

# REFIT Platform Opinion

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## **REFIT Platform Opinion on the submission by a citizen (LtL 242) on Identity and Travel Documents**

The REFIT Platform has considered the submission raised by a citizen on the administrative difficulties faced by EU citizens when moving from one EU country to the other.

The REFIT Platform encourages the Commission to analyse the feasibility of harmonising identity and residence documents, or any of their key features, with a view to facilitating free movement and tackling the challenges encountered by EU mobile citizens in their host countries.

Such a feasibility study would need to assess technical, legal and economic parameters involved, such as for example possible financial consequences in the Member States' budgets associated to the necessary IT developments).

One Member State proposes to discuss these issues within the Council preparatory structures.

## Detailed Opinion

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## 1. Submission XIII.3.a by citizen (LtL 242)

*When you move from one member state to another, your case is dealt with through the ordinary immigration authorities, which means that your case is but one among all other cases, no matter from where in the world immigrants come from. There is also the risk that the bureaucrats you deal with are not fully aware of the specific rights a citizen of the EU has, contrary to people from outside EU. This naturally creates misunderstandings and unnecessary bureaucracy and thus, delays in processes which should be fairly straightforward and simple for people who want to use the freedom of movement within the EU.*

*Also when you move from one member state to another (which also includes countries belonging to the EEC-area), your economic history is being zeroed or non-existent. I don't know whether this also happens to bureaucrats working within the EU-system and in case it doesn't, you may not even be aware of this and the problems it causes. A normal citizen has to wait until he or she has filed a tax declaration and become registered as a tax payer before it is possible to obtain a normal bank card or often even such simple dealings as to get an internet provider, a mobile phone contract, not to think of asking for credits or loans. Even renting a flat can be troublesome if you don't know people in the country you move to who can vouch for you or even guarantee for you. Economically, you are seen as someone without any economic history and documentation proving your economic past is not even considered. You may have worked in the same profession for decades and have had a stable income, although as an independent or freelancer, having paid taxes and had a good relation with banks and credit institutions in the country you move from, but all of this has become irrelevant and your past is nulled, zeroed, becoming non-existent. This is clearly an obstacle for the free movement of people between the different countries within the EU as you have to start from scratch each time, regarding this.*

*Finally, I think the EU should look to the Nordic countries to learn and get inspired from the systems they have there, if this is not already the case. Something which would save a lot of time and money and get rid of unnecessary bureaucracy would be to provide every EU-citizen with their individual signum. This would then be instead of all the various numbers you have in countries like Portugal, for instance. One number for everything.*

*I think it would be more efficient if each member state established special departments which only dealt with the cases pertaining to EU-citizens. Such offices could be concentrated to the major cities but the immigration offices all over the country could contact them if in doubt. I understand that EU cannot demand this from the member states, but one could present a plan, at least, showing how this would improve the free movement of people within the EU and thus save time and money for both the citizens as well as the states in question. The bureaucrats working in such offices would be specialised in the rules and regulations regarding the free movement of EU-citizens and unnecessary delays and bureaucratic confusion will be avoided.*

*What with today's technology it should be relatively simple and straightforward for citizens to have their economic past moved together with them to the new country of residence. I am not the right person to suggest the right procedures how to solve this, but as I have moved quite a few times and have experienced this over and over, I see this as an unnecessary obstacle and it causes economic losses for businesses in the new country of residence as the person moving cannot purchase goods and services the way a person normally would. I hope people are aware of this obstacle and try to find solutions to it.*

*One personal signum for each citizen.*

## **2. Policy context**

Based on Directive 2004/38/EC, EU citizens residing in an EU Member State other than their own for more than three months may be required to register with the local authorities, in which case they receive a registration certificate. However, these certificates are not always accepted as identity documents in the EU (in particular by private entities such as bank, companies, etc.) and citizens cannot use them as travel documents, even within the EU. Similar problems arise for EU citizens who hold identity cards issued in their country of origin and often cannot rely on them in their transactions in other EU Member States. Private companies feel uneasy accepting 'foreign' documents as proof of identity since the format of such documents, unlike passports, is not harmonised at EU level.

