

The right of residence of citizens of the European Union and their family members and the rules of obtaining permanent residence

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The free movement of persons contains an area without internal frontiers, which is one of the fundamental freedoms of the internal market. Citizenship of the Union should be the fundamental position of nationals of the Member States of the Union, when they exercise their right of free movement and residence. So it is required to review and codify the existing Community instruments dealing separately with self-employed persons, workers, as well as students and other persons in order to strengthen and simplify the right of free movement and residence of nationals of the Member States. Directive 2004/38/EC of the European Parliament and the Council determines general rules for Union citizenship. Citizenship of the Union confers on every citizen of the Union a primary and individual right to move and indwell freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaty and to the measures adopted to give it effect.

The right to move and reside freely within the territory of the Member States of all Union citizens should be also allowed to their family members, irrespective of nationality. In this context the definition of 'family member' contains the registered partner, if the host Member State treats this partnership as equivalent to marriage. Other family members such as siblings, cousins, aunts and uncles and other relatives possess the right to have the right to move and residence facilitated by the host Member States if they are dependant on any EU citizen or they are members of household or when serious health problems strictly re-

quire his personal care. The formalities related to the free movement of citizens of European Union within the territory of Member States should be clearly determined, without prejudice to the provisions applicable to national border controls. With a view to make easy the free movement of family members who are not nationals of a Member State, those who have already acquired a residence card should be free from the requirement to obtain an entry visa in accordance with Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals have visas when passing the external borders and those whose nationals are free from that requirement or, where appropriate, of the applicable national legislation.

Union inhabitants who have resided lawfully for an unceasing period of five years in the host Member State shall have the right of permanent residence there. Provisional absences not more than six months a year totally, or by absence for compulsory military service, or by one absence of 12 continuous months for essential reasons such as pregnancy and childbirth, severe illnesses, educational purposes, or a posting to another Member state or a third country should not be affected to incessancy of residence. Once acquired, the right of permanent residence should be withdrawn only through absence from the host Member State for a period more than two consecutive years.

The right of permanent residence can be acquired before completing of the continuous period of five years of residence in these situations:

a) employees or freelance persons who stop working, when have reached the age laid down by the law of that Member State for claimed to

an old age superannuation or employees who lay off salaried working to take early superannuation, ensured that they have been working in that Member State for at least the preceding twelve months and have dwell in there incessantly for more than three years.

b) employees or freelance persons who have dwelled incessantly in the host Member State for more than two years and lay off working there as a result of permanent incapacity to work. If such incapacity is the consequence of an mishap at work or an industrial disease refer to the person related to a utility payable in full or in part by an institution in the host Member State, no condition should be imposed as to length of residence;

c) employees or freelance persons who, after three years of continuous working and residence in the host Member State, work in an employed or freelance 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 working spent in the Member State in which the person related is working should be considered as having been spent in the host Member State. Periods of involuntary unemployment duly recorded by the appropriate working office, periods not worked for reasons not of the person's own making and absences from work or stopping of work due to illness or accident should be regarded as periods of working.

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Xülasə

Açar sözlər: Avropa Birliyi (AB), Avropa Birliyi üzv dövlətləri, şəxslərin azad hərəkəti, yerləşmək hüququ, daimi rezidentlik.

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Резюме

Ключевые слова: Европейский Союз (ЕС), Члены Европейского Союза, свободное передвижение людей, право проживания, постоянное место жительства

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