



# EU GUIDE

Questions and answers about the rights of EU citizens



GÖTEBORGS KYRKLIGA  
STADSMISSION



**FEANTSA** is a European federation of national organisations that work with the homeless. FEANTSA was founded in 1989 as a non-governmental organisation with the aim of preventing and alleviating poverty and social exclusion. At present, it has more than 130 member organisations working in almost 30 European countries. FEANTSA cooperates with the EU's institutions and works in an advisory capacity at the Council of Europe and the UN. FEANTSA receives financial support from the European Commission.

**Göteborgs Stadsmission** (City Mission Gothenburg) is one of the member organisations of FEANTSA. We are a non-governmental movement that was established in 1952 and we work to alleviate poverty, homelessness and alienation in our city and our region. One of the initiatives run by Göteborgs Stadsmission is Crossroads, a centre for EU citizens and non-EU citizens with long term residence in another EU country who are currently residing in Gothenburg and are homeless and/or unemployed.

**Crossroads'** primary task is to counter social and financial alienation by informing people of their rights and obligations, as well as by offering advice on how things work in Swedish society. Among other things, we offer personal assistance in visitors' native languages and mediate contact with the authorities. Crossroads also works to compile and mediate knowledge about migration in the EU and vulnerability on local, national and European levels.

**EU citizen**

Person with citizenship in an EU country.

**Long-term resident (third-country national)**

Persons who have lived in an EU country for at least five years with a residence permit may apply for long-term resident status in that country. Persons who are granted long-term resident status receive a special EC/EU residence permit. This gives them certain rights, similar to those of an EU citizen. This makes it easier for them to move to another EU country in order to work, study, start their own business or live on their pension, for example.<sup>2</sup>

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<sup>2</sup> <http://www.migrationsverket.se/English/Private-individuals/EU-citizens-and-long-term-residents/Long-term-residents.html>, 2015-12-15.

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## 1. WHICH RIGHTS ARE ATTACHED TO THE CITIZENSHIP OF THE EUROPEAN UNION?<sup>3</sup>

- Right of free movement and residence in the EU.
- Right to vote and to stand as a candidate in municipal elections and in elections to the European Parliament in the member state in which he or she resides.
- Right to protection by the diplomatic or consular authorities of any member state in the territory where the State of which the person is a national is not represented in a non-member country.
- Right to petition the European Parliament and complain to the European Ombudsman.

### **EU citizenship**

Any person who holds the nationality of an EU country is automatically also an EU citizen. EU citizenship is a citizenship over and above national citizenship and entails an independent tie to the rights and obligations under the EU treaties. Member states are obligated to respect that citizenship when EU law is applicable under the treaties.

### **Free movement**

The right to reside in the EU's different member states is a direct consequence of the treaties: for EU citizens in accordance with Article 21 of TFEU and every worker and jobseeker in accordance with Article 45.

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<sup>3</sup> *Treaty on the Functioning of the European Union (TFEU).*

## 2. WHAT DO EU CITIZENS AND THEIR FAMILIES NEED WHEN THEY MOVE TO SWEDEN?

Only valid identity cards or passports.

## 3. IF YOU WOULD LIKE TO RESIDE IN SWEDEN?<sup>4</sup>

**For up to three months:** Just a valid identity card or passport.

**For more than three months:** You must be a worker, a jobseeker, self-employed or a student or have sufficient resources not to become an unreasonable burden on the social assistance system of the host member state, as well as hold comprehensive health insurance.

