

Checklist right to equal treatment

(pursuant to Directive 2004/38)

For the individual EU citizen

General introduction

Certain EU citizens and their third-country family members have the right to equal treatment pursuant to Directive 2004/38. The purpose of this checklist is to assess whether the individual EU citizen has this right to equal treatment. This is not a binding assessment.

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Requests for advice to the IND

The right to equal treatment is linked to the lawful residence of the EU citizen. That is why collaboration with the IND is important. The following is relevant:

- The IND is primarily responsible for assessing the right of residence. However, if a request is made for facilities, such as shelter, municipalities have their own responsibility to investigate whether an EU right of residence exists.
NB: Residence code 30 in the BRP (Personal Records Database) is issued automatically, so this does not mean that the EU citizen's right of residence has been established. Municipalities must therefore make their own assessment.
- When assessing, it may be necessary to ask the IND for advice (adviesverzoekenEU@ind.nl): when (i) doubts arise about the assessment, or (ii) the assessment is negative.
- In addition, there are some special situations when a request for advice should always be sent to the IND: (i) the person concerned is a third-country family member of the EU citizen; (ii) parent of a minor child with EU nationality; (iii) EU citizen or third-country family member with a criminal record (public order or national security).
- The IND aims to have a response period of 1-2 weeks.
- When requesting advice, it is important to include the following: (i) whether there should be urgency in processing the application for this EU citizen; (ii) the information provided by the EU citizen (evidence such as employment contract, employer's declaration, bank statements, etc.).
- The IND's advice is not a decision and there are no legal consequences attached to it, such as an expulsion decision. The IND's advice only concerns feedback on whether the EU citizen (based on the documents supplied with the request for advice) has an EU right of residence. The IND's advice is not addressed to the EU citizen (or the family member), but to the municipality that requested advice from the IND.





Special situations

- EU citizen with permanent residence: EU citizens who have had the right of residence in the EU for more than 5 years without interruption have permanent residence. This gives the right to equal treatment with Dutch citizens. This can arise by operation of law (i.e. without assessment by the IND). If you are unsure whether this is the case for an individual EU citizen, please contact the IND.

NB: Residence code 40 in the BRP indicates that the EU citizen has permanent residence and that this has already been checked by the IND. The right of permanent residence expires automatically if the EU citizen has been absent from the Netherlands for more than 2 consecutive years.

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1. Can the EU citizen reasonably prove his identity and nationality?

Explanation:

Establish that the person concerned is an EU citizen or a third-country family member of an EU citizen. It is the responsibility of the person concerned to prove his identity. The question is not whether a valid identity document can be presented, but whether the identity can reasonably be proven.

This can be done by checking identity and nationality or consulting the BRP. Identity and nationality can be verified by means of official documents such as an identity card or passport. Identity and nationality can also be proven by other means; a birth certificate, driving license, expired identity document or copies can be included in this assessment.

If the identity and nationality cannot be proven with any document or with a BRP registration, the EU citizen has failed to establish his EU citizenship.

No, the EU citizen **cannot** prove his identity and nationality

Yes, the EU citizen can reasonably prove his identity and nationality



1. Can the EU citizen reasonably prove his identity and nationality?

Chosen answer:

No, the EU citizen cannot demonstrate his identity and nationality.

Advice:

Advise the person concerned to report to the embassy to apply for a new passport or identity card. If the person concerned has proven his identity by means other than a valid passport or identity card, not having a passport or identity card does not constitute an obstruction.

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2. Did the EU citizen enter the Netherlands more than three months ago?

Explanation:

It is the responsibility of the EU citizen to demonstrate when he entered the Netherlands. You may be able to verify this by checking whether and when the person concerned was registered in the BRP. However, sometimes the information in the BRP is outdated; the actual situation counts. If the BRP information is outdated, the EU citizen can demonstrate when he entered the Netherlands by, for instance, showing an international bus ticket, but also by providing insight into finances (e.g. showing purchase receipts or providing insight into the account statement). For EU citizens who have been travelling back and forth from the Netherlands to their home country for a long time (which may be evident from the fact that the EU citizen has been registered with RNI for some periods and not for other periods), the last date of registration can be used.

No, the EU citizen entered the Netherlands **less** than three months ago

Yes, the EU citizen entered the Netherlands **more** than three months ago



2. Did the EU citizen enter the Netherlands more than three months ago?

Chosen answer:

No, the EU citizen entered the Netherlands less than three months ago.

Advice:

In principle, the person concerned has no right to equal treatment.

