

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **C**

CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



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Obstacles to the right of free movement and residence for EU citizens and their families: Country report for Italy

Study for the LIBE and PETI Committees



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CONSTITUTIONAL AFFAIRS**

**CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS
PETITIONS**

**Obstacles to the right of free movement
and residence for EU citizens and their
families:
Country report for Italy**

STUDY

Abstract

This study, commissioned by the European Parliament's Policy Department for Citizen's Rights and Constitutional Affairs at the request of the LIBE and PETI Committees, analyses the current status of transposition of selected provisions of Directive 2004/38/EC in Italy and identifies the main persisting barriers to free movement for EU citizens and their family members in Italian national law and practice. The study also examines discriminatory restrictions to free movement, measures to counter abuse of rights and refusals of entry and residence rights, in addition to expulsions.

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LIST OF ABBREVIATIONS

CJEU Court of Justice of the European Union

EHIC European Health Insurance Card

EU European Union

FRA Fundamental Rights Agency

SIS Schengen Information System

TCN Third Country National

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TABLE 1

Transposition overview

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EXECUTIVE SUMMARY

According to the European Commission Communication and the European Parliament studies of 2008, the majority of **Directive 2004/38/EC has been correctly and fully transposed** into Italian law, although with some delay. Since the 2008 Commission Report, a number of **amendments** were introduced to rectify partially incorrect and incomplete transposition, as well as to transpose several provisions that had previously been omitted. Most of the issues raised by the Commission and the Parliament have been addressed, although issues of concern remain, as described below.

- With regard to the requirements related to **economic resources**, legislation was reviewed¹ to foresee that the personal situation of the person concerned must be taken into account in order to determine whether or not his/her economic resources are adequate. However, evidence of **legal** economic resources must be given in accordance with the benchmarks provided by the Article.
- With respect to **expulsions**, the different grounds of state security, as well as the imperative grounds of public security, were clearly defined by recent amendments. However, the conditions for removal for '**other reasons of public policy or public security**' remain very general.
- A new provision introduced in 2008 has also resulted in an additional burden for EU citizens' exercising their residence rights, as it foresees that an EU citizen can legally stay in Italy for less than three months only if he/she can show, in addition to an identity card or passport, the **document issued by the police** stating that he/she has reported his/her presence. If the EU citizen has not reported to the police office, he/she is considered to have stayed in Italy for more than three months, unless he/she can prove otherwise.

New and **persistent barriers exist in practice** in the exercise of entry and residence rights for EU citizens and especially their third country national family members.

With regard to **EU citizens**, there are a number of core trends identified in relation to residence rights, chiefly in the practical application of the notion of 'sufficient resources', health insurance, the imposition of extra formalities and the provision of incorrect information.

- The European **Health Insurance** Card (EHIC) and private health insurance are often not accepted in Italy as proof of comprehensive insurance. **Additional formalities** are often required, in particular with regard to application for a permanent residence card, applications which require citizens to produce payslips or work contracts, or to meet financial conditions.
- EU citizens exercising their free movement rights face difficulties in accessing the **health services** and **social benefits** to which they should be entitled. In general, the information given to EU citizens and medical staff is insufficient.

Administrative practices relating to **social benefits** often lead to delays and incur unreasonable demands, which hinder free movement. Recurring problems are

¹ Decree-Law 89/2011 amending the original provision contained in the Italian transposing law.

- delays in issuing documents, and a lack of coordination between Italian and other authorities, especially relating to **unemployment benefits** and **old age pensions**.
- Other obstacles encountered by EU citizens in exercising their free movement rights include delays and denials of **recognition of professional qualifications**, poor services in foreign languages and problems with the use of vehicles.
 - Recurring obstacles to free movement of EU citizens in Italy are reported with respect to the use of **vehicles**. Italian authorities request EU citizens resident in Italy to exchange their licences for Italian ones, which implies a slow and costly procedure. Short-term licence plates are often not recognised by Italian police.

The most common trends in respect of the entry and residence rights of **family members, especially third country nationals (TCNs)**, of EU citizens relate to the requirements linked to their financial resources, health insurance, additional formalities imposed, incorrect information and cross-border workers.

- The **information** provided by the authorities in relation to the requirements for obtaining a visa, the type of entry visa needed, or more generally regarding the rights of TCNs, is confusing. **Numerous documents and information are requested for authorising entry, but which are not required under the Directive**. Generally speaking, non-EU family members face **difficulties in being recognised as family members of EU citizens**.
- **Family members of EU citizens are not allowed to use the accelerated procedure**, even though they fulfil the conditions, and their visas are often issued only after a considerable delay. Non-EU family members of an EU citizen cannot travel freely within the Union together, even after many years of residence in the EU, because the **visa exemption is not applied**.
- TCN family members are also **denied the right to reside** in Italy on grounds not provided for by Directive 2004/38/EC, such as the fulfilment of the 'sufficient resources' condition in their own right. Another problem is that the permanent residence card delivered after five years does not indicate that the long-term resident TCN is the family member of an EU citizen, meaning that the specific rights as a family member may still be questioned in Italy, even after the individual has received his/her permanent residence card.

Discrimination based on nationality, particularly against Romanian and Polish citizens, is encountered in registering as permanent residents, accessing health services, using vehicles, accessing simplified administrative procedures and social benefits in Italy.

Same-sex couples are not legally permitted to marry in Italy, but they can enter into registered partnerships under the Law on Civil Unions adopted in May 2016. Before that, courts had already granted entry and residence rights to same-sex couples married or in a civil partnership contracted abroad. It is expected that Italy will now transpose Article 2(2)(b) to formally recognise under its definition of family member, a same-sex partner with whom the Union citizen has contracted a registered partnership or marriage.

Discrimination based on racial origin against **Roma** is a widespread problem in Italy, hindering access to healthcare, education and other essential services.

Various provisions aim to discourage and punish **marriages of convenience or other abuses** of free movement rights. These abuses are likely to be punished as criminal offences. The checks made by authorities often lead to delays and additional hurdles for TCN family members, especially with regard to the verification of documents proving family relation issues abroad.

EU citizens and their family members may be **refused entry or a residency permit** in Italy if they cannot prove their identity, or for reasons of state security, imperative grounds of public security, and other reasons of public policy or public security. A valid identity document is required for EU citizens or TCNs to obtain the right of residence. If this condition is not fulfilled (e.g. if the document has expired), this may lead to the expulsion of the EU citizen or TCN, contrary to the Directive's provision.

Finally, there is uncertainty concerning the grounds for **expulsion** of EU nationals: the reference made in the Italian transposing legislation to a number of other provisions (contained in Laws, decrees, codes, articles, etc.) makes it difficult to identify the crimes that may lead to such expulsion.

1. OVERVIEW OF THE TRANSPOSITION OF DIRECTIVE 2004/38/EC AND RECENT DEVELOPMENTS

KEY FINDINGS

- According to the European Commission Communication and the European Parliament study of 2008, the **majority of Directive 2004/38/EC has been correctly and fully transposed** into Italian law, although with some delay. However, there was also evidence of partially incorrect and incomplete transposition, as well as several provisions that were not transposed at all.
- **A number of amendments were introduced** - through different Laws, Legislative Decrees, Decree-Laws and Memoranda of the Ministry of the Interior - to the Italian transposing legislation. **Most of the issues raised by the Commission and the Parliament have been addressed**, although not always correctly. Nor have all concerns been tackled. The provisions that remain a **concern** are those related to **'sufficient resources' and expulsion**, as well as **a new provision which creates an additional burden for EU citizens' exercising their residence rights**.

1.1. Transposition context

1.1.1. Transposition overview as assessed by the European Parliament and the Commission in 2008

The transposition process for the Directive ran far later than its 30 April 2006 deadline, leading the European Commission to open infringement proceedings against Italy. These proceedings were closed on 27 November 2008, as the Italian government adopted Legislative Decree 30/2007 transposing the Directive into Italian law². The 2008 Commission Report indicated that the **majority of Directive 2004/38/EC had been correctly and fully transposed into Italian law**³. However, there was also evidence of **elements of incorrect and incomplete transposition**⁴. A number of substantive areas of concern were identified in both the 2008 Commission Report and the European Parliament Study in 2009.

According to the European Commission and the European Parliament studies, Italy failed to correctly transpose **Article 3(2)**, concerning the **residence rights of 'other family members' and partners with whom EU citizens are in a durable relationship**⁵. Although the Article was literally transposed, the criteria which such persons must fulfill in order to have their rights facilitated were not indicated, nor was there any definition of

² Legislative Decree 6 February 2007, n.30, Implementation of the European Directive in the rights of citizens of Union and their family members to move and reside freely within the territory of member states (*Attuazione della direttiva 2004/38/CE relativa al diritto dei cittadini dell'Unione e dei loro familiari di circolare e di soggiornare liberamente nel territorio degli Stati membri*), Official Gazette n. 72 of 27 March 2007.

³ European Commission, 'Report on the application of 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', 10.12.2008, [COM(2008) 840 final].

⁴ Ibid, p. 12.

⁵ Ibid, p. 4.

'dependent' within the meaning of Article 2 and Article 3 of the Directive⁶. With respect to partners (Article 3(2) b) of the Directive), the means of proof that attested the relationship was limited to those provided by the host Member State (Italy) and not by the State of origin.

The **right of residence for up to three months for TCN family members of EU citizens (Article 6(2))** of the Directive) was conditional upon them entering the country lawfully; Italian law required the TCN family member to be in possession of an entry visa, in addition to the valid passport specified in the Directive⁷.

The Commission noted that **Article 7(3)** of the Directive, which provides for the **retention of the status of worker**, was not correctly transposed, largely because the law, while providing for the retention of the right of residence, did not provide for retention of the wider status of worker⁸.

Both the Commission⁹ and the Parliament¹⁰ highlighted legal uncertainties with Italy's transposition of the notion of 'sufficient resources'. Problems in this area relate to requiring proof of legality of economic resources, setting a minimum amount regarded as sufficient, and failure to take personal circumstances into account in making the decision. Article 29(3) of Legislative Decree 286/1998 provides that Union citizens who register with their local registry office must provide evidence of 'sufficient economic resources' for themselves and their family members, in line with the benchmarks set out in that Decree¹¹. It also requires that the citizen prove the legality of his/her economic resources.

Particular concern was expressed regarding the **restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health (Articles 27-33)** of the Directive). Both the European Commission¹² and the Parliament¹³ highlighted the incorrect and incomplete transposition of these provisions. More specifically, their ambiguous nature allowed the possibility that the relevant Italian authorities might use the provision as a legal basis to adopt measures restricting free movement, in breach of the Directive¹⁴. While restrictions were allowed on grounds of 'State security, imperative

⁶ European Parliament, European Citizen Action Service, 'Comparative study on the application of Directive 2004/38/EC 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', March 2009, [PE 410.650], pp. 129 and 132.

⁷ European Commission, 'Report on the application of 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', p. 5; European Parliament, S. Carrera, Briefing note 'Dilemmas in the implementation of Directive 2004/38 on the right of citizens and their family members to move and reside freely in the EU', February 2009, [PE 410.669], p. 10. According to Community law, as confirmed by the case-law (Case C-459/99 *MRAX*), the residence rights cannot be denied on the sole ground that the family member has entered the Member State unlawfully or that their entry visa has expired.

⁸ European Commission, 'Report on the application of 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', p. 6.

⁹ Ibid.

¹⁰ European Parliament, 'Comparative study on the application of Directive 2004/38/EC 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', p. 127.

¹² European Commission, 'Report on the application of 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', p. 28.

¹³ European Parliament, 'Comparative study on the application of Directive 2004/38/EC 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', p. 131.

¹⁴ The Italian Penal Code states that the expulsion of a EU national will occur in the case of a sentence of imprisonment of at least two years or in the case of a crime against the state (irrespective of the duration of the

reasons of public security and other grounds of public policy or public security', Italian law offered only a definition of 'imperative reasons of public security'. The legal concept of 'imperative reasons of public security' included 'any previous convictions for serious offences handed down by an Italian or foreign Court'¹⁵.

Italy also introduced a scheme that **increased the length of detention for offenders who were found to be staying illegally when they had committed a crime**. This contrasted with CJEU case law, which has ruled several times that the failure by an EU citizen to comply with administrative procedures concerning residence can only be sanctioned in a proportionate and non-discriminatory way¹⁶.

Finally, **several provisions were not transposed at all**: as civil partnerships between same-sex couples were not recognised under Italian law until May 2016, **Article 2(2)(b)** was not transposed. In fact, Italian law does not recognise the **status of 'partner'**, unlike other Member States¹⁷. In relation to expulsion decisions, Italy was also placed among the Member States who failed to transpose **Article 14(3)** of the Directive **excluding expulsion as an automatic consequence of recourse to the social assistance system**¹⁸.

On a positive note, for the family members of students, Italy has not made use of the option of **Article 7(4)** to restrict the scope only to the spouse and dependent children, thereby giving all family members of a Union citizen who are students the right of residence in Italy and making the Italian act more favourable than others¹⁹.

1.1.2. What has changed since

A number of amendments were introduced to the Italian transposing legislation after the 2008 Commission Report. **Most of the issues raised by the Commission and the Parliament have been addressed, although not always correctly**, and with some ongoing concerns.

Italy has, largely, correctly transposed **Article 3(2)** of the Directive into its national law, clarifying the criteria with which the **'other family members'** must comply in order to have their **right of entry and residence** facilitated.

Legislative Decree 32/2008 added a new para 5bis to Article 5 of Legislative Decree 30/2007, imposing the requirement for **additional documents** not requested by the

sentence). See Articles 235 and 312 of the Penal Code (*Codice penale*) as amended by Decree-Law No 92 of 23 May 2008 (converted finally into Law No 125 of 24 July 2008).

¹⁵ European Parliament, 'Dilemmas in the implementation of Directive 2004/38 on the right of citizens and their family members to move and reside freely in the EU', pp. 13-14.

¹⁶ European Commission, 'Report on the application of 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', p. 28.

¹⁷ European Parliament, 'Comparative study on the application of Directive 2004/38/EC 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', p. 129.

¹⁸ European Commission, 'Report on the application of 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', p. 7.

¹⁸ European Parliament, 'Comparative study on the application of Directive 2004/38/EC 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', pp. 129 and 132.

¹⁹ European Commission, 'Report on the application of 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', p. 6.

Directive²⁰. Following this 2008 amendment, the EU citizen who is legally staying in Italy for less than three months, has the possibility of registering his/her presence. According to this provision, a decree by the Ministry of the Interior should have been adopted within 30 days of the date of entry into force of this provision, but no such decree was enacted.