**Long-term resident:** In addition to fulfilling the above, a residence permit must be obtained after three months.

## 4. WHO IS CONSIDERED A FAMILY MEMBER?<sup>5</sup>

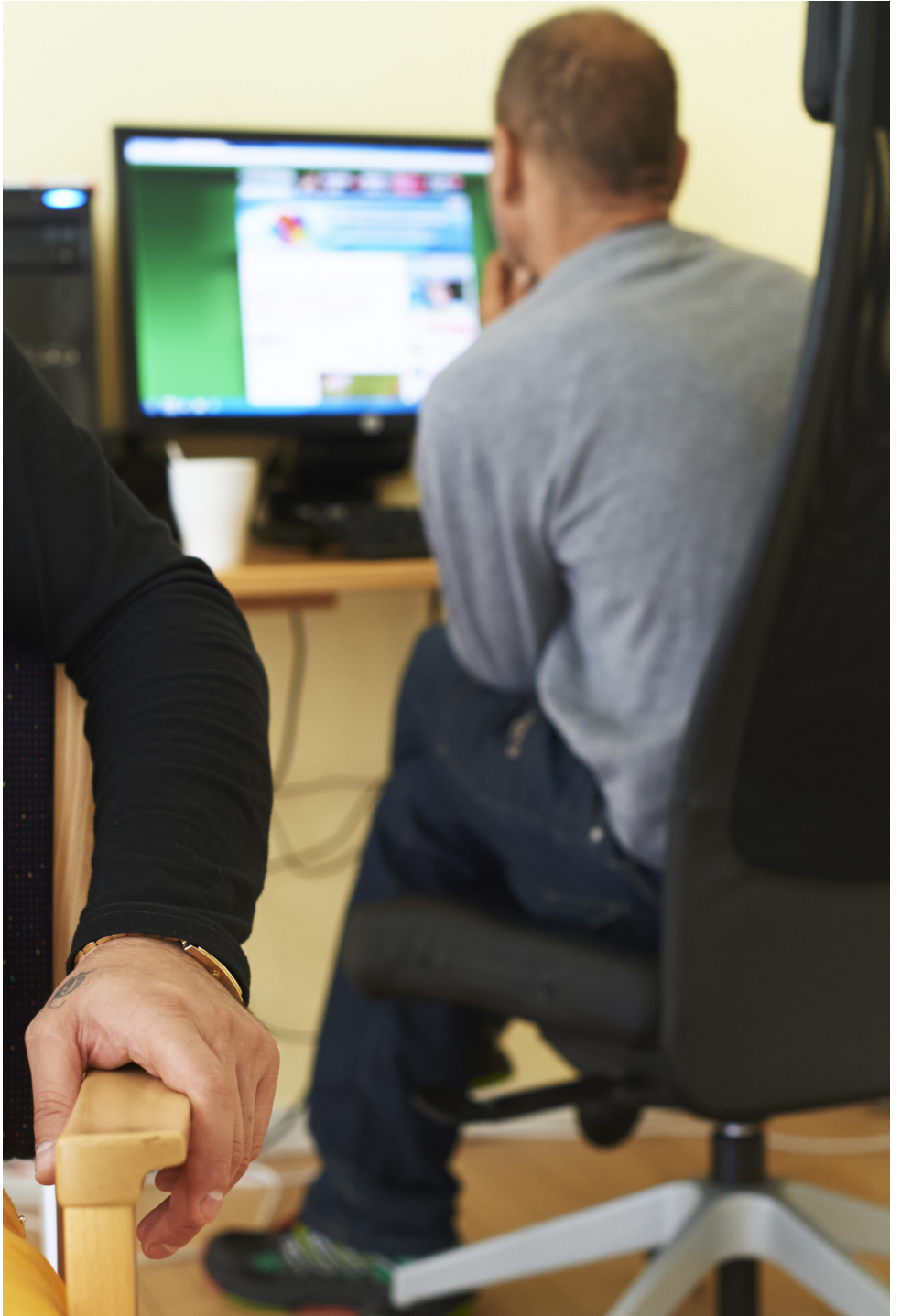
- Husband, wife or partner (partnership means that two people live together permanently as a couple in a joint household<sup>6</sup>).
- The partner with whom the EU citizen has entered into a registered partnership under the legislation of another EU country that equates partnership with marriage.
- Relatives in descending lines who are under 21 years of age or are dependants. Also relatives of husband or wife.
- Related dependants in ascending lines of the person with the right to reside or their husband/wife.

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<sup>4</sup> Compare Directive 2004/38 and Swedish Aliens Act (SFS 2005:716).

<sup>5</sup> Compare Directive 2004/38 and Swedish Aliens Act (SFS 2005:716).