### **Current State of Play**

In the public consultation on EU citizenship leading to the 2013 EU citizenship report<sup>1</sup>, reported problems were inter alia related to moving to or living in another EU country, administrative hurdles with documents when wanting to travel or proving identity within the EU. Citizens asked for solutions to simplify their lives and reinforce their identification with the EU, including through uniform European documents, where applicable.

As a follow-up to the 2013 EU citizenship report – an action plan with concrete action items to improve EU citizens' rights in a number of areas – the Commission is working to remove obstacles in relation to identity and residence documents issued by Member States.

In the EU Citizenship Report 2017<sup>2</sup>, the Commission announced that it will shortly finalise its study on EU policy options to improve the security of EU citizens' ID cards and of the residence documents of EU citizens and their non-EU family members residing in another Member State. Security features and standards will be part of this study. . The Commission will evaluate the next steps, options and impacts, in view of a possible legislative initiative by the end of 2017.

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<sup>1</sup> [http://ec.europa.eu/justice/citizen/files/2013eucitizenshipreport\\_en.pdf](http://ec.europa.eu/justice/citizen/files/2013eucitizenshipreport_en.pdf)

<sup>2</sup> [http://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/news/news/20170124\\_eu\\_citizenship\\_report\\_2017\\_en.pdf](http://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/news/news/20170124_eu_citizenship_report_2017_en.pdf)

### 3. Opinion of the REFIT Platform

#### 3.1 Considerations of the REFIT Platform Stakeholder group

There seems to be sufficient evidence that the variety of ID and residence documents (different types and forms) across the European Union is a cause of problems encountered by EU mobile citizens in their interactions with public authorities and administrations and private companies (e.g. airlines, banks), and also as consumers.

Considering the fact that the right to free movement is at the core of European citizenship and is still the most cherished right by EU citizens (81% of Europeans are in favour of the "free movement of EU citizens who can live, work, study and do business anywhere in the EU", according to the Autumn 2016 Standard Eurobarometer), the Stakeholder group is encouraging the Commission to analyse the feasibility of harmonising these documents, or any of their key features, with a view to facilitating free movement and tackling the challenges encountered by EU mobile citizens in their host countries.

#### **Problems encountered by mobile EU citizens relating to ID and residence documents**

This analysis is based on the enquiries received from EU citizens in the framework of the Your Europe Advice (YEA) service and reported in the Quarterly Feedback reports from 2014 to October 2016. YEA is an EU advice service provided by legal experts from ECAS operating under contract with the European Commission. It consists of a team of about 60 lawyers who cover all 24 official EU languages and are familiar both with EU law and national law in all EU countries.

***Problems encountered by EU citizens in regard to their Identity and/or Residence documents in their interaction with public authorities or administrations.***

#### ***1. Lack of knowledge amongst national authorities of the rights connected to national identity cards and residence documents***

The Directive 2004/38/EC introduced different forms of residence documents including registration certificates and residence cards. This often causes confusion.

##### 1.1 Examples of problems relating to ID documents

- In Greece or Malta, identity cards are not accepted as valid travel documents and only valid passports are accepted.<sup>3</sup> Greek citizens sometimes face harassment when using their national identity cards in other Member States due to the fact that their names are written in the Greek alphabet. In some cases, this can lead to the retention of Identity cards by public authorities to verify their authenticity.
- France has extended the period ID cards are valid by 5 years. Unfortunately, most EU/EEA countries have not yet recognised this extension of validity, which forces the French nationals concerned to use a passport or bear the risk of aborted trips.

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<sup>3</sup> Quarterly Feedback report October-December 2014, page 67.

## 1.2 Examples of problems relating to residence documents

The notion of residence cards for family members of EU citizens is not always clear for national authorities and this has led to confusion regarding the obligation to apply for a visa. Some cases even show that national authorities do not know the difference between the categories of identity and residence documents, which results in excessive personal checks at the border.