The provision is not intended to impose an obligation, but it has **implications** for the citizen with respect to Article 6 of the Directive, as 'if the EU citizen has not reported to the police office, he/she shall be regarded as having stayed in Italy for **more than three months**, unless he/she can prove otherwise.'

Legal scholars have levelled considerable criticism at this provision, calling into question its compatibility with EU law²¹. In fact, while the Union citizens have no obligation to report themselves to the municipality, not doing so **entails negative consequences** for them. If they did not register and are unable to prove that they had been in Italy no longer than three months (in itself difficult to prove with any degree of certainty), they are then deemed to have infringed the obligation to register their residence with the municipal authority.

Decree-Law 89/2011²² amended the original provision contained in Article 6 of Law Decree 30/2007 to bring it in line with **Article 6(2) of the Directive**. This abolished the requirement for an entry visa for TCN family members accompanying or joining an EU citizen in order to exercise their **right of residence** in Italy for a period of **up to three months**. Since the amendment, the possession of a valid passport is sufficient to exercise this right. Italy does not appear to have addressed the concerns of the Commission in relation to **Article 7(3) of the Directive, retention of the status of worker**.

As far as **economic resources** are concerned (**Articles 8(3) and (4)** of the Directive), amendments were introduced requiring that the personal situation of the person concerned must be taken into account in determining whether or not his/her economic resources are adequate²³. However, legislation continues to require evidence of *legal* economic resources in accordance with the *benchmarks* provided by that Article²⁴.

The Italian legislation in respect of **expulsions** has been considerably amended so that it clearly defines the different grounds of state security and imperative grounds of public security (**Article 27** of the Directive)²⁵. However, removal of a person for other reasons of public policy or public security is also permitted under Italian law. The conditions for this measure have been criticised²⁶, in that their general nature does not comply with EU requirements, in particular the clear identification by Member States of the interests they

²⁰ In practice, a form is available in English, French, Spanish and German on the websites of the Ministry of the Interior and of the Police at: <http://img.poliziadistato.it/docs/moduldich.pdf>.

²¹ B. Nascimbene, A. Di Pascale, 'Italy', p. 671.

²² Decree-Law 89/2011 'Urgent measures to complete the transposition of Directive 2004/38 (*Decreto Legge 23 giugno 2011, n. 89 'Disposizioni urgenti per il completamento dell'attuazione della direttiva 2004/38/CE sulla libera circolazione dei cittadini comunitari e per il recepimento della direttiva 2008/115/CE sul rimpatrio dei cittadini di Paesi terzi irregolari'*), Government Gazette. 23/06/2011, n.144.

²³ Decree-Law 89/2011 amended the original provision contained in Article 9(3bis) of Legislative Decree 30/2007.

²⁴ Article 29(3) of Legislative Decree 286/1998.

²⁵ Amendments contained in Legislative Decree 32/2008²⁵ and Decree-Law 89/2011 (which was converted into Law 129/2011²⁵).

²⁶ B. Nascimbene, A. Di Pascale, 'Italy', in U. Neergaard, C. Jacqueson, N. Holst-Christensen, *Union Citizenship: Development, Impact and Challenges – Congress publications of the XXVI FIDE Congress in Copenhagen*, Vol. 2, p. 674 and *Associazione per gli Studi Giuridici sull'Immigrazione* (ASGI), G. Perin e P. Bonetti, 'Ingresso e soggiorno dei cittadini dell'Unione Europea', p. 11.

intend to protect with an expulsion²⁷. **Article 28** of the Directive is now correctly transposed, with the Italian legislation containing a number of limitations to protect against unjust or unclear expulsion decisions²⁸. Under an amendment introduced in 2011 it is now explicitly stated that **recourse** to the **social assistance system** is not a sufficient reason for adopting an expulsion order for lack of resources²⁹, in accordance with **Article 14(3)** of the Directive.

1.2. Current transposition status

1.2.1. Overall assessment of the current transposition status in Italy

Transposition of Directive 2004/38/EC took place through Legislative Decree 30/2007, as amended and integrated by a number of different Legislative Decrees, Decree-Laws, Laws and Memoranda from the Ministry of the Interior³⁰. While Italy has transposed the majority of the Directive, it appears that **parts remain that are not fully transposed**, with the **risk of non-compliance** with certain rules. This section assesses the current transposition of Directive 2004/38 in relation to the key issues of: the imposition of additional conditions in law or practice for family members of EU citizens, especially TCNs, to exercise their free movement and residence rights; the Italian approach towards partners of Union citizens; the follow-up of the *Metock* Case; and any conditions imposed on residence rights of Union citizens beyond those contained in Article 7 of the Directive.

1.2.2. Additional conditions in law or practice for family members (especially third country national family members) to exercise their free movement rights

The provisions related to the exercise of free movement rights of family members of a Union citizen generally correspond to those under the Directive. Nevertheless, several **obstacles** remain concerning the attainment of those rights, especially with regard to the right of entry of **TCN family members**, whether members of the 'nuclear family' (Article 2 of the Directive) or 'other family members' (Article 3 of the Directive)³¹.

As mentioned under Section 1.1.1, Italy was considered to have incorrectly transposed Article 3(2) of the Directive, which mandates **facilitation of entry and residence for 'other family members'** irrespective of their nationality³². Italy was to examine, on the basis of its own national legislation, the situation of those persons not included in the definition of 'family members' under the Directive (Article 2), and who do not, therefore, enjoy an automatic right of entry and residence in Italy ('the host Member State'), but 'who nevertheless maintain close and stable family ties with a Union citizen on account of specific factual circumstances'. Italy was required to decide if entry and residence could be granted to such persons, undertaking an 'extensive examination' of their relationship with the Union citizen, or any other circumstances (e.g. 'the extent of economic or physical dependence and the degree of relationship between the family member and the Union citizen whom he wishes to accompany or join') and justifying any denial of entry or residence decisions³³. Article 3(2) of the Directive was literally transposed, even if no

²⁷ European Commission, 'Communication on guidance for better transposition and application of 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', 2.7.2009, [COM(2009) 313 final], p. 13.

²⁸ Article 20 paras 5, 6 and 7 of Legislative Decree 30/2007.

²⁹ Decree-Law 89/2011, modifying Article 21(1) of Legislative Decree 30/2007.

³⁰ For further information, see the 'Transposition overview table' (Annex I).

³¹ AG Mengozzi in Case C-423/12 Reyes [2013] ECLI:EU:C:2013:719, paras 33-37.

³² European Commission, 'Report on the application of 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', p. 4.

³³ Case C-83/11 Rahman [2012] ECLI:EU:C:2012:519, para. 23; Whereas 6, Preamble of Directive 2004/38/EC.

indication was given of how those persons falling under Article 3 might have their rights facilitated (i.e. no criteria were stated by which their rights might be recognised, and no definition of 'dependent' within the meaning of Article 2 and Article 3 of the Directive was provided)³⁴. Legislation was modified in 2011 to clarify the criteria which must be met by the 'other family members' (mentioned under Article 3(2) of the Directive) in order to have their right of entry and residence facilitated³⁵. Even though the definition of dependent continues to raise problems of interpretation³⁶, the transposition of Article 3 (2) is satisfactory.

Article 7 of Legislative Decree 30/2007 has not been modified. This provision, which lists the beneficiaries of the right of **residence in Italy for more than three months**, does not expressly include those mentioned under Article 3(2). Article 7 (1) d) mentions exclusively EU citizens who are family members of other EU citizens as defined by Article 2, without mentioning the other beneficiaries listed under Article 3(2). Article 7 (2) simply mentions family members without further defining the term. In the absence of any clarification from the Ministry, legal critics generally agree that these beneficiaries are included under this Article. Although a clear reference to these beneficiaries is missing, the transposition of Article 7 is in line with the Directive.

1.2.3. Italy's approach towards the partners of EU citizens

Italy approved a **law on civil partnerships** in May 2016, which will become effective as soon as governmental decrees will be proposed and approved, including in relation to mutual recognition in family law and in relation to free movement. Until now, a partner with whom the Union citizen has a civil partnership (be it a different-sex or same-sex couple) or a same-sex marriage contracted abroad, or an officially attested durable relationship, has so far fallen under Article 3 ('other family members' for whom the State has to facilitate entry and residence) and not under Article 2 ('family members who are granted the right to move and reside freely within the territory of the Member States as the EU citizen') for the purposes of free movement rights. Legislative Decree 30/2007 does not clarify in any detail how those persons falling under Article 3 may have their rights facilitated. At the same time, jurisprudence has been developed in order to grant to same-sex couples who are married or in a civil partnership contracted abroad the right of entry and residence. The new law on civil partnerships and the transposing decrees will most probably include recognition of free movement rights under Article 3 of the Directive.

An amendment introduced by Law 97/2013 correctly transposed Article 3(2) b) of the Directive allowing that the means of proof that 'duly attest' the 'durable relationship' may come from the State where the individual was residing, and not necessarily the home Member State, as well as any other official means of proof. Even though issues may arise in the interpretation of what constitutes a '**durable relationship**' and upon which criteria³⁷, the transposition of Article 3 (2) is correct (i.e. literally transposed).

³⁴ European Parliament, 'Comparative study on the application of Directive 2004/38/EC 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'.

³⁵ Decree-Law 89/2011 integrated Article 9 ('Administrative formalities for EU citizens and their family members', particularly with regard to the documents necessary for the registration on the public registers) and Article 10 of Legislative Decree 30/2007 ('Visa for TCN who is a family member of an EU citizen', regarding the documents necessary for obtaining such a visa).

³⁶ Your Europe Advice, Quarterly Feedback Report No. 11, Quarter 1/2015 (January-March), Italy 166300.

³⁷ States will require more than formal proof in these circumstances, often undertaking an extensive examination of the personal circumstances, but this does not seem to be reflected in Italian law. Legislative Decree 30/2007 only requires formal proof to 'duly attest' the durable relationship '*with official documents*' [emphasis added] (Article 3(2) b) and Article 9 of the Legislative Decree). No other criteria, e.g. common household for a certain

1.2.4. Italy's implementation of the *Metock* ruling

Italy experienced no impact following the CJEU ruling in the *Metock* case, as there were no national rules or conditions requiring prior lawful residence in the EU for TCN family members.

period, the undertaking of shared long-term legal, social or financial commitments (for example, a mortgage to buy a house), or having a child or children together, are set out in the law, nor have they been identified in practice.

2. DIRECTIVE'S IMPLEMENTATION: DESCRIPTION OF THE MAIN PERSISTING BARRIERS

KEY FINDINGS

- While the Directive has generally been sufficiently transposed into national legislation, **new and persistent barriers exist in practice** in the exercise of entry and residence rights for EU citizens and especially their family members.
- With regard to **EU citizens**, there are a number of core issues identified in relation to **residence rights**, namely in the transposition and practical application of the notion of '**sufficient resources**' and **health insurance**, the requirement of **extra formalities** and the provision of **incorrect information**.
- The most common concerns in respect of the entry and residence rights of **family members, especially TCNs**, of EU citizens relate to the requirements linked to their **financial resources, health insurance, extra formalities, incorrect information and cross-border workers**.

2.1. Main barriers for EU citizens

2.1.1. Entry

An obstacle for EU nationals in exercising their right of entry in Italy is the requirement by some carriers that the travel document remain valid for a determined period after the trip³⁸. This runs counter to Directive 2004/38, which only requires the validity of the ID card or passport to enter the host country without referring to any margin of validity beyond the trip.

2.1.2. Residence

There are a number of core issues in relation to obstacles faced by Union citizens in exercising their residence rights, namely regarding **financial resources, health insurance, extra formalities, incorrect information and cross-border workers**. The Your Europe Advice service reports that:

- Even though Legislative Decree 30/2007 requires that the **personal situation** of the person concerned be taken into account in determining whether or not his/her **economic resources** are adequate, this is not applied in practice. The Your Europe Advice service highlighted a case where a citizen could maintain herself partially, but her common life with her national partner was not considered³⁹.
- The **European Health Insurance Card (EHIC)** is often not accepted in Italy as proof of comprehensive insurance⁴⁰. **Private health insurance** and other insurance coverage in the country of origin also appear to be refused in Italy⁴¹, as well as

³⁸ Your Europe Advice, Quarterly Feedback Report No. 1, Quarter 2/2012 (April-June), p.10.

³⁹ Your Europe Advice, Quarterly Feedback Report No. 5, Quarter 3/2013 (July-September), Italy 126939.

⁴⁰ Your Europe Advice, Quarterly Feedback Report No. 6, Quarter 4/2013 (October-December), Italy 127449; Your Europe Advice, Quarterly Feedback Report No. 5, Quarter 3/2013 (April-June), Italy 127449, 127449. Your Europe Advice, Quarterly Feedback Report No. 14, Quarter 4/2015 (October-December), Italy 183321.

⁴¹ Your Europe Advice, Quarterly Feedback Report No. 7, Quarter 1/2014, (January-March), Italy 143826.

health insurance documents attesting insurance coverage in the country of origin⁴². For example, a German pensioner couple were denied residence registration on the grounds of not having health insurance in Italy, when their German insurance coverage extended to Italy⁴³. In addition, Italy seems to systematically **refuse to issue the S1 form**, which is necessary to obtain a residence permit⁴⁴.

Extra formalities are often required, in particular with regard to applications for a permanent residence card. According to recent Your Europe Advice Quarterly Feedback Reports, Romanian and Polish citizens who have lived in Italy for more than five years are frequently refused registration as permanent residents on the basis that they are unemployed⁴⁵. In order to apply, citizens have been required to produce payslips⁴⁶ or work contracts⁴⁷. One citizen had to prove that he had continuously paid social security contributions for five years⁴⁸. A Romanian pensioner was required to attend a one-year language course in order to obtain a residence permit⁴⁹, while another EU citizen was required to obtain a residence permit from the police station before being allowed to register as a resident with the municipality⁵⁰. Italian authorities requested **unnecessary documents** from EU citizens permanently resident in Italy who were changing their place of residence within Italy⁵¹.

Incorrect information is also given, with one citizen reporting that the Italian authorities were confused about the right of residence of young children of an EU citizen⁵².

The Your Europe Advice service also reports a case where an Italian citizen working in Switzerland as a **cross-border worker** was denied the right to reside in Italy. This denial was driven by the fact that the worker did not pay taxes in Italy⁵³. This runs contrary to the case law of the CJEU, according to which an EU citizen who has exercised their right to free movement in another Member State without residing there, also benefits from the rules on free movement of persons⁵⁴. Frontier workers are covered by EU law in both countries (as a migrant worker in the Member State of employment and as a self-sufficient person in the Member State of residence).

2.1.3. Access to social security and healthcare

EU citizens still encounter problems in accessing healthcare and other social benefits in Italy. In addition, **administrative hurdles** imposed by the Italian authorities often cause difficulties for EU citizens in accessing these benefits in another Member State.