<sup>6</sup> Compare Swedish Cohabitation Act (2003:376).





## 5. WHAT IS THE DEFINITION OF WORKER ACCORDING TO EUROPEAN UNION LAW?

The concept of worker *has a definition in EU law that must not be subordinated to national legislation.*<sup>7</sup> According to the established case law of the Court of Justice of the European Union (CJEU)<sup>8</sup>, free movement is one of the EU's founding principles and regulations governing this freedom *must* therefore be interpreted in a manner that ensures the implementation of this principle.

The essential feature of an employment relationship<sup>9</sup> can be summarised as follows:

- Someone
- Who for someone else<sup>10</sup>
- For a certain period of time
- For remuneration
- Performs services

It is necessary to make an overall assessment of the circumstances of each individual case.<sup>11</sup> The work that is conducted shall be of a nature that is normally associated with the national labour market.<sup>12</sup> Illicit work is not accepted.

### **The concept of worker is interpreted exclusively by EU law**

C-53/81 Levin: Levin was a British citizen married to a South African national. They 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 EU law purpose. The CJEU ruled 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.

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<sup>7</sup> *The criteria that the CJEU has established are binding for all member states, compare Swedish government proposal 2005/06:77 p. 183.*

<sup>8</sup> *Compare, for example, C-292/89 Antonissen.*

<sup>9</sup> *Lawrie-Blum C-66/85 [1986] ECR 2121.*

<sup>10</sup> *It requires the involvement of two parties, as in CJEU case C-107/94 Asscher.*

<sup>11</sup> *See ruling C-413/01 Ninnie-Orasche.*

<sup>12</sup> *See ruling C-456/02 Trojani.*

## 6. DOES IT NEED TO BE FULL-TIME WORK?

No. The right to free movement applies to both part-time and full-time, as well as many other types of employment, such as traineeships, apprenticeships, domestic work and au pair work.<sup>13</sup>

## 7. IS THE AMOUNT OF REMUNERATION IMPORTANT?

No. A wage is a necessary precondition for activity that comprises work. The amount of remuneration, however, is irrelevant. There are no requirements on a minimum wage or subsistence for being considered a worker. There is nothing to prevent you from supplementing your wages with private savings or income support.<sup>14</sup> Remuneration can even comprise food and lodging.

### **C-196/87 Steymann**

A German citizen living in the Netherlands had worked as a plumber before joining the Bhagwan Community, a religious community that provided its members with, among other things, food and lodging. Steymann conducted plumbing work as well as other household duties. He then applied for the right of residence, which was denied on the grounds that he was not to be considered a worker. The CJEU disagreed and ruled that even if the work was unpaid, it was not financially ineffective. Steymann provided services of value to the religious community that would otherwise have been conducted by someone else. In return he was remunerated with food and lodging.

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<sup>13</sup> See, for example, *C-3/90 Bernini* and *C-109/04 Kranemann*.

<sup>14</sup> Compare *C-53/81 Levin*.

## 8. WHO RETAIN THE STATUS OF WORKER OR SELF-EMPLOYED PERSON, WHEN THE JOB IS LOST?<sup>15</sup>

- A person who is temporarily unable to work due to illness or accident.
- A person who suffers involuntary unemployment after having been employed for more than one year and who is registered as a jobseeker at the local job centre.
- A person who is involuntary unemployed after completing a fixed-term employment contract of less than a year or who has become involuntary unemployed during the first twelve months and has registered as a jobseeker. *In this case the status of worker is retained for at least six months.*
- A person who begins a vocational training course. If he or she is not involuntary unemployed, *the status of worker shall only be retained if the vocational training course is related to their previous occupation.*
- Women who cease working or looking for work due to physical limitations in conjunction with pregnancy and/or giving birth retain their worker status on the condition that they return to work or find other employment within a reasonable amount of time of giving birth.<sup>16</sup>

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<sup>15</sup> Compare Directive 2004/38, Section 3a, Paragraph 5a Swedish Aliens Act.

<sup>16</sup> Compare C-507/12 Saint Prix versus Secretary of State for Work and Pensions.