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3. Does the EU citizen work in the Netherlands (A) or does he have sufficient means of subsistence (B)?

Explanation:

If an EU citizen is an employee and has been in the Netherlands for more than three months or has sufficient means of subsistence and has been in the Netherlands for more than three months, then there is a right to equal treatment. The EU citizen himself has the responsibility to prove the above.

A. The following requirements must be met for work in the Netherlands:

1. The person concerned works as an employee or self-employed person.

- Being an employee can be proven through an employment contract, salary payments and/or payslips. If someone has a DigiD, insight into the wage statement can be obtained via that person's personal page on "mijn UWV" or "mijn SVB". The person concerned can also provide insight into his personal page on the Social Insurance Bank (SVB) or authorize you to query Suwinet.
- Self-employment can be proven by submitting a registration with the Chamber of Commerce in combination with an insight into income and hours worked (such as a balance sheet, profit or loss account, monthly statements of business results, a statement or forecast drawn up by an accountant/financial advisor or a (provisional) income tax return from the tax authorities).

2. It concerns genuine and effective work.

There are no strict criteria for this. In any case, this is the case if someone earns more than 50 percent of the applicable social security standard or works at least 40 percent of the usual full-time working hours (usually at least 40% of 36 hours). The lower limit is that the work and income may not be marginal and incidental (for instance, only working a few hours very occasionally), because then it no longer meets the criterium of "genuine and effective". In addition, there is genuine and effective work if the person concerned has had a job interview and is awaiting the results. If the EU citizen indicates that he previously performed genuine and effective work in the Netherlands but had to cease work due to temporary incapacity for work, you are advised to contact the IND by means of a request for advice.

B. The EU citizen has sufficient means of subsistence. An EU citizen can prove sufficient means of subsistence (money), for instance, by means of bank statements. An economically inactive EU citizen has in any case sufficient means of subsistence with an income (other than from work) that is the same as 100% of the [applicable social security standard](#). If the EU citizen also supports a family, it is important that the EU citizen has sufficient means of subsistence for himself and his family members. In that case, the EU citizen at least has sufficient means of subsistence with an income (other than from work) that is the same as 100% of the statutory assistance criterion that applies to a family. The EU citizen may have resources if he receives a benefit for which premiums have been paid in advance (such as a sickness benefit, unemployment benefit, AOW benefit, WIA/WGA benefit, etc.); benefits for which no premiums have been paid do not count as resources (such as benefits based on the Disablement Assistance Act for Handicapped Young Persons, Supplementary Benefits Act, Participation Act, income from the Dutch Student Finance Act 2000 and child benefit). The resources may also have been a gift or inheritance, for instance.

NB Undeclared work is not included, it is not legal work and resources obtained from undeclared work cannot be considered as means of subsistence because they were not obtained legally.

No, the EU citizen **does not** work and also **does not** have sufficient means of subsistence

Yes, the EU citizen works **or** has sufficient means of subsistence



3. Does the EU citizen work in the Netherlands (A) or does he have sufficient means of subsistence (B)?

Chosen answer:

Yes, the EU citizen works or has sufficient means of subsistence.

Advice:

There is a right to equal treatment.

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4. Does the EU citizen have a demonstrable employment history?

Explanation:

Even when the EU citizen is currently unemployed, if there is demonstrable employment history, in some cases there is also a right to equal treatment because the EU citizen then retains the status of worker. When assessing whether there is a demonstrable employment history, it must be examined whether the EU citizen performed genuine and effective work at the time. The same criteria/conditions apply to this assessment as those set out in step 3 (A) for assessing genuine and effective work as an employee or self-employed person.

If the EU citizen has no employment history and indicates to be looking for work, this is not sufficient.

No, there is **no** proven employment history

Yes, there is proven employment history



4. Does the EU citizen have a demonstrable employment history?

Chosen answer:

No, there is no proven employment history.

Advice:

In principle, there is no right to equal treatment.

If the EU citizen indicates to have worked but cannot prove this at this time (at the time of the counter visit), advise the EU citizen to prove the employment history by submitting documents that prove this. If the person concerned has not worked, refer the person concerned to organizations that can provide support with returning to the country of origin (Barka Foundation, De Regenbooggroep Foundation, or independent client support) or joining to the labour market.

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5. Is the EU citizen registered with the UWV and is there involuntary unemployment?

Explanation:

In order to maintain the status of worker, the EU citizen must also be seeking employment. In the Netherlands, this is done by checking whether the EU citizen is registered with the UWV. The EU citizen must also have become involuntarily unemployed. Involuntary unemployment is assumed unless the municipal social services (GSD) or the UWV have sufficiently established that this is not the case.