⁴² Your Europe Advice, Quarterly Feedback Report No. 14, Quarter 4/2015 (October-December), Italy 183321.

⁴³ Ibid., Italy 184216.

⁴⁴ Your Europe Advice, Quarterly Feedback Report No. 6, Quarter 4/2013 (October-December), Italy 135051; Your Europe Advice, Quarterly Feedback Report No. 8, Quarter 2/2014 (April-June), Italy 146610; Your Europe Advice, Quarterly Feedback Report No. 10, Quarter 4/2014 (October-December), Italy 156115; Your Europe Advice, Quarterly Feedback Report No. 14, Quarter 4/2015 (October-December), Italy 183129.

⁴⁵ Your Europe Advice, Quarterly Feedback Report No. 10, Quarter 4/2014 (October-December), Italy 155971, 157087; Your Europe Advice, Quarterly Feedback Report No. 8, Quarter 2/2014 (April-June), Italy 147413

⁴⁶ Your Europe Advice, Quarterly Feedback Report No. 9, Quarter 3/2014 (July-September), Italy 151852.

⁴⁷ Your Europe Advice, Quarterly Feedback Report No. 7, Quarter 1/2014, (January-March), Italy 144267; Your Europe Advice, Quarterly Feedback Report No. 7, Quarter 1/2014, (January-March), Italy 139673.

⁴⁸ Ibid., Italy 158938.

⁴⁹ Your Europe Advice, Quarterly Feedback Report No. 6, Quarter 4/2013 (October-December), Italy 135250.

⁵⁰ Your Europe Advice, Quarterly Feedback Report No. 14, Quarter 4/2015 (October-December), Italy. Italy 186179.

⁵¹ Your Europe Advice, Quarterly Feedback Report No. 10, Quarter 4/2014 (October-December), Italy 160331.

⁵² Your Europe Advice, Quarterly Feedback Report No. 14, Quarter 4/2015 (October-December), Italy 180478.

⁵³ Your Europe Advice, Quarterly Feedback Report No. 6, Quarter 4/2013 (October-December), Italy 133064.

⁵⁴ Case C-60/00 Carpenter [2002] ECLI:EU:C:2002:434.

This affects **access to healthcare services, unemployment benefits and old age pensions**.

EU citizens and their non-EU family members have the right of access to the National Healthcare System with the same conditions as Italian citizens when in possession of a permanent employment contract, or when in possession of a one-year employment contract (or for the duration of the employment contract if it is less than one year)⁵⁵.

In other cases, such as an EU citizen without worker status and who does not have an EHIC card, access to medical treatment is uncertain and not guaranteed⁵⁶. National law provides emergency and urgent medical treatment (including child care, maternity care, preventative care, etc.) all of which are granted under the condition of possession of an ENI code⁵⁷.

Very frequently, particularly for Romanian citizens, **access to medical treatment is uncertain and not granted**. Obstacles arise since:

- The ENI code is not provided by hospitals and emergency services, but must be requested by doctors operating in non-profit associations for the medical care of undocumented migrants. The patient must then enrol for the ENI code in National Health System offices.
- The ENI code does not allow access to a single doctor, so EU citizens must always refer to non-profit associations.
- As the Healthcare System is managed at regional level, some regions such as *Lombardia* do not offer an ENI code.

Many cases of **denial of access to healthcare** are reported: one **petition** to the European Parliament concerned the fact that the health board in Turin had refused to allow a Spanish citizen resident in Italy to register for National Health Service care⁵⁸. Restrictions are often placed on the ability of inactive EU citizens to register for healthcare in Italy⁵⁹. For instance, a British citizen in early retirement was told she would have no access to the national healthcare system in Italy until she became a permanent resident⁶⁰.

It also has been reported that Italy is **refusing to issue the S1 Form⁶¹ to Italian pensioners** who do not reside in Italy and who do not, therefore, pay taxes in Italy. The Italian health care authorities (ASL) request pensioners to voluntarily subscribe to the Italian health insurance scheme and pay 7.5% of their income as health insurance contributions, or instructs them to obtain insurance in their host Member State. This is impossible, as, under Regulation 883/2004/EC, pensioners are insured in the country from which they receive pension benefits. In linking compulsory health insurance with tax liability, Italy goes beyond the provisions of Regulation 883/2004/EC⁶².

⁵⁵ Citizens without borders, Free Movement and Residence in the European Union a Challenge for European Citizenship, 2013, p. 41.

⁵⁶ In Italy, the EHIC is translated into the TEAM card ('Tessera Europea di Assicurazione Malattie').

⁵⁷ ENI stands for 'unregistered European citizen', translating into 'Europeo Non Iscritto'.

⁵⁸ Petition No. 1225/2012 to the European Parliament.

⁵⁹ Your Europe Advice, Quarterly Feedback Report No. 11, Quarter 1/2015 (January-March), Italy 162105.

⁶⁰ Your Europe Advice, Quarterly Feedback Report No. 10, Quarter 4/2014 (October-December), Italy 157320.

⁶¹ The S1 form is a European certificate of entitlement to healthcare for persons who don't live in the country where they are insured.

⁶² Your Europe Advice, Quarterly Feedback Report No. 10, Quarter 4/2014 (October-December), Italy, 181502, 183129.

In general, the **information** given to EU citizens and medical staff is **insufficient**. For example, a Romanian citizen holding a long-term residence permit was incorrectly told that he was no longer entitled to be registered with the Italian healthcare system after he became unemployed⁶³.

Another illustrative example is the case of a Hungarian citizen whose valid EHC issued by the Hungarian competent authority is not recognised by any doctor in Italy, nor was it considered sufficient to prove her social security coverage when attempting to register at her local municipality⁶⁴.

Administrative practices relating to social benefits are also often clearly **in conflict with EU law**, lead to **delays and make unreasonable demands which hinder free movement**. Recurring problems exist with unreasonable delays in issuing documents, e.g. the frequent cases where the competent authorities are not aware of their responsibilities under EU law⁶⁵. After having worked for two years in the UK, an Italian citizen returned to Italy and wanted to obtain unemployment benefits. For this he needed to obtain the U1 portable document⁶⁶, which he failed to obtain for many months. According to Italian legislation, the Italian social security institution, INPS, is responsible for issuing this document. However, the local INPS office is not aware of its responsibility and refuses to issue these proofs. As a consequence, the Italian citizen is unable to exercise his rights⁶⁷. Complaints relating to delays in issuing U1 and other documents necessary to obtain social benefits are frequently reported⁶⁸.

Problems of coordination between Italian and other authorities hinder the right to social benefits of EU citizens, especially the right to **unemployment benefits**⁶⁹. Regulation (EC) No 883/04 in its Articles 11 and 13 provides that the insured person is subject to the legislation of a single Member State only. The Member State concerned is the one in which he or she pursues a gainful activity. Particular rules are provided for certain categories of workers, such as civil servants who are subject to the legislation of the Member State to which the administration employing them is subject, and workers who are employed or self-employed in several EU countries. In practice, however, the complexity of the rules, lack of information, lack of training and poor coordination between Member States make it difficult to determine the competent state. Since national authorities often fail to communicate and cooperate with each other as they should, **citizens do not obtain the social benefits to which they should be entitled**. For instance, an Italian doctor had been working in Germany for seven years, during which time he had been paying social security contributions in both Germany and Italy. Neither authority can tell which of them is competent, nor can either determine the documents required⁷⁰. The communication between national authorities for confirmation of employment periods remains insufficient, with citizens complaining about **misinformation, delays and burdensome administrative formalities**⁷¹.

⁶³ Your Europe Advice, Quarterly Feedback Report No. 14, Quarter 4/2015 (October-December), Italy 184250.

⁶⁴ Your Europe Advice, Quarterly Feedback Report No. 7, Quarter 1/2014, (January-March), Italy 143249.

⁶⁵ Your Europe Advice, Quarterly Feedback Report No. 8, Quarter 2/2014 (April-June), Italy 147260.

⁶⁶ The U1 document is a European statement of insurance periods to be taken into account when calculating an unemployment benefit.

⁶⁷ Ibid., Italy 155796.

⁶⁸ Your Europe Advice, Quarterly Feedback Report No. 10, Quarter 4/2014 (October-December), Italy 158305, 158485.

⁶⁹ Your Europe Advice, Quarterly Feedback Report No. 2, Quarter 3/2012 (July-September), Italy 109228, 109222, 108777.

⁷⁰ Your Europe Advice, Quarterly Feedback Report No. 7, Quarter 1/2014, (January-March), Italy 145121.

⁷¹ Your Europe Advice, Quarterly Feedback Report No. 6, Quarter 4/2013 (October-December), Italy 136282.

In relation to **old age pensions**, the **principle of the aggregation of periods**, which guarantees that periods of insurance, employment or residence in an EU country are taken into account in all the other EU countries, is **often overlooked** in Italy⁷². Ignorance of the applicable rules on the part of the authorities also presents an obstacle in exercising the right to old age pensions. An Italian pensioner living in Portugal, was requested by the Portuguese authorities to obtain a new EHIC from the country that pays her pension (Italy). However, the Italian authorities refused to issue the card⁷³.

2.1.4. Others

Availability of information and language barriers

A general lack of information on the legal framework, together with poor services in foreign languages, still represent obstacles for EU citizens exercising their free movement rights in Italy.

The 2009 European Parliament assessment considered administrative services, such as the **translation of documents** into the main foreign languages, and the number of personnel at police headquarters able to **speak foreign languages**, to be **'very poor.'**

Different studies found the **level of information to be significantly lacking**, both among legal practitioners and among EU citizens themselves, particularly with respect to their knowledge of legislation, rights and duties related to freedom of movement and the right of residence in Italy⁷⁴.

For example, no information is available on the registration certificate and permanent residence on the migration portal, with only poor and insufficient information available on the regional/local websites. Limited information is available on the main police website about residence cards and permanent residence, despite this being the website to which the local and regional websites refer⁷⁵. In addition to the obvious issues posed by the scarcity of language availability, a review of the content provided on the main national websites suggests that, while it is written up in everyday language, the website itself is difficult to use and is not user-friendly.

Work

Numerous complaints have been made about the difficulties encountered by EU citizens in having their **professional qualifications and diplomas recognised** in Italy. This usually relates to delays in the recognition of professional qualifications⁷⁶, or to the failure of the automatic recognition mechanism in the medical professions⁷⁷. Many of the reported cases concern Romanian citizens, or Italian citizens who obtained their professional qualification in Romania⁷⁸.

⁷² Your Europe Advice, Quarterly Feedback Report No. 2, Quarter 3/2012 (July-September), Italy 109262, 109498; Your Europe Advice, Quarterly Feedback Report No. 4, Quarter 2/2013 (April-June), Italy 125431.

⁷³Your Europe Advice, Quarterly Feedback Report No. 11, Quarter 1/2015 (January-March), Italy 166722; Your Europe Advice, Quarterly Feedback Report No. 5, Quarter 3/2013 (July-September), Italy 131218).

⁷⁴ Citizens without borders, 'Free movement and residence in the European Union a challenge for European citizenship' and ICF/GHK, Milieu Ltd., Study 'Evaluation of EU rules on free movement of EU citizens and their family members and their practical implementation'.

⁷⁵ ICF/GHK, Milieu Ltd., Study 'Evaluation of EU rules on free movement of EU citizens and their family members and their practical implementation', p. 41.

⁷⁶ Your Europe Advice, Quarterly Feedback Report No. 10, Quarter 4/2014 (October-December), Italy 158250.

⁷⁷ Your Europe Advice, Quarterly Feedback Report No. 7, Quarter 1/2014, (January-March).

⁷⁸ Your Europe Advice, Quarterly Feedback Report No. 9, Quarter 3/2014 (July-September), Italy 151526.

Italian citizens qualified as **dentists** in Romania experience particular difficulties when applying for the recognition of their qualification in Italy. Italian institutions often do not respect the deadline for such recognition, which has been fixed at three months in cases of automatic recognition⁷⁹. In many cases, the Italian Health Minister refused to recognise the qualifications, despite their validity, justifying the delay by saying that it had asked the European Commission to grant derogation from the automatic system of recognition, allowing it to oblige all Italian citizens qualified as dentists in Romania to undertake an examination to certify their knowledge in the field. This is against EU law, where the automatic recognition system applies⁸⁰.

Other problems are faced by **lawyers** qualified in other Member States who seek recognition of their qualification in Italy. An Italian citizen who obtained his qualification as a lawyer in Romania was denied recognition by the Italian authorities on the ground that U.N.B.R. Bota is not officially recognised in Romania and is thus not qualified to issue qualification titles for lawyers⁸¹. A widespread problem exists where Italian Bars refuse to register Italian lawyers who qualify in Spain (where there is no compulsory traineeship period) and immediately come back to Italy after qualifying⁸².

A third category of professionals who frequently face problems in the recognition of their qualifications are **teachers**. Here, the problems stem from either a delay in the answer by the public authorities, the denial of the recognition of previous teaching experience, or the imposition of burdensome formalities.

For instance, a Romanian teacher was refused recognition of her work seniority acquired in Romania as her years of public employment in Romania were not recognised in Italy neither for the duration of her career, nor for her pension⁸³.

A long-standing issue concerns foreigner readers ('lettori') working in Italian universities as foreign-language assistants. Following the initiation of an infringement procedure by the European Commission, the CJEU established that the contractual and administrative practices operated by certain public universities violated the principle of equal treatment as long as they did not recognise the rights acquired by former foreign-language assistants, who have become associates and mother-tongue linguistic experts, even though such recognition is guaranteed to all national workers⁸⁴. Italy subsequently brought the economic treatment of foreign readers in line with that of Italian citizens⁸⁵. However, new complaints have been brought by foreign readers in relation to the extinction of their pending cases in front of the Italian courts. Such extinction was established by the same Law conceived to remedy the equal treatment violation⁸⁶.

Aside from the recognition of professional qualifications and diplomas, access to employment services for jobseekers also hinders access to the Italian job market for EU citizens. In fact,

⁷⁹ Your Europe Advice, Quarterly Feedback Report No. 7, Quarter 1/2014, (January-March), Italy 139019.

⁸⁰ Your Europe Advice, Quarterly Feedback Report No. 10, Quarter 4/2014 (October-December), Italy 155893, 156058, 158514, 158708, 158784, 159178, 159179, 159218, 159303, 159395.

⁸¹ Your Europe Advice, Quarterly Feedback Report No. 9, Quarter 3/2014 (July-September), Italy 152386).

⁸² Your Europe Advice, Quarterly Feedback Report No. 2, Quarter 2/2012 (April-June), Italy 103402; Your Europe Advice, Quarterly Feedback Report No. 11, Quarter 1/2015 (January-March), Italy 164233, 161855, 160731, 164620, 165671.