## 9. WHAT DOES EQUAL TREATMENT INCLUDE?

The principle of equal treatment under EU law means that an EU citizen has the right to the same benefits and on the same conditions as the member state's own citizens.<sup>17</sup> All discrimination based on nationality is prohibited. That is, EU citizens shall be treated in the same manner as Swedish colleagues as regards, for example:

- Working conditions (such as salary, termination of employment and re-employment).
- Right to further training/education.
- Social benefits, tax benefits and social welfare.

Even if the conditions seem neutral and are applied regardless of nationality, they shall be deemed indirectly discriminatory if there is a risk of an EU citizen finding himself or herself in a less favourable position than would be the case for a Swedish citizen.

**One example of indirect discrimination** comprises situations in which a particular advantage is conditional upon residence requirements or language skills that by definition are easier for a Swedish citizen to fulfil. Example:

- **Language skills** – jobseekers from other EU countries may need to show that they have the language skills required for the job, but the requirements shall be reasonable and necessary in order to conduct the work.

A carpenter does not need to be able to speak Swedish to obtain a Swedish vocational certificate.

In order to be employed as a cleaner, a reasonable requirement would be for the applicant to be able to understand a job description and safety instructions. General requirements for fluency in written and spoken Swedish, on the other hand, would be disproportionate.

- **Workers** from other EU countries have the right to the same social benefits and tax benefits as Swedish workers. This may concern, for example, discounts on public transport, child allowance and so on.<sup>18</sup>

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<sup>17</sup> Articles 18 and 45 of TFEU.

<sup>18</sup> C-85/96 *Martínez Sala*.

## 10. CAN EU CITIZENS MOVE TO SWEDEN TO LOOK FOR WORK?

Yes. EU citizens have the right to reside in Sweden to look for work for a minimum of six months and even longer if they can show that they are actively looking for work and have a real chance of finding employment.<sup>19</sup>

Long-term residents have the right to look for work for three months.

## 11. HOW DO I REGISTER AS A JOBSEEKER AT THE JOB CENTRE?

### **EU citizens and long-term residents in Sweden:**

Contact the local job centre and explain that you want to register as a jobseeker. In order for you to register, the job centre needs to acquire a so-called co-ordination number from the Swedish Tax Agency. Once you have received a co-ordination number, you need to finalize your application.

What do you need?

- National ID card or passport.
- Address in Sweden, in order to receive information from the job centre.

### **Long-term resident in another EU country:**

- EC/EU residence permit from an EU country.

### **Also good to have!**

CV, certified copies of qualifications, certificates from previous employers.

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<sup>19</sup> C-292/89 Antonissen.

## 12. HOW LONG CAN EU CITIZENS LOOK FOR WORK IN SWEDEN?<sup>20</sup>

A jobseeker has the right of residence for a reasonable amount of time in order to learn of job opportunities and to take necessary measures to gain employment.

**Jobseekers** have the right to reside in Sweden for at least six months without any special conditions or formalities. Once six months has passed, the jobseeker has an extended right of residence if he or she can show that they are actively looking for work and have a real chance of finding employment.

**Long-term residents** can look for work for a maximum of three months. After this time, the profile of the jobseeker is removed from the job centre database if they do not fulfil the requirement for a residence permit.

A clear example of an active jobseeker is a person who is registered at the job centre and actively uses the services offered there by, for instance, following established action plans and submitting activity reports detailing job applications.

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<sup>20</sup> Compare point (9) of Directive 2004/38, Article 14.4 b of Directive 2004/38 and Swedish government proposal 2005/06:77 p. 185 ff.

### **Jobseekers are covered by free movement**

According to the CJEU in the case C-292/89 Antonissen, free movement encompasses a right for citizens within the EU to move freely between and reside in the territories of other member states in order to look for work there. The court also ruled that the (in the present case) national limit of six months is not – in general – to be considered insufficient. The court did, however, state that after the end of such a time period the right of residence is retained if the concerned person continues to seek work and has a real chance of finding employment.

### **Right of residence as a jobseeker**

Jönköping Administrative Court of Appeal ruled in case number 3248-07 that it was wrong to deny an application for income support on the grounds that the applicant lacked the right of residence.