Reasons for leniency (UWV registration):

It may be that the EU citizen has a demonstrable employment history, but has not (yet) registered with the UWV. This can occur in the following (non-exhaustive) situations:

- The EU citizen does not have a postal address and was therefore unable to register.
- The EU citizen did not immediately register with the UWV when he became unemployed, but subsequently registered as a jobseeker.
- The EU citizen was not aware of the obligation to register with the UWV.

It is important to look at the circumstances in combination with the question of whether the person concerned will now register as a jobseeker and is available for the labour market.

No, the EU citizen is **not** registered with the UWV or is **not** involuntarily unemployed and there are **no reasons for leniency**

No, the EU citizen is **not** registered with the UWV, he **is** involuntarily unemployed and there are **reasons for leniency**

Yes, the EU citizen is registered with the UWV and has become involuntarily unemployed



5. Is the EU citizen registered with the UWV and is there involuntary unemployment?

Chosen answer:

No, the EU citizen is not registered with the UWV or is not involuntarily unemployed and there are no reasons for leniency.

Advice:

In principle, there is no right to equal treatment.

Advice to the EU citizen:

The person concerned is advised to register with the UWV. This requires a (postal) address.

Advice to municipality:

- The municipality is advised to provide a postal address to the person concerned.
- In addition, it is recommended that the municipality always ensures a warm transfer to the Employment and Income department of the municipality in question.
- On the [website workinnl.nl](https://www.workinnl.nl), the person concerned can find a lot of relevant information about, among other things, housing, illness and healthcare, salary and registration in the Netherlands. This website is available in multiple languages.

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6. Did the EU citizen become unemployed less than six months ago?

Explanation:

An EU citizen who became unemployed less than six months ago retains his status of worker if he is registered with the UWV and has become involuntarily unemployed.

No, the EU citizen became unemployed **more** than six months ago

Yes, the EU citizen became unemployed **less** than six months ago



6. Did the EU citizen become unemployed less than six months ago?

Chosen answer:


Yes, the EU citizen became unemployed less than six months ago.

Advice:

There is a right to equal treatment.

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7. Did the EU citizen work continuously in the Netherlands for one year or longer before becoming unemployed?

Explanation:

For EU citizens who became unemployed more than 6 months ago, it is important whether they have worked continuously for at least one year in genuine and effective employment. EU citizens who have worked continuously for at least one year in genuine and effective employment, then became involuntarily unemployed and registered as jobseekers with the UWV, retain their status of worker and thus the right to equal treatment. It does not matter how much longer than 6 months ago the EU citizen became involuntarily unemployed. In principle, there must be at least one year of uninterrupted genuine and effective work, but in some cases, this may be a few days apart for practical reasons, for instance, when there is a period between two consecutive employment contracts.

No, the EU citizen has an employment history of **less** than a continuous period of one year

Ja, the EU citizen has an employment history of **at least** one uninterrupted year



7. Did the EU citizen work continuously in the Netherlands for one year or longer before becoming unemployed?

Chosen answer:

Yes, the EU citizen has an employment history of at least one uninterrupted year.

Advice:

There is a right to equal treatment.

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8. Does the EU citizen have job prospects?

Explanation:

Even if the employment history is less than one year, an unemployed EU citizen can retain the status of “worker” and thus the right of EU residence for at least six months during the period that he is registered as a jobseeker, provided that he is registered with the UWV (registration with an employment agency, for instance, is not sufficient). After those six months, the EU citizen will only retain the status of worker if he can prove that he is still looking for work and has a real chance of finding work. For example, there is a real chance of employment if the EU citizen has had a job interview and is waiting for the result.

No, the EU citizen does **not** have a real chance of finding work

Yes, the EU citizen has a **real chance** of finding work



8. Does the EU citizen have job prospects?

Chosen answer:

Yes, the EU citizen has a real chance of finding work.

Advice:

There is a right to equal treatment.

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8. Does the EU citizen have job prospects?

Chosen answer:

No, the EU citizen does not have a real chance of finding work.

Advice:

There is no right to equal treatment.

- If the person concerned no longer has a real chance of finding work, it is recommended that he contacts organizations (Barka Foundation, De Regenbooggroep) that can provide support in returning to the country of origin.
- In addition, it is recommended that the municipality always ensures a warm transfer to the Employment and Income department of the municipality in question. On the website workinnl.nl, the person concerned can find a lot of relevant information about, among other things, housing, illness and healthcare, salary and registration in the Netherlands. This website is available in multiple languages.

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