⁸³ Your Europe Advice, Quarterly Feedback Report No. 4, Quarter 2/2013 (April-June), Italy 123010.

⁸⁴ Case C-212/99, *Commission of the European Communities v Italian Republic* [2001], ECLI:EU:C:2001:357.

⁸⁵ See Press Release IP/07/927 'Commission closes Lettori case following firm assurances from Italy', available at: http://europa.eu/rapid/press-release_IP-07-927_en.htm?locale=en.

⁸⁶ Ibid.

some national employment services in specific sectors are open only to Italian nationals⁸⁷.

Taxation

Taxation remains mainly within the competence of Member States. However, issues of **double taxation** or **lack of cooperation between national authorities** can hinder the free movement of persons among Member States. Even in cases where specific treaties theoretically eliminate double taxation, there is insufficient cooperation between Member States' tax authorities in eliminating this issue in practice. The lack of cooperation and knowledge within and between national authorities has recently spread to VAT, with Italy as one of the States involved.

Cases of double taxation of salary involving Italy and France; and the UK, have been reported⁸⁸. For instance, the Italian widow of a British worker who returned to Italy had all her income taxed in the UK. . However, the competent Italian tax authorities decided that her income should be taxed in Italy as well disregarding the double taxation agreement operating between Italy and the UK⁸⁹.

Vehicles

Vehicles are the subject of some recurring obstacles to free movement of EU citizens in Italy. Italian authorities request EU citizens resident in Italy to **exchange their licences for Italian ones**. Many cases of this kind have been reported to Your Europe Advice⁹⁰.

Even when EU citizens request such an exchange of licence, **the procedure is long, costly, and the authorities not always issue an Italian licence.**

In general, **national authorities lack information and training** to deal with these cases. The Italian authorities stated that they did not know how to address the request of a Lithuanian citizen who has lived in Italy for 11 years and who wanted to have a new licence issued⁹¹. Other cases, where the authorities refuse to issue a licence⁹², or impose further formalities, have also been reported⁹³. In addition, the police are not always aware of the applicable legal framework, as in the case of a German national, who was fined by the police while driving through Italy, on the incorrect assumption that her German licence was not valid in Italy⁹⁴.

The **non-recognition of short-term licence plates** is also a frequent problem. Drivers of cars with German short-term plates (so-called 'yellow' plates) often encounter this problem in Italy. German plates are not recognised by Italian police and the validity of the German insurance linked to it is then denied without any justification, resulting in German citizens being required to pay fines⁹⁵.

⁸⁷ Your Europe Advice, Quarterly Feedback Report No. 2, Quarter 2/2012 (April-June), Italy 105853.

⁸⁸ Your Europe Advice, Quarterly Feedback Report No. 9, Quarter 3/2014 (July-September), Italy 152929.

⁸⁹ Your Europe Advice, Quarterly Feedback Report No. 5, Quarter 3/2013 (April-June), Italy 127986.

⁹⁰ Your Europe Advice, Quarterly Feedback Report No. 7, Quarter 1/2014, (January-March), Italy 143856; Your Europe Advice, Quarterly Feedback Report No. 10, Quarter 4/2014 (October-December), Italy 156800; Your Europe Advice, Quarterly Feedback Report No. 5, Quarter 3/2013 (July-September), Italy 130224 and 132499.

⁹¹ Your Europe Advice, Quarterly Feedback Report No. 7, Quarter 1/2014, (January-March), Italy 143539.

⁹² Your Europe Advice, Quarterly Feedback Report No. 11, Quarter 1/2015 (January-March), Italy 166253.

⁹³ Ibid., Italy 164632.

⁹⁴ Your Europe Advice, Quarterly Feedback Report No. 7, Quarter 1/2014, (January-March), Italy 140256.

⁹⁵ Your Europe Advice, Quarterly Feedback Report No. 10, Quarter 4/2014 (October-December), Italy 156285; Your Europe Advice, Quarterly Feedback Report No. 2, Quarter 3/2012 (July-September), Italy 108409.

Italian authorities are **fining** foreign citizens for not registering their car in Italy, despite it being used for only a few weeks each year during holidays⁹⁶. In one case concerning Italy and Spain, the Italian authorities requested payment of vehicle tax for a car whose registration had been changed to Spain, following the owner's relocation there⁹⁷.

Voting rights

Cases in which EU citizens were **denied the right to vote for the European elections** were reported. A German citizen resident in Rome was informed of the obligation to present a request for voting for the European elections only after the deadline for submitting the request had passed. He was subsequently denied the right to vote for those elections⁹⁸.

Education

Children of EU workers face obstacles when they **start school** in Italy, often not being registered in the school year corresponding to their age, or on the basis of their school certificate. Cases involving Romanian children are particularly frequent⁹⁹.

EU citizens wishing to have their **diplomas recognised** in Italy also face **administrative hurdles**. In the case of a Dutch citizen, the Italian authorities demanded a document from the Dutch authorities with a description of each of the high school courses that she had attended, including a description of the topics covered. Given that no such document exists in the Netherlands, the student was not permitted to start academic education in Italy¹⁰⁰.

2.2. Main barriers for family members of EU citizens

2.2.1. Entry

Although Italy has literally transposed Article 5(2) of the Directive 2004/38, several obstacles exist in practice with respect to the right of entry of non-EU family members of EU citizens. Frequent complaints are logged by the Your Europe Advice service regarding **incorrect application of entry rules by Italian authorities**, especially Embassies/Consulates abroad, or among border officers. The main problems concern obtaining entry visas. Examples include the following situations:

- Citizens continued to **receive confusing information** on the obligation to obtain a visa, the type of entry visa their non-EU spouse/family member needs, or more generally regarding their rights, conditions and documentation required¹⁰¹. For example, periods of stay authorised under a residence permit or a long-stay visa shall not be taken into account in the calculation of the duration of stay in the territory of the Member States. However, the Italian authorities informed a citizen that her non-EU husband was not allowed to travel with her to Italy before his residence permit for the Netherlands was issued¹⁰². According to Your Europe Advice service, this issue can be partly explained by the contracting out of online visa

⁹⁶ Your Europe Advice, Quarterly Feedback Report No. 3, Quarter 1/2013 (January-March), Italy 119256, 121479, 117567, 120640 and 118822.

⁹⁷ Your Europe Advice, Quarterly Feedback Report No. 2, Quarter 3/2012 (July-September), Italy 111487.

⁹⁸ Your Europe Advice, Quarterly Feedback Report No. 7, Quarter 1/2014, (January-March), Italy 143357.

⁹⁹ Your Europe Advice, Quarterly Feedback Report No. 10, Quarter 4/2014 (October-December), Italy 158737.

¹⁰⁰ Ibid., Italy 135263, 134713.

¹⁰¹ Your Europe Advice, Quarterly Feedback Report No. 14, Quarter 4/2015 (October-December), Italy 180642; Your Europe Advice, Quarterly Feedback Report, Quarter 3/2015 (July-September), Italy 179910; Your Europe Advice, Quarterly Feedback Report No. 6, Quarter 4/2013 (October-December), Italy 135578 and 128449.

¹⁰² Your Europe Advice, Quarterly Feedback Report No. 14, Quarter 4/2015 (October-December), Italy 182637.

applications and processing to private organisations¹⁰³. These services make no distinction between partners of EU citizens and TCNs in general. Family members of EU citizens are **not allowed to use the accelerated procedure** even though they fulfill the conditions¹⁰⁴.

- The visa application is **not free of charge**¹⁰⁵. In some cases, the family members were not allowed to apply directly through the consulate in order to avoid paying the fee¹⁰⁶.
- Visas are often issued only after **long delays**¹⁰⁷, often after the four-week time period stipulated by the 2009 Commission Communication on guidance for better transposition and application of Directive 2004/38/EC has passed¹⁰⁸.
- **Numerous documents and information** are requested, which are not required under the Directive, e.g. healthcare insurance¹⁰⁹, proof of accommodation¹¹⁰, invitation from a national of the country concerned¹¹¹, flight details¹¹², a hotel reservation¹¹³, a sum of money available in a bank account or other sufficient resources¹¹⁴, residence card¹¹⁵, or other documents (sometimes even for short visits to family or for holidays)¹¹⁶. Family members are also asked to have a passport with at least a three month validity after the intended date of return¹¹⁷. Visas are often denied because of legal documents required from a non-EU family member¹¹⁸. Non-EU citizens who marry an EU citizen are, therefore, refused a visa, as their marriage is not registered in the EU or in line with Italian national laws.

¹⁰³ Your Europe Advice, Quarterly Feedback Report No. 4, Quarter 2/2013 (April-June), Italy 125901.

¹⁰⁴ Your Europe Advice, Quarterly Feedback Report No. 12, Quarter 2/2015 (April-June), Italy 172463; Your Europe Advice, Quarterly Feedback Report No. 3, Quarter 1/2013 (January-March), Italy 121097; Your Europe Advice, Quarterly Feedback Report No. 5, Quarter 3/2013 (July-September), Italy 132176. Your Europe Advice, Quarterly Feedback Report No. 10, Quarter 4/2014 (October-December), Italy 156371.

¹⁰⁵ Your Europe Advice, Quarterly Feedback Report No. 11, Quarter 1/2015 (January-March), Italy 166722; Your Europe Advice, Quarterly Feedback Report No. 5, Quarter 3/2013 (July-September), Italy 132176.

¹⁰⁶ Your Europe Advice, Quarterly Feedback Report No. 12, Quarter 2/2015 (April-June), Italy 172463; Your Europe Advice, Quarterly Feedback Report No. 4, Quarter 2/2013 (April-June), Italy 125383.

¹⁰⁷ Your Europe Advice, Quarterly Feedback Report No. 12, Quarter 2/2015 (April-June), Italy 173969; Your Europe Advice, Quarterly Feedback Report No. 11, Quarter 1/2015 (January-March), Italy 163988; Citizens without borders, p. 37.

¹⁰⁸ European Commission, 'Communication on guidance for better transposition and application of 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'.

¹⁰⁹ Your Europe Advice, Quarterly Feedback Report No. 4, Quarter 2/2013 (April-June), Italy 122698, Your Europe Advice, Quarterly Feedback Report No. 5, Quarter 3/2013 (July-September), Italy 130389.

¹¹⁰ Your Europe Advice, Quarterly Feedback Report No. 6, Quarter 4/2013 (October-December), Italy 137783; Your Europe Advice, Quarterly Feedback Report No. 4, Quarter 2/2013 (April-June), Italy 125383.

¹¹¹ Your Europe Advice, Quarterly Feedback Report No. 6, Quarter 4/2013 (October-December), Italy 137783; Your Europe Advice, Quarterly Feedback Report No. 4, Quarter 2/2013 (April-June), Italy 122698.

¹¹² Your Europe Advice, Quarterly Feedback Report No. 6, Quarter 4/2013 (October-December), Italy 137783; Your Europe Advice, Quarterly Feedback Report No. 5, Quarter 3/2013 (July-September), Italy 130389; Your Europe Advice, Quarterly Feedback Report No. 4, Quarter 2/2013 (April-June), Italy 125383.

¹¹³ Your Europe Advice, Quarterly Feedback Report No. 5, Quarter 3/2013 (July-September), Italy 130389.

¹¹⁴ Your Europe Advice, Quarterly Feedback Report No. 6, Quarter 4/2013 (October-December), Italy 137783; Your Europe Advice, Quarterly Feedback Report No. 4, Quarter 2/2013 (April-June), Italy 122698.

¹¹⁵ Your Europe Advice, Quarterly Feedback Report No. 5, Quarter 3/2013 (July-September), Italy 130389.

¹¹⁶ Your Europe Advice, Quarterly Feedback Report, Quarter 3/2015 (July-September), Italy 177216; Your Europe Advice, Quarterly Feedback Report No. 12, Quarter 2/2015 (April-June), Italy 172996; Your Europe Advice, Quarterly Feedback Report No. 6, Quarter 4/2013 (October-December), Italy 137890; Your Europe Advice, Quarterly Feedback Report No. 4, Quarter 2/2013 (April-June), Italy 125901.

¹¹⁷ Your Europe Advice, Quarterly Feedback Report No. 8, Quarter 2/2014 (April-June), Italy 148484.

¹¹⁸ Your Europe Advice, Quarterly Feedback Report No. 4, Quarter 2/2013 (April-June), Italy 125383: Italy refused to issue a visa because the marriage was not celebrated in the Union.

- Complaints have been made that non-EU family members of an EU citizen **cannot travel freely** within the Union together, even after many years of residence in the EU, **because the visa exemption is not applied**, in violation of Article 5(2) of the Directive¹¹⁹.
- Non-EU family members are **asked to submit their request for a long-term entry visa or family reunification entry visa**. EU citizens must, therefore, submit a request for family reunification and wait for the relevant authorisations. This violates Article 5 of the Directive and applies the Immigration Act¹²⁰ for non-EU citizens to EU citizens, despite Decree-Law 89/2011 cancelling the requirement of an entry visa for TCN family members accompanying or joining an EU citizen in order to legally reside in Italy for up to three months¹²¹. Cases are also reported where a long-term visa is required in place of a short-term visa¹²². TCNs who are family members of a migrant EU citizen and who want to exercise their right to stay with him/her in the host country, do not need to apply for a long-term visa to enter the host country, even if their declared intention is to reside there. A short-term visa should suffice to enter the country and a residence card can be applied for within three months of entry.
- Regarding **visa duration**, it has been reported that the non-EU wife of a British citizen residing in the UK has been issued a visa valid for only two months on the basis that her UK residence permit would expire in two months¹²³, while the non-EU wife of British citizen applied for a 20-day multiple entry within six months Schengen Visa. Instead she was issued a 15-day single entry visa within one month¹²⁴.
- **Abusive enquiries** at the border are reported, e.g. children of German and Italian parents with double nationality holding a German passport were required to have their Italian passport when returning from non-EU country to Italy, where they live¹²⁵.
- **Unjustified or erroneous refusal of a visa** are reported¹²⁶, (e.g. on grounds that the 'information was not reliable'¹²⁷, without giving any reason¹²⁸, or because a UK national could not prove that she was resident in Italy when she travelled there to meet her husband for a short holiday¹²⁹).
- Many consulates **require the applicant to be lawfully present in the consular jurisdiction** the when they submit a visa application¹³⁰.

¹¹⁹ Your Europe Advice, Quarterly Feedback Report No. 9, Quarter 3/2014 (July-September), Italy 150877; Your Europe Advice, Quarterly Feedback Report No. 4, Quarter 2/2013 (April-June), Italy 122667; Your Europe Advice, Quarterly Feedback Report No. 6, Quarter 4/2013 (October-December), Italy 122667.