EU citizens looking for work have, in accordance with the Swedish Aliens Act, Chapter 3a, Section 3, Paragraph 2, the right of residence if they have a real chance of finding employment. In the present case, both the county administrative court and the administrative court of appeal ruled that the applicant, who had been in Sweden for four months, studied Swedish language for immigrants and had technical qualifications, fulfilled the requirements for the right of residence and remitted the matter for review under the Swedish Social Services Act.

## 13. CAN EU CITIZENS LOOKING FOR WORK GAIN ACCESS TO THE LABOUR MARKET?

Yes. They are entitled to equal treatment with Swedish citizens as regards access to the labour market.

### **Equal treatment for jobseekers**

Case C-138/02 Collins: Collins had dual Irish-American citizenship and moved to the UK to look for work in the social services sector. One month later he applied for jobseeker's allowance, which he was denied on the grounds that he was not deemed to actually reside in the UK. The CJEU, however, ruled that an EU citizen looking for work in another member state must be covered by equal treatment even as regards a benefit of a financial nature intended to facilitate access to employment in the labour market of a member state. The court ruled that it was in fact permissible for a member state to require that a jobseeker has a genuine link to the national labour market. It was not permissible for a residence condition to apply in a disproportionate and discriminatory way. Consequently, the UK needed to provide objective grounds for rejecting Collins' application.

According to the above reasoning, it is clear that EU citizens who are looking for work in the Swedish labour market in the same manner as Swedish citizens ought to be given *access to labour market initiatives in the shape of, for example, education, traineeships and administrative services offered by job centres*. Exceptions must be made on objectively acceptable grounds.



## 14. CAN JOBSEEKERS GAIN ACCESS TO FINANCIAL BENEFITS?

Yes. EU citizens and long-term residents shall be given access to every financial benefit that is intended to facilitate gainful employment in a member state's labour market on the same terms as the member state's citizens. The condition is that there is a genuine link to the labour market, such as the jobseeker has been looking for work for a certain period of time.<sup>21</sup>

*It is not, however, permissible to set demands on residence in a discriminatory or disproportionate manner.*



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<sup>21</sup> C 138/02 Collins.

## 15. CAN JOBSEEKERS GAIN ACCESS TO FINANCIAL AND SOCIAL SUPPORT?

Yes. In general, an EU citizen in Sweden shall be given the same access to support as a Swedish citizen.

### **Social benefits**

C-184/99 Grzelczyk: Rudy Grzelczyk, a French citizen undertook a course of physical education at a university in Belgium and took up residence in Belgium. During the first three years of his studies, he covered his costs for living, accommodation and studies by taking on paid work and by obtaining credit facilities. During the fourth year of his studies, Grzelczyk applied for the minimum subsistence allowance (known as minimex). He was initially granted the allowance but when the CPAS applied to the Belgian state authorities for reimbursement of the payments, the application was refused on the ground that Grzelczyk was not a Belgian national. The issue was whether Grzelczyk had forfeited his right of residence by submitting an application. The CJEU ruled 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 ground of his nationality, which, within the sphere of application of the EU Treaty, was prohibited.

In other words, a state authority cannot deny an EU citizen financial aid without first reviewing the individual case and a rejection must be based on objectively acceptable grounds.

This has been noted in a number of administrative court of appeal rulings. See, for example: Jönköping Administrative Court of Appeal ruling in case number 3248-07, Gothenburg Administrative Court of Appeal ruling in case number 5917-09, Gothenburg Administrative Court of Appeal ruling in case number 1600-09 and Stockholm Administrative Court of Appeal ruling in case number 2422-13.

## 16. HOW DO I REGISTER AT THE SWEDISH TAX AGENCY?

An EU citizen who fulfils the requirements for the right of residence and wants to register as resident in Sweden must:

- Be a worker (see above – points 5-6-7).
- Be self-employed.
- Be a student or a pensioner or have sufficient resources/private savings and comprehensive health insurance.



