No, it does not: the right to free movement applies to both part-time and full-time work, as long as the work is effective and genuine and not purely marginal and ancillary.

#### Case 53/81 Levin v Staatssecretaris van Justitie [1982] 1035:

Ms. Levin was a British national, married to a South African national, who moved to the Netherlands. Ms. Levin had undertaken a small amount of part-time work and she and her husband supplemented their earned income with investment income. The earned income was far below what could be regarded as a necessary income according to Dutch Law. The question was whether she could be regarded as a worker for the purposes of EU law.

The European Court of Justice stated that **it does not matter if the income is lower than the minimum required for subsistence. What is important is that the work activity be effective and genuine, not marginal and ancillary.**

### 6. Is the level of remuneration important?

- ✗ No, it is not: remuneration is a necessary precondition for an activity to constitute work yet the amount is not important. The right to free

movement applies whether or not the worker requires additional financial assistance from the Member State into which s/he moves. Remuneration may be indirect *quid pro quo* (e.g. board and lodging) rather than strictly monetary remuneration for work.

### **7. What does 'equal treatment' mean?**

Any discrimination based on nationality is prohibited in connection with employment, remuneration and other working conditions, social and tax advantages and social welfare. This includes not only direct discrimination based on nationality, but also indirect discrimination: even if certain criteria are applicable irrespective of nationality, they must be regarded as indirectly discriminatory if there is a risk of migrant workers being placed at a particular disadvantage. Common examples of indirect discrimination are situations where a particular allowance is conditional on a residence condition or language requirements for certain posts that may by definition be more easily satisfied by nationals than by non-nationals.

### **8. Can EU citizens move to another Member State to look for a job?**

✓ Yes, they can: they have the right to reside in another Member State for the purposes of job-seeking during 6 months and even more than 6 months if they can provide evidence that they are continuing to seek employment and that they have a genuine chance of being employed.

! EU citizens can go to another EU country to look for work and continue to receive unemployment benefits from the country where they became unemployed for at least 3 months

### **9. Can job-seekers access the labour market?**

✓ Yes, they can: they are entitled to treatment equal to that received by nationals as regards access to employment

### **10. Can job-seekers access benefits?**

✓ Yes, they can. Indeed, they should also qualify for equal treatment with regard to access to benefits of a financial nature intended to facilitate access to employment on the labour market of the host Member State (i.e. jobseeker allowances).

! However, a Member State could require that there be a genuine link between the jobseeker and the geographic employment market in question, such as the person needing to have, for a reasonable period, genuinely sought work in the Member State in question. National legislators remain competent for determining the nature of the link with their employment market but they should respect the principle of proportionality. Criteria should not go beyond what is necessary to conclude that the person concerned is genuinely seeking work on the employment market of the host Member State. Financial benefits to facilitate access to the labour market cannot be regarded as constituting 'social assistance', thus having recourse to these benefits can never lead to the expulsion of the jobseeker receiving them.

#### **Collins v Secretary of State for Work and Pensions**

Mr Collins was an Irish national who moved to the UK, claimed job-seekers' allowance and had his claim rejected. The European Court of Justice found that the rights of job-seekers should be interpreted in the light of the more general right to equal treatment of citizens. The ECJ decided that citizens of the Union could rely on the Treaty to have access to 'Benefits of a financial nature intended to facilitate access to employment in the labour market of a Member State'.

Therefore, the Court ruled that **although it was a legitimate and perfectly legal act for a Member State to require that a job-seeker has genuine link to the employment market in the Member State in which he claims job-seeking allowance, it was not permissible under Union law for a residence condition to apply in a disproportionate and discriminatory way.** Hence the UK had to justify on objective grounds the refusal to grant Mr Collins job-seekers' allowance and show that the grounds were proportionate and legitimate and not merely on the grounds of national discrimination.

### **11. For how long can EU citizens be jobseekers in another Member State?**

Jobseekers have the right to reside in a host Member State for a "reasonable period" of time in order to look for a job. In the absence of a definition of "reasonable period", most EU countries are now operating a 6-month period, though some EU countries are still operating a 3-month period. After that period expires, as long as jobseekers provide evidence that they are continuing to seek employment and have a genuine chance of being employed, they cannot be asked to leave the country. For example, if they still have interviews or tests to attend.

## 12. Can EU citizens be expelled because they have recourse to the social assistance system of the host Member State?

✘ No, they cannot. Indeed, an expulsion measure should not be the automatic consequence of recourse to the social assistance system. Those with the right to reside in a host Member State should not be expelled as long as they do not become an unreasonable burden on the social assistance system of that host Member State.

## 13. How does a Member State assess whether someone with the right to reside there is a burden on the social assistance system?

The host Member State should examine on a case-by-case basis whether or not it is a case of temporary difficulties and take into account the duration of residence, the personal circumstances and the amount of aid granted in order to consider whether the beneficiary has become an unreasonable burden on its social assistance system and to proceed to his/her expulsion.

### **Rudy Grzelczyk v. Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve [2001]**

Mr Grzelczyk, a French national, undertook a course of study in physical education at the Catholic University of Louvain-la-Neuve (Belgium). In the fourth year of his studies, Mr Grzelczyk applied to the Public Social Assistance Centre (CPAS) for a minimum subsistence allowance, or “minimex”. He was initially granted the allowance but when the CPAS applied to the Belgian state authorities to have the payments reimbursed, the application was refused on the ground that Grzelczyk was not a Belgian national. The question which arose was whether, following Grzelczyk’s minimex application, the host Member State could not only to refuse him entitlement to the benefit in question but also to revoke his right of residence. The Court of Justice held that the minimex was indeed a social benefit and that a Belgian student in the same position as Mr Grzelczyk would have satisfied the conditions for obtaining it. The Court thus found that Mr Grzelczyk had suffered discrimination solely on the grounds of his nationality, which, within the sphere of application of the EC Treaty, was prohibited.

## 14. For which reasons can EU citizens be expelled?

For reasons of public policy or public security.

! However, before making an expulsion decision Member States should take account 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. Moreover, the personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental

interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.