¹²⁰ Legislative Decree of 25 July 1998, n. 286 (*Decreto legislativo 25 luglio 1998, n. 286 'Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero'*), Government Gazette n.191 del 18-8-1998.

¹²¹ Your Europe Advice, Quarterly Feedback Report No. 5, Quarter 3/2013 (July-September), Italy 128419; Citizens without borders, 'Free movement and residence in the European Union a challenge for European citizenship', p. 37.

¹²² Your Europe Advice, Quarterly Feedback Report No. 5, Quarter 3/2013 (July-September), Italy 128419; Your Europe Advice, Quarterly Feedback Report No. 14, Quarter 4/2015 (October-December), Italy 186216.

¹²³ Your Europe Advice, Quarterly Feedback Report No. 11, Quarter 1/2015 (January-March), Italy 160973.

¹²⁴ Your Europe Advice, Quarterly Feedback Report No. 11, Quarter 1/2015 (January-March), Italy 163128.

¹²⁵ Your Europe Advice, Quarterly Feedback Report No. 5, Quarter 3/2013 (July-September), Italy 129800.

¹²⁶ Your Europe Advice, Quarterly Feedback Report No. 5, Quarter 3/2013 (July-September), Italy 130389.

¹²⁷ Your Europe Advice, Quarterly Feedback Report No. 5, Quarter 3/2013 (July-September), Italy 176839.

¹²⁸ Your Europe Advice, Quarterly Feedback Report No. 12, Quarter 2/2015 (April-June), Italy 170630.

¹²⁹ Your Europe Advice, Quarterly Feedback Report No. 5, Quarter 3/2013 (July-September), Italy 175780.

¹³⁰ Your Europe Advice, Quarterly Feedback Report No. 9, Quarter 3/2014 (July-September), Italy 152055.

- The **unfriendly attitude** of some diplomatic representations and providers of consular services for visa applications has also been reported¹³¹.
- **Difficulties** have been reported **in getting an appointment with the embassies** within a short deadline¹³².

Generally speaking, non-EU family members **face difficulties in being recognised as family members of EU citizens**. The absence of EU rules on mutual recognition of documents relating to personal status (e.g. birth and marriage certificates) exacerbates these problems and leads to variance between administrative practices, extra burdens and delays. For example, foreign marriage certificates were not accepted¹³³ (even when translated and notarised, or duly legalised¹³⁴ and certified internationally under The Hague Apostille Convention¹³⁵) and citizens were required to undergo additional formalities, e.g. prior registration in the celebration country¹³⁶. For instance, Italian authorities refused to accept a marriage certificate on the grounds that it was not legalised by the Italian Embassy in Sri Lanka. The Italian Embassy refused to certify the document, and the TCN in question could not apply for a residence card in Italy, where she resided with her spouse¹³⁷. The Your Europe Advice Service also reported a case where the registration of an adoption in another Member State for a same-sex couple was refused¹³⁸. In general, the issue of how dependency is defined continues to cause problems¹³⁹.

Difficulties related to the **wrong application of the restrictions on the right of entry when referring to non-EU family members** have also been identified¹⁴⁰. A 2014 study reports that SIS¹⁴¹ (Schengen Information System) notifications are considered by many Italian Embassies (e.g. in Paraguay and Nigeria) as a reason to deny an entry visa. This ignores the fact that the Ministry of the Interior has stipulated the cancellation of an SIS notification for cases of family reunification, under Article 29 of the Immigration Act¹⁴². EU citizens therefore encounter less favourable treatment than non-EU citizens, violating EU citizenship rights.

A recurring problem reported by the Your Europe Advice service concern the **exclusion orders stored in the SIS**, e.g. a non-EU spouse of an EU citizen was not able to enter the Schengen area due to an exclusion order entered into the SIS by Italy several years earlier¹⁴³.

¹³¹ Your Europe Advice, Quarterly Feedback Report No. 11, Quarter 1/2015 (January-March), Italy 163128; Your Europe Advice, Quarterly Feedback Report No. 6, Quarter 4/2013 (October-December), Italy 133578.

¹³²Your Europe Advice, Quarterly Feedback Report No. 10, Quarter 4/2014 (October-December), Italy 150582.

¹³³ Your Europe Advice, Quarterly Feedback Report No. 11, Quarter 1/2015 (January-March), Italy 166722.

¹³⁴ Your Europe Advice, Quarterly Feedback Report No. 6, Quarter 4/2013 (October-December), Italy 135840.

¹³⁵ Your Europe Advice, Quarterly Feedback Report No. 2, Quarter 2/2012 (April-June), Italy 105196, 106252, 104230, 103478.

¹³⁶ Your Europe Advice, Quarterly Feedback Report, Quarter 3/2015 (July-September), Italy 178356 and 179628; Your Europe Advice, Quarterly Feedback Report No. 14, Quarter 4/2015 (October-December), Italy 186216; Your Europe Advice, Quarterly Feedback Report No. 11, Quarter 1/2015 (January-March), Italy 163736.

¹³⁷ Your Europe Advice, Quarterly Feedback Report No. 10, Quarter 4/2014 (October-December), Italy 158021.

¹³⁸ Your Europe Advice, Quarterly Feedback Report No. 4, Quarter 2/2013 (April-June), Italy 124989.

¹³⁹ Your Europe Advice, Quarterly Feedback Report No. 11, Quarter 1/2015 (January-March), Italy 166300.

¹⁴⁰ Citizens without borders, 'Free movement and residence in the European Union a challenge for European citizenship', p. 38.

¹⁴¹ Schengen Information System: a governmental database of individuals accessing the territory of the European Union. SIS notifications signal that an individual has illegally entered the territory of a Member State.

¹⁴² Legislative Decree of 25 July 1998, n. 286.

¹⁴³ Your Europe Advice, Quarterly Feedback Report No. 11, Quarter 1/2015 (January-March), Italy 163761.

2.2.2. Residence

The main obstacles to the **residence rights** of family members of Union citizens are broadly similar to those identified in relation to entry outlined above, including **excessive delays** in processing residence documentation, the application of **fees** and requests for **additional documentation**, as well as the **processing of TCN family members under ordinary immigration rules**. TCNs also encounter **difficulties in obtaining clear information** when they intend to stay in the EU for more than three months¹⁴⁴.

It is reported that the condition of '**sufficient resources**' is applied to TCN family members in their own capacity, even when the EU citizen joined is lawfully resident in the country¹⁴⁵.

An issue related to registration certificates was reported by a 2013 study¹⁴⁶, with problems arising when residence cards for non-EU family members are issued by the Ministry of the Interior at the local offices of the Immigration Police. This is called the '**EU residence card for family member of an EU citizen**' and lasts five years. Immigration Police seldom provide residence cards in the first instance, but instead tend to provide the permit of stay for family members provided by Article 30 of the Immigration Act, with a maximum validity of two years¹⁴⁷. Only when specifically requested do Immigration Police consider issuing the registration certificate, but they remain **reluctant** to issue it, even when the individual making the request is assisted by a lawyer or another official.

Reasons given for denials by Immigration Police are:

- The non-EU family member does not possess an entry visa; the passport of the non-EU family member has expired (although he/she possesses a registration certificate).
- The EU citizen is unable to demonstrate the economic resources necessary to support his/her non-EU family member.
- The non-EU family member, resident in Italy for more than five years, is not married to an Italian citizen but to a citizen of another Member State¹⁴⁸.
- EU law, as well as the *Zu* and *Chen*¹⁴⁹ and *Zambrano*¹⁵⁰ case law would not guarantee a right of residence to a non-EU mother of an EU child¹⁵¹.

In countries like Italy, which has made use of Article 37 of Directive 2004/38 to extend the benefit of free movement rights to **non-EU family members** of nationals of the Member State in question, the non-EU family members of the country's own nationals will benefit from the same family reunification rules under Article 7(2) of the Directive and will therefore have been issued with a residence card under Article 10 of the Directive. However, there is some uncertainty about whether or not Article 5(2) should also apply to these family members¹⁵².

¹⁴⁴ Your Europe Advice, Quarterly Feedback Report No. 5, Quarter 3/2013 (July-September), Italy 128449.

¹⁴⁵ Your Europe Advice, Quarterly Feedback Report No. 2, Quarter 3/2012 (July-September), Italy 109289.

¹⁴⁶ Citizens without borders, 'Free movement and residence in the European Union a challenge for European citizenship', p. 51.

¹⁴⁷ Ibid.

¹⁴⁸ Your Europe Advice, Quarterly Feedback Report No. 6, Quarter 4/2013 (October-December), Italy 136298.

¹⁴⁹ Case C-200/02 *Zhu and Chen* [2004] ECLI:EU:C:2004:639.

¹⁵⁰ C-34/09 *Zambrano* [2011] ECLI:EU:C:2011:124.

¹⁵¹ Your Europe Advice, Quarterly Feedback Report No. 7, Quarter 1/2014, (January-March), Italy 141704.

¹⁵² Your Europe Advice, Quarterly Feedback Report No. 12, Quarter 2/2015 (April-June), Italy 174320 and 171360.

In addition, the **distinction** between **mobile EU citizens' TCN family members** moving with the EU citizen on the one hand, and **TCNs not falling within the scope of Directive 2004/38** on the other, is sometimes **not clearly made**. Often, the lack of a distinction and clarity is due to an absence of information about the rights of the TCN family members of mobile EU citizens, as outlined above. Also, in cases where information on the rights of TCN family members of mobile EU citizens is provided, some sources tend to focus and provide more extensive information on TCNs not falling within the scope of Directive 2004/38/EC.

Regarding **permanent residence**, the Your Europe Advice service highlighted that TCNs who acquire such a right as family members **after five years** should have their position strengthened. In other words, it would be absurd should they lose their acquired rights as family members of an EU citizen under Directive 2004/38 once they gain autonomous status as long-term residents in their own right. However, the permanent residence card delivered after five years does not indicate that the long-term resident TCN is the family member of an EU citizen (contrary to the card first received under Directive 2004/38). The result is that the **specific rights as the family member of an EU citizen were questioned once the TCN received his/her permanent residence card**¹⁵³.

2.2.3. Access to Social security and healthcare

The barriers outlined under Section 2.1.3 also affect TCNs. These barriers mainly concern **access to healthcare services, unemployment benefits and old age pensions**.

¹⁵³ Your Europe Advice, Quarterly Feedback Report No. 2, Quarter 3/2012 (July-September), Italy 110286.

3. DISCRIMINATORY RESTRICTIONS TO FREE MOVEMENT

KEY FINDINGS

- **Discrimination based on nationality:** issues reported concern EU citizens and TCN family members experiencing discrimination in registering as permanent residents, accessing health services, using vehicles, accessing simplified administrative procedures and social benefits in Italy.
- **Discrimination on grounds of civil status/sexual orientation:** Same-sex couples are not permitted to marry in Italy, but they will soon have the right to enter into a civil union under a May 2016 law. Therefore, the partner with whom the Union citizen has contracted a registered partnership (or a same-sex marriage abroad) should now be recognised as a family member under Article 2 of Directive 2004/38/EC. Issues remain open on “partners in a durable relationship”.
- **Discrimination based on race or ethnicity:** No instances have been reported of EU citizens and TCNs being discriminated on grounds of race or ethnicity.

3.1. Discrimination based on nationality

As described in Section 2.1.1, **Romanian and Polish citizens** frequently face difficulties in **registering as permanent residents**¹⁵⁴. In addition, for Romanian citizens, **access to medical treatment** is uncertain or not granted. Other EU citizens have been the target of racist behaviours.

A recurring issue concerns the **denial of the possibility of self-certification for civil status documents such as birth certificates**, with this option available only to Italian nationals¹⁵⁵. **Discrimination based on the place of residence** are also reported: an Italian pensioner residing in Romania needs to provide a so-called ‘still alive’ certificate, proving that she is still entitled to receive her pension. People residing in Italy are required only to provide a certificate which does not need to be signed and authenticated¹⁵⁶.

In addition, Your Europe Active reports cases of:

- Invalidity benefits denied on grounds of nationality¹⁵⁷.
- National employment services open only to nationals in a specific sector¹⁵⁸.
- Pension credits earned while studying are only recognised in the case of Italian citizens¹⁵⁹.

¹⁵⁴ Your Europe Advice, Quarterly Feedback Report No. 11, Quarter 1/2015 (January-March), Italy 162268, 162613, 162281. Your Europe Advice, Quarterly Feedback Report No. 12, Quarter 2/2015 (April-June), Italy 162268, 171714.

¹⁵⁵ Your Europe Advice, Quarterly Feedback Report No. 4, Quarter 2/2013 (April-June), Italy 126892, 126892.

¹⁵⁶ Your Europe Advice, Quarterly Feedback Report No. 7, Quarter 1/2014, (January-March), Italy 145540; Your Europe Advice, Quarterly Feedback Report No. 8, Quarter 2/2014 (April-June), Italy 148354.

¹⁵⁷ Your Europe Advice, Quarterly Feedback Report No. 2, Quarter 3/2012 (July-September), Italy 108747.

¹⁵⁸ Your Europe Advice, Quarterly Feedback Report No. 2, Quarter 2/2012 (April-June), Italy 105853.

¹⁵⁹ Your Europe Advice, Quarterly Feedback Report No. 7, Quarter 1/2014, (January-March), Italy 142951.

- Trucks with any number plates except Romanian plates can pay fines (even fines up to EUR 2000) via bank transfer, while drivers of trucks with Romanian number plates must pay immediately and, in the majority of cases, in cash¹⁶⁰.
- Car-sharing services are only available to drivers with Italian licences¹⁶¹.
- Differences in the penalties for road traffic offences: a holder of a licence gets points deducted in case of a penalty. If the driver is an Italian citizen and has no more points on his driving licence, he must sit an exam in order to regain his points. Foreigners, however, cannot drive for two years¹⁶².
- There is no provision establishing equal access to the public sector for TCN family members and, in practice, they are overlooked when competitions are organised, resulting in a number of cases challenging such exclusions¹⁶³.
- An Italian citizen, a physician operating in a public hospital in Italy, claimed that there is discrimination based on nationality when treating EU citizens for chronic diseases. Local administrative offices refuse to accept an exemption to prescription charges due to chronic disease ('Esenzione ticket per patologia cronica'), with the patient being asked to pay prescription charges of several hundred euros. If these citizens were enlisted in the Italian Health System, they would not have to pay these charges¹⁶⁴.

3.2. Discrimination based on civil status/sexual orientation

Same-sex spouses are not permitted to marry in Italy, nor is it possible to have such a marriage transcribed, for public order reasons¹⁶⁵. Going against its previous case law, the Italian Supreme Court has stated that the marriage of two Italians of the same sex celebrated abroad would be without force and effect in Italy, but is not contrary to public order¹⁶⁶.