The Swedish Tax Agency interprets the law such that the right of residence for jobseekers applies for up to six months. In order to be registered as a resident, that is, listed in the Swedish Population Register, you need to be able to show that you intend to reside in Sweden for at least one year. As a result, an application for registration can be denied. According to the Swedish Aliens Act, however, EU citizens looking for work have the right to reside in Sweden for at least six months without any special conditions or formalities. Once six months has passed, the jobseeker has an extended right of residence if he or she can show that they are actively looking for work and have a real chance of finding employment. This means that even jobseekers ought to be able to register as residents if they intend to reside in Sweden for at least one year.

## 17. PERMANENT RIGHT OF RESIDENCE

Five years after having worked, studied, run your own business or lived on private savings in Sweden you can be granted permanent right of residence. Permanent right of residence means that you are treated the same as a Swedish citizen.

Your application for permanent right of residence should be submitted to the Swedish Migration Agency.<sup>22</sup>

## 18. CAN EU CITIZENS BE EXPELLED BECAUSE THEY MAKE RECOURSE TO THE SOCIAL ASSISTANCE SYSTEM OF THE HOST MEMBER STATE?

No. The fact is that expulsion should not be the automatic consequence.

An EU citizen's right to reside shall not be affected as long as they are not an unreasonable burden on the host country's national insurance system.

### Reasonable burden

Compare Ruling Grzelczyk, C-184/99, p. 42-44, in which the CJEU ruled that "unreasonable burden" ought to be interpreted such that a reasonable burden should be accepted, which is why expulsion must not take place automatically and without grounds.

A number of factors, such as amount, duration, temporary nature of the difficulties and total extent of the burden that a financial allowance would entail for the national insurance system must be considered.<sup>23</sup> If, as a result of these considerations, the authorities conclude that the persons have become an unreasonable burden, the right of residency *can* be revoked.

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<sup>22</sup> For more information, see: <http://www.migrationsverket.se/English/Private-individuals/EU-citizens-and-long-term-residents/After-five-years-in-Sweden/Permanent-right-of-residence.html>.

<sup>23</sup> Compare C-135/08, *Rottmann inter alia*.

## **19. HOW SHOULD THE MEMBER STATE DETERMINE WHETHER A PERSON WITH THE RIGHT OF RESIDENCE IS A BURDEN ON THE SOCIAL ASSISTANCE SYSTEM?<sup>24</sup>**

The host country ought to conduct a separate investigation into the individual case to determine whether it is a matter of temporary difficulties. Personal circumstances ought to be taken into account.

## **20. ON WHICH GROUNDS CAN AN EU CITIZEN BE EXPELLED?<sup>25</sup>**

On grounds of public policy and public security.

However, before a decision is made, the authorities must consider how long the concerned person has resided in the host country's territory, his/her age, health status, family and economic situation, the degree of social and cultural integration with the member state and existing links to the country of origin.

Finally, it is prohibited to expell an EU citizen who is actively looking for work and has a real chance of finding employment in accordance with Article 14.4b of Directive 2004/38.

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<sup>24</sup> Compare, for example, point (16) of Directive 2004/38.

<sup>25</sup> Directive 2004/38.





**Freedom of movement** is one of the fundamental rights of all EU citizens.<sup>1</sup> Countless numbers of people use this right every day and many have established new lives abroad and as such contribute to the welfare and growth of their host countries. The rules concerning freedom of movement are sometimes difficult to interpret and member states can implement them in very imprecise way. Therefore, the main aim of this guide is to present general and initial answers to a number of important and frequently asked questions related to freedom of movement.

This guide is a dynamic document, of use to private individuals as well as employers, public employees and others. It will be regularly updated with case law and other developments.

If you have any questions or are in need of information or legal advice, please feel free to contact Crossroads. We can also help report issues to the Swedish National Board of Trade's Solvit Centre, which helps EU citizens resolve problems that arise when an authority has applied EU legislation incorrectly.

Contact details for Crossroads: [EU.guide@stadsmissionen.org](mailto:EU.guide@stadsmissionen.org)

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<sup>1</sup> Article 3 of the Treaty on European Union and Article 20 of the Treaty on the Functioning of the European Union (TFEU).

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