Until 2012, Italian authorities did not recognise same-sex marriages and civil partnerships celebrated outside the EU between a Union citizen and a TCN, denying the latter the status of 'spouse' for the purpose of the Directive. Only the duty of facilitation was open to them. However, it has been increasingly frequent for a foreigner to request a residence permit on the grounds of being in a couple with an Italian national¹⁶⁷. In 2012, the court of Reggio Emilia quashed the police authority's decision to refuse a permit on the basis that **the capacity of the spouse acquired in the country where the marriage was celebrated should have effect in Italy as well**, if only for the purposes of the issuance of the residence card¹⁶⁸.

The Court of Pescara recognized '**spouse**' in accordance with Legislative Decree 30/2007, as including the **citizen of a country outside the EU who has married an EU citizen of the same sex abroad**, thereby giving him/her an **entitlement to a residence permit**

¹⁶⁰ Your Europe Advice, Quarterly Feedback Report No. 7, Quarter 1/2014, (January-March), Italy 142384.

¹⁶¹ Your Europe Advice, Quarterly Feedback Report No. 9, Quarter 3/2014 (July-September), Italy 152527.

¹⁶² Your Europe Advice, Quarterly Feedback Report No. 3, Quarter 1/2013 (January-March), Italy 122628.

¹⁶³ European Commission, European Report on the Free Movement of Workers in Europe in 2011-2012.

¹⁶⁴ Your Europe Advice, Quarterly Feedback Report No. 6, Quarter 4/2013 (October-December), Italy 136853.

¹⁶⁵ Memorandum of the Ministry of the Interior n. 55 of 18 October 2007 (*Circolare del ministero dell'Interno n. 55 del 18 ottobre 2007*); National case law: Appeal Firenze, 27 June 2008, Appeal Roma, 13 July 2006, Court of Latina, 31 May 2005.

¹⁶⁶ Supreme Court (*Corte di Cassazione*), judgement 15-3-2012 no. 4184.

¹⁶⁷ B. Nascimbene, A. Di Pascale, 'Italy', p. 670-67.

¹⁶⁸ Court of Reggio Emilia, order 13-2-2012. The judgement is final because not appealed by the State Counsel.

and/or residence card. In 2012, the Ministry of the Interior issued a **circular** in which, while stating that Legislative Decree 30/2007 does not permit the issuance of a residence card under Article 10 to a spouse of the same sex, it acknowledged as legitimate the practice of those police authorities which had issued such a residence document¹⁶⁹. The question of recognition of same-sex marriages for the purposes of family reunification remains open. A 2013 study highlighted that, following the abovementioned 2012 Circular of the Ministry of the Interior, immigration offices do not provide the residence card prescribed by Article 10 of the Directive but instead offer a permit of stay for two years¹⁷⁰.

In **May 2016 the law on (same-sex) civil unions** was approved¹⁷¹ and implementing decrees will be proposed in the coming months. These will most probably include the recognition of same-sex couples, married or in a civil partnership contracted abroad, both in civil law and in relation to free movement rights. **It may be assumed that the partner with whom the Union citizen has contracted a marriage or registered partnership outside the EU will be recognised as a family member**, through a review of the transposition of Article 2(2)b) of the Directive. (See Section 1.2 for an analysis of the situation of the partner of an EU citizen.)

Notably, in June 2016, the **European Court of Human Rights condemned Italy because of its refusal to grant a residence permit to a gay couple on family grounds**¹⁷². This refusal violated Article 14 (prohibition of discrimination) taken together with Article 8 (right to respect for private and family life) of the European Convention on Human Rights. In particular, the Court found that in deciding to treat homosexual couples in the same way as heterosexual couples without any spousal status, Italy had breached the applicants' right not to be subjected to discrimination based on sexual orientation in the enjoyment of their rights under Article 8 of the Convention. The restrictive interpretation of the concept of family member, as applied to Mr McCall, did not take due account of the applicants' personal situation and in particular their inability to obtain a form of legal recognition of their relationship in Italy. In fact, the gay couple could not marry or, at the relevant time, obtain any other form of legal recognition of their situation in Italy.

3.3. Discrimination based on ethnic/racial origin

In Italy, **Roma** face discrimination on many different levels. The Fundamental Rights Agency ('FRA') reported in 2014 that 31% of the Roma population felt discriminated against in Italy¹⁷³. In particular, it reported that the situation of Roma in Italy differs from that of other Member States since about half of the Roma surveyed (40 % of them non-nationals) live in **encampments**. A European Parliament study confirmed this data by indicating that between 40,000 and 50,000 Roma people lived in camps in 2010¹⁷⁴. Roma live in an extremely degrading environment in these camps..

¹⁶⁹ Memorandum 26-10-2012, no. 400/C/2012/8996/IIdiv.

¹⁷⁰ Citizens without borders, 'Free movement and residence in the European Union a challenge for European citizenship', p. 39.

¹⁷¹ The law was approved on 11 May 2016 but it is not yet in force.

¹⁷² Judgment in Taddeucci and McCall v. Italy, of 30 June 2016, application. 51362/09.

¹⁷³ Fundamental Rights Agency, 'Roma Survey- Data in Focus. Discrimination against and living conditions of Roma women in 11 EU Member States' ('Roma Survey'), October 2014, at p. 22, available at: http://fra.europa.eu/sites/default/files/fra-2014-roma-survey-gender_en.pdf.

¹⁷⁴ European Parliament, 'Evaluation of the EU Framework for National Roma Integration Strategies', 2015, at p.32, available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2015/536485/IPOL_STU\(2015\)536485_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/536485/IPOL_STU(2015)536485_EN.pdf).

This situation severely affects their **access to many essential services**, such as **healthcare**. FRA reports that the health of Roma women aged 50 and over living in encampments is much worse than that of non-Roma women living nearby: 67 % of Roma women surveyed say that they are in bad health, compared to 9 % of non-Roma women, and 69 % of Roma women say that their health limits their daily activities, compared to only 24 % of non-Roma women¹⁷⁵. In general, Roma **life expectancy** is ten years lower than the general population and the Roma **infant mortality** rate is at least twice as high as the national average. Health status is linked to **poor living conditions**: examples include lack of hygiene and access to water, overcrowding in flats, no private bathrooms, and the presence of rats. In addition, the camps very often do not have electricity and other facilities¹⁷⁶.

The European Parliament study indicates that **hate speech and hate crime** have been on the rise, with 85% of the respondents to the survey holding unfavourable views on Roma¹⁷⁷. Moreover, **educational attainment and school attendance** rates are lower in the Roma community than in the wider population, and as a consequence, there are also high levels of illiteracy found in the Roma population. The survey also revealed that the **employment** rate of Roma and Sinti is around 34% and that gender is an important issue: legally employed Roma and Sinti women represent only 11.5% of the entire sample, as opposed to 34.4% of Italian women who reside in Italy¹⁷⁸.

Moreover, in 2008, the European Parliament adopted a resolution on the **census of the Roma** on the basis of ethnicity in Italy¹⁷⁹. This measure was part of the actions taken at local level under the "state of emergency" declared in relation to nomad settlements in the regions of Campania, Lazio and Lombardy. The Parliament urged the Italian government to refrain from collecting fingerprints from Roma, including minors, and from using fingerprints already collected. The Parliament also expressed concern at the affirmation - contained in the administrative decrees and orders issued by the Italian Government - that the presence of Roma camps around large cities in itself constitutes a serious social emergency with repercussions for public order and security which justify declaring a state of emergency for one year. The declaration of a state of emergency was not deemed appropriate or proportionate to this specific case by the EP.

¹⁷⁵ Fundamental Rights Agency, Roma Survey, at p.27.

¹⁷⁶ Matrix (2014). Roma Health Report, Health status of the Roma population, Data collection in the Member States of the European Union, Executive Summary. Brussels: Directorate General for Health and Food Safety, European Commission. Page 5. Available at: http://ec.europa.eu/health/social_determinants/docs/2014_roma_health_report_es_en.pdf

¹⁷⁷ European Parliament, 'Evaluation of the EU Framework for National Roma Integration Strategies', at p.26.

¹⁷⁸ Ibid at pp. 31-32.

¹⁷⁹ European Parliament resolution of 10 July 2008 on the census of the Roma on the basis of ethnicity in Italy, P6_TA(2008)0361, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2008-0361>.

4. MEASURES TO COUNTER ABUSE OF RIGHTS

KEY FINDINGS

- Various provisions aim to discourage and punish **marriages of convenience** or other abuses of free movement rights. The residence permit (or its renewal) is rejected, or the residence permit is revoked when it is proven that the marriage, justifying the authorisation for family reunification, took place only to allow the TCN to reside in Italy. The residence permit is immediately revoked where it is established that the marriage was not followed by 'actual cohabitation'. Cases of marriage of convenience are also likely to be punished as criminal offences.
- **False declarations of parenthood** or **false declarations of the age of a child** are also punished as criminal offences and lead to the refusal of free movement rights, as do **adoptions of convenience**.
- Documents proving family relations that are issued abroad need to be verified by the Italian authorities. This verification creates **delays and additional obstacles** for the applicants.

4.1. Marriage of convenience

Italy does not specifically criminalise marriages of convenience. However, a number of legislative provisions are used by the authorities to curb this sort of abuse¹⁸⁰.

The Italian Civil Code stipulates the **invalidity of marriage** when the spouses do not fulfil their obligations or do not exercise the rights connected to the marriage¹⁸¹. In addition, cases of marriage of convenience are likely to constitute crimes of **false declarations before a public official¹⁸²** and **aiding and abetting unauthorised immigration¹⁸³**. More specifically, Legislative Decree 286/1998 allows the **refusal of a family reunification** request when it is established that the sole purpose for the marriage was to allow the person to enter and reside in the territory of the State¹⁸⁴. Similarly, the application for a **residence permit or its renewal is rejected, or the residence permit is revoked**, when it is proven that the marriage justifying the authorisation for family reunification, took place only to allow the TCN to reside in Italy¹⁸⁵.

The residence permit is immediately revoked when it is established that the marriage was not followed by 'actual cohabitation', with an exception made in cases

¹⁸⁰ European Commission, 'Misuse of the Right to Family Reunification. Marriages of Convenience and False Declarations of Parenthood' June 2012, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/family-reunification/01_austria_national_report_misuse_of_the_right_to_family_reunification_en.pdf.

¹⁸¹ Article 123 Italian Civil Code, Royal Decree 16 March 1942, n. 262 (*Codice Civile*) Official Gazette n. 79 of 4 April 1942.

¹⁸² Article 495 Italian Penal Code, Royal Decree 19 October 1930 n.1398 (*Codice Penale*) Official Gazette n. 251 of 26 October 1930.

¹⁸³ Article 12 Legislative Decree 286/1998 'Text regulating migration and rules concerning migrants' status', Decreto Legislativo 25 luglio 1998, n. 286, (*Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*), Government Gazette 18/08/1998, n. 191.

¹⁸⁴ Article 29 para 9 Legislative Decree 286/1998.

¹⁸⁵ Article 30 para 1-bis Legislative Decree 286/1998.

where children were born from the marriage¹⁸⁶. The Court of Cassation added that a residence permit is conditional not only on the permanent cohabitation of the spouses, but also on the TCN residing in Italy¹⁸⁷. On other occasions, however, the Court has adopted a more flexible approach justifying the situation of a spouse who, for example, lives abroad for work reasons¹⁸⁸.

With regard to marriages contracted in Italy, a TCN is entitled to **a residence permit for family reasons only if he/she holds a valid residence permit for different purposes for at least one year prior to the marriage**¹⁸⁹.

Italy introduced **stricter requirements for the acquisition of the Italian citizenship** by marriage with an Italian citizen in order to counter marriages of convenience. The foreign or stateless applicant must now be married to an Italian citizen for at least two years, and he/she must have his/her legal residence in Italy. If the spouses reside abroad, the application can be submitted three years after the marriage¹⁹⁰. The same law provided that a foreign national who wants to undertake a marriage in Italy must show a valid Italian residence permit to the Registrar¹⁹¹. The Italian Constitutional Court declared this latter provision unconstitutional, stating it was a breach of the right to marry¹⁹².

While the **burden of proof** in applying for family reunification is on the applicant, the burden of proof for misuse of these rights lies with the authorities. However, in one reported case Italy required the citizen to prove that the marriage was genuine¹⁹³.

An **investigation** by the authorities can be triggered because of the living conditions of the couple, especially where the couple is not cohabiting with one another, or if one of the spouses is living in another country. **Documents** proving marriages celebrated abroad are thoroughly checked: in order to counter marriage of convenience, a certificate translated and legalised by Italian authorities abroad is always requested, except in cases of exemption under international conventions. In addition, a police officer must conduct checks at the applicant's home before issuing a residence permit for family reasons, in order to verify effective cohabitation. After the issuing of a residence permit for family reasons, the police carry out checks to verify the cohabitation or, in the case of the spouse, the effectiveness of the marriage. Where no such evidence of found, a decision to revoke the residence permit is adopted.

As described in Section 5.2.1, **the checks on documents issued abroad constitute a recurrent obstacle** to the free movement rights of TCNs. Foreign marriage certificates were not accepted even when translated and notarised¹⁹⁴, or duly legalised¹⁹⁵ and certified

¹⁸⁶ Article 30 para 1-bis Legislative Decree 286/1998.

¹⁸⁷ Italian Court of Cassation, Civ., Sect. I, 25 November, 2005, no. 25027.

¹⁸⁸ Italian Court of Cassation, Civ., Sect. I, 18 June 2005, no. 13165.

¹⁸⁹ Article 30, para 1, letter b) Legislative Decree 286/1998.

¹⁹⁰ Article 11 of Law 94/2009, Dispositions on the matter of security law, 15 July 2009 (*Disposizioni in materia di sicurezza pubblica*) Official Gazette n.170 of 24 July 2009.

¹⁹¹ Article 116, para 1 of the Italian Civil Code Law as amended by Law 94/2009.

¹⁹² Italian Constitutional Court, decision n. 245 of 25 July 2011.

¹⁹³ Your Europe Advice, Quarterly Feedback Report No. 2, Quarter 3/2012 (July-September), Italy 109173).

¹⁹⁴ Your Europe Advice, Quarterly Feedback Report No. 11, Quarter 1/2015 (January-March), Italy 166722.

¹⁹⁵ Your Europe Advice, Quarterly Feedback Report No. 6, Quarter 4/2013 (October-December), Italy 135840.

internationally under The Hague Apostille Convention¹⁹⁶, and citizens were required to go through additional formalities, e.g. prior registration in the celebration country¹⁹⁷.

4.2. Other abuses of free movement rights

Italy has no specific law covering false declarations of parenthood or any other abuse of free movement rights. However, the Italian penal code punishes giving **false identity before a public officer** with between one and six years of imprisonment, and if there has been a false declaration to a registrar, this may be at least two years¹⁹⁸. Legislative Decree 286/1998 also introduced the penalty of one to six years of imprisonment for anyone **counterfeiting or altering documents in order to illegally obtain a visa or a residence permit**. If such falsification is systematic, this the period of imprisonment is extended from three to 10 years¹⁹⁹. As a consequence of any form of abuse of free movement rights, the residence permit may be withdrawn.

Legislative Decree 286/1998²⁰⁰ specifically addresses **adoptions of convenience** by establishing that a request for reunification is refused when it is determined that an adoption was made for the sole purpose of enabling the person to enter and reside in the state. To avoid the so-called chain reunification and discourage forced marriages between, or with, minors, the spouse is entitled to reunification only if s/he is at least 18 years old and the minor enjoys reunification with the parent only if unmarried²⁰¹.

The **burden of proof** is on the authorities to establish abuses such as marriages of convenience. Once the authorisation for reunification is granted, the Italian consular authorities may issue an entry visa only after verifying the authenticity of the documents proving family relationship, marriage, minor age and health conditions.

In order to counter **false statements on the age of a child**, the Italian Court of Cassation has stated that Italian consular representatives may undertake all necessary investigations to determine the age of those who require an entry visa to Italy, including the use of bone densitometry examinations²⁰². If the report of investigation has a margin of error, then the minor age will be assumed to be valid, in order to protect the child²⁰³. DNA tests may be conducted at the expense of the parties concerned.

¹⁹⁶ Your Europe Advice, Quarterly Feedback Report No. 2, Quarter 2/2012 (April-June), Italy 105196, 106252, 104230, 103478.

¹⁹⁷ Your Europe Advice, Quarterly Feedback Report, Quarter 3/2015 (July-September), Italy 178356 and 179628; Your Europe Advice, Quarterly Feedback Report No. 14, Quarter 4/2015 (October-December), Italy 186216; Your Europe Advice, Quarterly Feedback Report No. 11, Quarter 1/2015 (January-March), Italy 163736.

¹⁹⁸ Article 495 Italian Penal Code

¹⁹⁹ Article 5, par. 8-bis, Legislative Decree 286/1998 'Text regulating migration and rules concerning migrants' status' as amended by Law no. 94 of 2009.

²⁰⁰ Article. 29, paragraph 9, Legislative Decree 286/1998.

²⁰¹ Article 29, para 2 letter a) and b), Legislative Decree 286/1998).

²⁰² Italian Court of Cassation, Civ., 25th January 2007, no.1656.

²⁰³ Circular of the Ministry of the Interior of 9 July 2007, no. 17272/7, available at: <http://www.piemonteimmigrazione.it/PDF/Circolare%20Min.%20Int.%2012272%20-%207%20-%20del%209%20Lug.%2007.pdf>.

5. REFUSAL OF ENTRY OR RESIDENCE AND EXPULSIONS OF EU CITIZENS AND THEIR FAMILY MEMBERS

KEY FINDINGS

- EU citizens and their family members may be **refused entry** or a **residence permit** in Italy if they cannot prove their identity, or for reasons of state security, imperative grounds of public security, and other reasons of public policy or public security.
- A **valid identity document** is required for EU citizens or TCNs to exercise their right to residence. If this condition is not fulfilled (e.g. the document has expired), this might lead to the **expulsion** of the EU citizen or TCN, contrary to the Directive's provision.
- Non-EU **fiancé(e)s** of EU citizens are often **refused entry** to Italy on the ground that they do not fall under any category of the Directive.
- There is **uncertainty** about the **grounds for expulsion** of EU nationals: the reference made in the Italian transposing legislation to a number of other provisions (contained in Laws, Decrees, Codes, Articles, etc.) makes it difficult to identify the crimes that can lead to expulsion.

5.1. Refusal of entry or residence

EU citizens and their family members who are not nationals of a Member State may be refused entry to, or residence in, Italy when:

- They **cannot prove their identity, nationality and/or family relationship with the EU citizen**, e.g. they are not in possession of a valid identity document/card, a valid passport, or, where required, an entry visa (TCN family members) and cannot produce, within 24 hours of the request, the necessary documents or prove by appropriate documentation that they are covered by the right to freedom of movement and residence (Article 5 of Legislative Decree 30/2007 transposing Article 5 of the Directive). Some legal critics have pointed out the inadequacy of a 24-hour term to produce such documentation²⁰⁴.
- For reasons of **state security, imperative grounds of public security, and other reasons of public policy or public security**, in accordance with Article 20 of Legislative Decree 30/2007 transposing Articles 27 and 28 of the Directive (further information in the section below). The Supreme Court²⁰⁵ acknowledged that a TCN family member of an EU citizen cannot be automatically refused entry or residence on the Italian territory in case of an alert (SIS notification)²⁰⁶.

²⁰⁴ *Associazione per gli Studi Giuridici sull'Immigrazione (ASGI)*, G. Perin e P. Bonetti, 'Ingresso e soggiorno dei cittadini dell'Unione Europea'.

²⁰⁵ Supreme Court of Cassation, (*Corte di Cassazione*), case n. 27224, 14 November 2008.

²⁰⁶ Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, Official Journal L 239, 22/09/2000, pp. 19 – 62, ratified by Italy by Law n. 388 of 30 November 1993.

Your Europe Advice reports cases of refusal of entry when a residence card was not produced²⁰⁷. In addition, airlines often refuse to board EU citizens or their family members because they do not have a passport with at least three months validity following the intended date of return²⁰⁸.

Italy frequently refuses entry to non-EU fiancé(s) of EU citizens, on the ground that they do not fall under any category of the Directive²⁰⁹.

5.2. Expulsions of EU citizens and their family members

Provisions on expulsions are contained in Legislative Decree 30/2007 and these provisions have been significantly amended by the National Parliament, especially by Legislative Decree 32/2008 and by Decree-Law 89/2011²¹⁰.

Expulsion for reasons of state security, imperative grounds of public security, and other reasons of public policy or public security

Article 20(1) of Legislative Decree 30/2007 states that, except for cases where the conditions of entitlement for residence in Italy no longer exist, the right of entry and residence of Union citizens or their family members, whatever their nationality, may be **restricted only for reasons of state security, imperative grounds of public security, and other reasons of public policy or public security**.

The reference made in the Italian transposing legislation to a number of other provisions (contained in Laws, Decrees, Codes, Articles, etc.) makes it **difficult to identify the crimes for which an EU national may be expelled**. The different grounds for expulsion are²¹¹:

The ground of **state security** includes facts that affect the stability of state institutions (for example, a terrorist attack or espionage activity). This ground, therefore, includes a person being part of a terrorist organisation, or when there are reasonable grounds for believing that his/her stay in Italy would help national or international terrorist organisations or activities in any way²¹².

Imperative grounds of public security exist where the behaviour of the person constitutes a genuine, effective, and serious threat affecting the fundamental human rights or public safety, making his/her expulsion urgent because his/her stay is incompatible with orderly society. Previous criminal convictions decided by Italian or foreign judges, for one or more intentional crimes, committed or attempted against the life or health of people, together with preventive measures or expulsion orders decided by foreign authorities, will be taken into account²¹³.

Expulsion is also provided for under **other reasons of public policy or public security**: such a decision is adopted by the Prefect of the place of stay or residence of the recipient,

²⁰⁷ Your Europe Advice, Quarterly Feedback Report No. 7, Quarter 1/2014, (January-March), Italy 142438.

²⁰⁸ Your Europe Advice, Quarterly Feedback Report No. 7, Quarter 1/2014, (January-March), Italy 144406, 142022.

²⁰⁹ Your Europe Advice, Quarterly Feedback Report No. 7, Quarter 1/2014, (January-March), Italy 143910.

²¹⁰ See Article 13 (transposing Article 14 of the Directive), Article 20 (transposing Articles 27, 28, 29 and 30 of the Directive), Article 21 (transposing Articles 14 and 15 of the Directive) and Article 22 (transposing Article 31 of the Directive) of Legislative Decree 30/2007.

²¹¹ B. Nascimbene, A. Di Pascale, 'Italy', pp. 673-674.

²¹² Article 20(2) of Legislative Decree 30/2007, as amended.

²¹³ Article 20(3) of Legislative Decree 30/2007, as amended. This provision corresponds to Article 4(2) of Legislative Decree 249/2007 which extended Article 20(7-ter) as amended by Legislative Decree 81/2007.

and covers situations that do not fit into the circumstances described above, but which nevertheless constitute a serious and present risk to state institutions or civil society. The Administration may use this type of measure in respect of a person whose presence on Italian territory is considered a serious threat to civil society or the institutions of the state, even if its situation is not directly related to public order or security of the state. The conditions for this measure have been criticised by legal scholars²¹⁴ for being **too general**, and questions have been raised about the compliance of such measures with EU requirements (in particular the definition of the protected interests of society)²¹⁵.

Article 20(4) of Legislative Decree 30/2007, as amended by the Law of 2011, provides that removal orders must be adopted in accordance with the **principle of proportionality** and **cannot be motivated by economic reasons**, or by reasons **unrelated to the individual behaviour of the person concerned representing a real, genuine, and sufficiently serious threat to public order or public safety**. The **existence of criminal convictions shall not in itself justify the adoption of such measures**. In taking an expulsion measure, the length of stay in Italy, the age, family status and economic situation of the individual, his/her health, social and cultural integration in the national territory, and the importance of his/her ties with the country of origin, must be considered (Article 20(5) of Legislative Decree 30/2007)²¹⁶. The Courts have effectively applied these principles on the expulsion of Union citizens or their family members. For instance, the Court of Milan cancelled²¹⁷ an expulsion measure motivated by the criminal record of the person, as the documentation produced by the police could not prove the existence of the claimed precedents. Moreover, the Court of Rome²¹⁸ annulled an expulsion order, citing the tenuous nature of the alleged facts of the crime and taking into account the integration of the EU citizen into the country²¹⁹.

Limitation to expulsion decisions for reasons of state security, imperative grounds of public security, and other reasons of public policy or public security

In accordance with Article 28 of the Directive, Article 20(5), (6) and (7) of Legislative Decree 30/2007, as amended, include a number of **limitations to protect against expulsion decisions**.

The **holders of the right of permanent residence** (that is acquired after five years of residence) may be expelled from the national territory only on grounds of state security, on imperative grounds of public security, or for other serious reasons of public policy or public security. They cannot be expelled for any other reasons of public policy or public security which cannot be qualified as 'serious' according to Article 20(6) of Legislative Decree of

²¹⁴ B. Nascimbene, A. Di Pascale, 'Italy' p. 674; *Associazione per gli Studi Giuridici sull'Immigrazione (ASGI)*, G. Perin e P. Bonetti, 'Allontanamento dei cittadini dell'Unione Europea e dei loro familiari e tutele giurisdizionali', Scheda pratica, 23 March 2012, p. 11.

²¹⁵ European Commission, 'Communication on guidance for better transposition and application of 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', p. 10.

²¹⁶ B. Nascimbene, A. Di Pascale, 'Italy', p. 675; *Associazione per gli Studi Giuridici sull'Immigrazione (ASGI)*, G. Perin e P. Bonetti, 'Allontanamento dei cittadini dell'Unione Europea e dei loro familiari e tutele giurisdizionali', p. 12.

²¹⁷ Court of Milan (Tribunale di Milano), case of 8.10.2008.

²¹⁸ Court of Rome (Tribunale di Roma), case of 9.3.2009.

²¹⁹ B. Nascimbene, A. Di Pascale, 'Italy', p. 676; *Associazione per gli Studi Giuridici sull'Immigrazione (ASGI)*, G. Perin e P. Bonetti, 'Allontanamento dei cittadini dell'Unione Europea e dei loro familiari e tutele giurisdizionali', p. 12.

30/2007²²⁰. Legal critics, however, note that the seriousness of these grounds of expulsion is based on a discretionary judgement²²¹.

In accordance with Article 20(7) of Legislative Decree of 30/2007, **the beneficiaries of the right of residence who have stayed in the country during the previous 10 years or who are minors** may only be removed for reasons of national security or for reasons of public security, unless the expulsion is necessary in the interests of the child²²².

The *Union citizen and his/her family members* who do not fall into the categories above can then be expelled for all four reasons.

The greater the **attachment of the Union citizen with the host state** (represented by the length of residence), the more limited the power of the state to expel that person.

Expulsion on grounds of public health

In accordance with Article 20(8) of Legislative Decree 30/2007, **diseases or sicknesses that may justify restrictions** on freedom of movement within the national territory are only those with epidemic potential as identified by the World Health Organisation, and other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to Italian nationals. Diseases that occur after entry into the territory cannot justify expulsion.

Judicial expulsion for security reasons

Italian legislation regulates the expulsion of foreigners (whether TCN or EU citizen) found **guilty of particular offences²²³ or sentenced to a term of imprisonment of a certain length²²⁴**. In these cases, expulsion is a security measure enacted against a person who represents a danger to the general public, in order to prevent him from committing further crimes. **Expulsion is not automatic**, but depends on a specific analysis of the danger presented by the offender by both the judge who convicted him and the supervising court after the person has served his term of imprisonment. In order to ascertain if the person represents a danger, the judges must take into account the offence committed, the circumstances in which the offence took place, and the personality of the offender. In doing so, the judge is not expressly required to consider the general principles laid down by Articles 27 and 28(1) of the Directive. A 2009 amendment clarified the situation considerably, with security measures to be carried out according to Article 20 of Legislative Decree 30/2007, and the judge required to take into account all of the factors that EU law requires before deciding on the expulsion of a Union citizen under Articles 235 and 312 of the Criminal Code.

²²¹ *Associazione per gli Studi Giuridici sull'Immigrazione (ASGI)*, G. Perin e P. Bonetti, *Allontanamento dei cittadini dell'Unione Europea e dei loro familiari e tutele giurisdizionali*, p. 13.

²²² As required by the Convention on the Rights of the Child of 20 November 1989, ratified by Law 27 May 1991, n. 176.

²²³ Crimes against the State (Article 312 of the Criminal Code) or serious crimes related to drugs (Article 86 of Decree of the President of the Republic 309/1990).

²²⁴ Article 235 of the Criminal Code.

Expulsion on grounds of cessation of the conditions that give the right of residence

The decision to expel other Member States' citizens and their family members, irrespective of nationality, may be adopted when the **conditions that gave the person the right of residence are no longer present**²²⁵. Following an amendment introduced by Law-Decree 89/2011, the transposing legislation now specifies that the verification shall not be carried out systematically, but there must be a reasonable doubt as to the persistence of those conditions (Article 13).

Any **recourse by the EU citizen or his/her family members to the social assistance system** is not a sufficient reason for adopting an expulsion order, which must, rather, be assessed on a case-by-case basis²²⁶. There is no evidence of the **expulsion** of EU citizens (and/or their family members) **on purely economic grounds** (i.e. failure to satisfy the conditions set out in Article 7 of the Directive) in the decisions of national courts and/or tribunals²²⁷.

Finally, Article 6(1) of the Legislative Decree requires, as an essential condition for the right of residence, **a valid identity document** which is valid for expatriation according to the legislation of the state of nationality. This seems to imply that if the conditions are not fulfilled (i.e. upon expiry of the document), this might be a ground of expulsion, contrary to the Directive. The expiry of the identity document is considered to create a situation that makes the residence of the person concerned unlawful.

Implementation

It has been reported that the **provisions on expulsion contained in Article 20 of Legislative Decree 30/2007 are frequently violated by the daily procedures of the local government offices responsible for expulsion decisions**. These offices, it is claimed, regularly take expulsion decisions on the grounds of any guilty legal verdict²²⁸. As a consequence, the case law is considerable and served to clarify the notion of 'danger for public policy or public security'²²⁹.

²²⁵ An exception is provided for in Articles 11 and 12 of the Legislative Decree (on retention of the right of residence by family members in the event of death or departure of the Union citizen and in the event of divorce, annulment of marriage or termination of registered partnership).

²²⁶ Article 1 h) of Decree-Law 89/2011, which amended Article 21(1) of Legislative Decree 30/2007.

²²⁸ Citizens without borders, 'Free movement and residence in the European Union a challenge for European citizenship', p. 42.

²²⁹ Sentence of the Court of Reggio Emilia n. 2280 11 October 2012, Decree of the Court of Reggio Emilia of 6 December 2012.

6. CONCLUSIONS

It can be concluded that **the majority of Directive 2004/38/EC has been correctly and fully transposed** into Italian law. **However**, the provisions related to **'sufficient resources' and expulsion still raise concerns**, as does a new provision requiring that EU citizens **report to the police** their presence, which creates an additional burden for EU citizens' exercising their residence rights.

Persistent barriers exist in practice concerning the exercise of entry and residence rights for EU **citizens** and especially their **TCN family members**. With regard to **EU citizens**, the issues chiefly relate to residence rights, namely in the transposition and practical application of the notion of 'sufficient resources' and health insurance, the requirement of extra formalities and the provision of incorrect information. EU citizens also face persistent hurdles in accessing health services, social benefits, and in having their professional qualifications recognised. Romanian citizens seem to be particularly affected by these recurring obstacles.

TCN family members of EU citizens encounter practical problems in entering Italy, mainly because of the difficulties in being recognised as family members and because of the additional requirements imposed to obtain visas. Misinformation remains a problem in relation to the requirements for obtaining a visa, the type of entry visa needed, or their rights in general. TCN family members are also denied the right to reside in Italy on grounds not provided for by the Directive. A general **lack of information** regarding the applicable legal framework on the part of the authorities is often reported.

Discrimination based on **nationality**, especially directed against Romanian and Polish citizens, is reported in registering as permanent residents, accessing health services, using vehicles, accessing simplified administrative procedures and social benefits in Italy. Instances of discrimination based on **civil status/sexual orientation** are expected to disappear with the entry into force of the law on civil unions which was adopted in May 2016. Discrimination based on **ethnic/racial** origin mainly target Roma and mostly concerns access to decent living conditions, healthcare and employment.

Finally, **uncertainty** persists concerning the grounds for **expulsion** of EU nationals, as the reference made in the Italian transposing legislation to a number of other provisions makes it difficult to identify the crimes that can lead to expulsion.

ANNEX I: TRANSPOSITION OVERVIEW TABLE

Table 1: Transposition Overview

Directive's provisions	National provisions	Assessment	Changes since 2008
<p>Article 3(2) Beneficiaries:</p> <ul style="list-style-type: none"> • Family members • Partners 	<p>Article 3(2) of Legislative Decree 30/2007_Beneficiaries</p>	<p>In line with the Directive (Literally transposed)</p> <p>Notwithstanding the literal transposition of the provision, the lack of definition of 'dependent' under both the Directive and the Italian transposing measure gives leeway to the national authorities to apply very different interpretations of the term. This might result in implementation issues.</p>	<p>Both the 2008 Commission Report and the 2009 European Parliament's study considered Italy to have failed to transpose Article 3(2) even though the article was literally transposed.</p> <p>The Parliament's study considered that Italian law gave no clear definition of a 'dependent', which gave the Italian officials the opportunity to base their assessment of dependency on different considerations, such as socio-economic benchmarks. As it can be seen, this issue relates more to an implementation problem (the interpretation given to this Article by national authorities) than to transposition concerns.</p> <p>Subsequently, Decree-Law 89/2011 integrated Article 9 ('Administrative formalities for EU citizens and their family members', particularly for the documents necessary for registration on the public registers) and Article 10 ('Visa for TCN who is the family member of an EU citizen', particularly the documents necessary for obtaining such a visa) of Legislative Decree 30/2007.</p> <p>In terms of the partner, Law 97/2013 changed the end of Article 3(2) b) – referring to the means of proof of the relationship: it replaced 'duly attested by the state of the Union citizen' with 'duly attested with official documents'. While the means of proof that attested the relationship were previously limited to those coming from the host</p>

			Member State, the new wording allows them to come also from the State where the partners were residing, as well as allowing for other ways of attesting a relationship.
<p>Articles 5(1) and 5(2) Right of entry - No entry visa or equivalent formality may be imposed on Union citizens - To facilitate granting third country family members the necessary entry visas</p>	<p>Article 5 of Law Decree 30/2007 as amended by legislative decree 32/2008.</p>	<p>In line with the Directive</p>	<p>No issues were identified in the 2008 Commission Report or the 2009 European Parliament study. No changes have been identified since 2008.</p>
<p>Article 6 Right of residence for up to three months without any conditions or any formalities other than an ID</p>	<p>Article 6 of Law Decree 30/2007 as amended by Decree-Law 89/2011.</p>	<p>Incorrect transposition A new provision imposes additional formalities not allowed by the Directive, since the EU citizen can legally stay in Italy for less than three months if he/she can show, in addition to an identity card or passport, the document issued by the police stating that he/she reported his/her presence.</p>	<p>The 2008 Commission Report considered Italy to have failed to transpose Article 6 correctly.</p> <p>Decree-Law 89/2011 amended the original provision contained in Article 6 of Law Decree 30/2007. <u>Before the amendment</u>, the right of residence on the Italian territory for a period of up to three months for TCN family members, accompanying or joining an EU citizen, was conditional upon being in possession of an entry visa. This rendered the transposition incorrect, as, per the Directive, the family member who is not a national of a Member State and who wants to reside in Italy for up to three months needs only a valid passport. <u>After the amendment</u>, the requirement has been abolished, in accordance with EU law.</p> <p>Since the 2008 Commission Report, a new paragraph has been added to the provision which requires additional documents not requested by the Directive. Legislative Decree 32/2008 added a new paragraph 5 bis to Article 5 of Legislative Decree 30/2007.</p>

			<p><u>Before the amendment</u>, the Legislative Decree did not require the EU citizen to report his/her presence within the Italian territory.</p> <p><u>Following the 2008 amendment</u>, the Union citizen may report his/her presence to a police officer. While the provision does not state this as an obligation, if the EU citizen has not reported to the police officer, he/she must be regarded as having stayed in Italy for more than three months, unless he/she can prove otherwise.</p> <p>According to the provision, a Decree by the Ministry of the Interior should have been adopted within 30 days of the date of entry into force of this provision, but no such Decree was forthcoming. In practice, a form is available in English, French, Spanish and German on the websites of the Ministry of the Interior and of the Police²³⁰.</p> <p>While the Union citizen has no obligation to report his/her presence, not doing so entails negative consequences for them. If they did not report themselves and are unable to prove that they had been in Italy no longer than three months (which is difficult to prove), they would be deemed to have infringed the obligation to register their residence with the municipal authority.</p> <p>In other words, the provision imposes additional documents not requested by the Directive, since the EU citizen can legally stay in Italy for less than three months if he/she can show, in addition to an identity card or passport, the document issued by the police stating that he/she reported his/her presence.</p>
Articles 7(1) and 7(2) Right of residence for more than three months for EU citizens and their family members based	Article 7 (1) and (2) of Law Decree 30/2007	In line with the Directive	<p>The 2008 Commission Report did not indicate any problems with the transposition of Articles 7(1) and 7(2).</p> <p>However, Decree 89/2011, which clarified the Beneficiaries under Article 3(2) has not modified Article</p>

²³⁰ <http://img.poliziadistato.it/docs/moduldich.pdf>.

<p>on employment, sufficient resources or student status</p>			<p>7. Thus, Article 7 (1) d) explicitly refers only to family members as defined by Article 2 without mentioning the other beneficiaries listed under Article 3(2). Although a clear reference to these beneficiaries is missing, the transposition of Article 7 is in line with the Directive.</p>
<p>Article 14 Retention of residence rights as long as they do not become an unreasonable burden on the social assistance system</p>	<p>Articles 13 and 21(1) of Legislative Decree 30/2007 as amended by Decree-Law 89/2011</p>	<p>In line with the Directive</p> <p>Article 13(3) of Legislative Decree 30/2007 transposed Article 14(4) in a more favourable way, as the Italian provision only refers to provisions on expulsion for public policy and public security, while the Directive refers to the whole Chapter VI, which also includes provisions on public health. (See content of Article 20(8) of Legislative Decree 30/2007 that transposes Article 29(2) of the Directive which does not allow for expulsion on the grounds of public health.)</p> <p>Let. b) is also a more favourable transposing provision: the fact that registration with the employment office constitutes evidence that a Union citizen is continuing to seek employment. This is also true for the other two requirements mentioned in the Italian provision, namely, the declaration of immediate readiness to carry out work, and not be excluded from unemployment status. There is no mention of the evidence to 'have a</p>	<p>The 2008 Commission Report noted that Italy had not transposed Article 14(3). This was later transposed by Article 1 h) of Decree-Law 89/2011, which amended Article 21(1) of Legislative Decree 30/2007.</p> <p>Decree-Law 89/2011 also amended Article 13(2) of Decree 30/2007 transposing Article 14(2) second sentence, on the verification of the conditions that EU citizens and their family members have to fulfill to exercise their right of residence. This issue was not flagged by the 2008 Commission Report.</p>

		genuine chance of being engaged', rendering the Italian provision even more favourable.	
Article 16 Right of permanent residence	Article 14 of Legislative Decree 30/2007	In line with the Directive	The 2008 Commission Report did not identify any issues with the Italian transposition of Article 16 of the Directive. The provision has not been amended.
Article 24(1) Equal treatment	Article 19(2) of Legislative Decree 30/2007	In line with the Directive	The 2008 Commission Report did not identify any issues with the Italian transposition of Article 24 of the Directive. No relevant changes have been reported regarding the transposition of Article 24.
Article 27 Restriction on the freedom of movement and residence of Union citizens and their family members, on grounds of public policy, public security or public health	Article 20 of Legislative Decree 30/2007 as amended by Legislative Decree 32/2008 and Decree-Law 89/2011	Incorrect transposition Article 20 allows for removal for other reasons of public policy or public security . The conditions for this measure have not been defined. Therefore, this ground for removal remains ambiguous and does not address the transposition issues identified by the 2008 Commission report. In particular, Italy fails to identify the interests it intends to protect with regard to this ground for expulsion ²³¹ .	Article 20 was heavily criticised by both the 2008 Commission Report and the 2009 European Parliament study for transposing Article 27 incorrectly and incompletely (notably for the ambiguous nature of the transposing provisions). The Article has been significantly amended by Legislative Decree 32/2008 and Decree-Law 89/2011 . Following amendments, the different grounds of state security and imperative grounds of public security have been better defined even though the reference made to a number of other provisions (contained in Laws, Decrees, Codes, Articles, etc.) still makes it difficult to identify the crimes for which an EU national may be expelled. However, the amendment allows for removal for other reasons of public policy or public security without providing any definition clarifying the scope of this ground of expulsion.

²³¹ European Commission, Communication on guidance for better transposition and application of 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, 2.7.2009, [COM(2009) 313 final], p. 13.

<p>Article 28 Protection against expulsion</p>	<p>Article 20 of Legislative Decree 30/2007 as amended by Legislative Decree 32/2008 and Decree-Law 89/2011</p>	<p>In line with the Directive</p>	<p>Article 20 of the Legislative Decree was heavily criticised by both the 2008 Commission Report and the 2009 European Parliament study for transposing Articles 28 incorrectly and incompletely (notably for the ambiguous nature of the transposing provisions). The Article has been significantly amended by Legislative Decree 32/2008 and Decree-Law 89/2011. After the amendments, Article 20 of Legislative Decree 30/2007 includes a number of limitations to protect against expulsion decisions, in accordance with the Directive.</p>
<p>Article 35 Abuse of rights</p>	<p>n/a</p>	<p>In line with the Directive</p> <p>Italy has adopted various provisions to curb marriages of convenience and other forms of abuse of free movement rights. For instance, Article 123 of the Italian Civil Code stipulates the invalidity of marriage when the spouses do not fulfil their obligations or do not exercise the rights connected to the marriage. Article 495 Italian Penal Code criminalises false declarations before a public official and Article 12 Legislative Decree 286/1998 punishes aiding and abetting unauthorised immigration. Article 29 para 9 of Legislative Decree 286/1998 allows the refusal of a family reunification request when it is established that the sole purpose for the marriage was to allow the person to enter and reside in the territory of</p>	<p>No changes have been made regarding Article 35 since 2008. The 2008 Commission Report did not identify any issues with the Italian transposition of Article 35 of the Directive.</p>

		the State. (For further information, see Section 4).	
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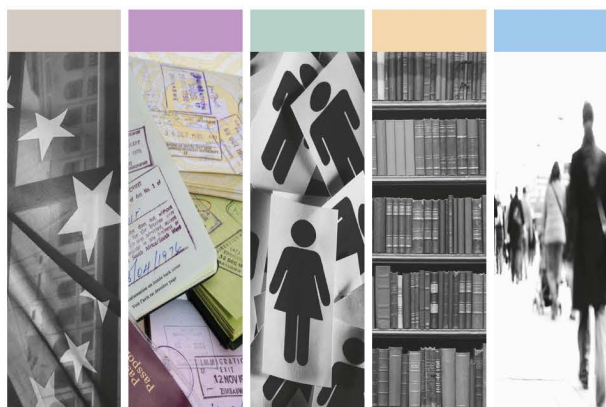
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