- Several Greek Identity card holders<sup>4</sup> complained that the idea of residence cards is not clear for UK authorities.
- An EU citizen, resident in France for nine years, who applied for family benefits was required to hold a residence card to continue receiving family benefits, whereas he should not have been obliged to obtain a residence card as such cards are not provided to EU citizens in France<sup>5</sup>.
- In Sweden, EU citizens have faced in the last few years serious difficulties in receiving a personal identification number (*personnummer*) from the tax authorities without an S1 form. The situation is not only frustrating for EU citizens, as they cannot register and secure their right to residence, but also makes all other administrative steps impossible, such as opening a bank account, accessing internet or telephone services, taking courses in Swedish (required for registering in an employment agency) and searching for work<sup>6</sup>.

## 2. Lack of a harmonised system of documents between Member States

Public authorities have different perceptions of identity and residence documents<sup>7</sup> issued by other Member States. Such a lack of knowledge results in difficulties being encountered by EU citizens and their family members when travelling and in misunderstandings and a refusal to accept such documents by national authorities.

- In some cases, EU citizens living in another Member State, whose national identity cards had expired, lost their political rights as they were no longer eligible for a new ID card in their home country. It also occurs that, when national authorities, such as in France, have extended the validity of expired national identity cards, authorities from other Member States and carriers, such as airline companies, have not necessarily been instructed to take this into account. As a consequence, French nationals have been obliged to use a passport<sup>8</sup>.
- In January 2017, a case was reported whereby a Portuguese citizen's identity card was

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<sup>4</sup> Quarterly Feedback report April-June 2015, page 19.

<sup>5</sup> Quarterly Feedback report January-April 2016, page 41.

<sup>6</sup> Quarterly Feedback report January-April 2016, page 22.

<sup>7</sup> Quarterly Feedback report October-December 2014, page 20.

<sup>8</sup> Quarterly Feedback report July-September 2015, page 21.

refused by German authorities because they did not recognise the validity of a Portuguese identity card, but required a passport instead.

### 3. Access to employment and the issue of job seekers

In terms of access to employment, some Member States still refuse to grant EU citizens this right unless they can provide a residence card or proof of holding a national identification number.

- Such cases especially concerned Spain<sup>9</sup>, Sweden<sup>10</sup>, the UK and Belgium<sup>11</sup>.

During the last quarter of 2015, several “catch 22” situations were reported in which EU citizens were required to provide a national identification number in order to take up employment in Denmark or Sweden. However, this number cannot be issued without a residence card or work contract, making it impossible for these citizens to work<sup>12</sup>. Moreover, national authorities appear to be under the wrong impression that only an employment relationship grants the right of residence to an EU citizen for a period exceeding 3 months<sup>13</sup>.

### 4. Misconception of the notion of ‘travel documents’

The notion of travel documents is misunderstood by national authorities, especially by airport authorities and during border control.

- Greek citizens face problems with their identity cards during airport controls because Greek and Italian identity cards are very often falsified. Airport authorities have been asking for passports and other documents to verify their data and citizens have been subject to questioning<sup>14</sup>.
- EU citizens have been denied the right to travel because national authorities do not recognise their travel documents. One of the most relevant cases is about a Danish citizen who could not travel to Germany for shopping without a passport because identity cards do not exist in Denmark<sup>15</sup> and national authorities only recognise documents from their own country.
- Confusion also applies for EU citizens themselves<sup>16</sup>. In many cases, there is a widespread belief that a residence card or a so-called identity card for foreigners in some Member States or even a valid driving license can serve as a valid travel document. EU citizens are not well informed themselves.

### 5. Social security and healthcare issues

Social security and healthcare issues are deeply connected to the question of identity cards and residence documents. Most of the reported cases in the last quarter of 2015 came from

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<sup>9</sup> Quarterly Feedback report April-June 2015, page 41.

<sup>10</sup> Quarterly Feedback report April-June 2015, page 41.

<sup>11</sup> Quarterly Feedback report January-April 2016, page 46.

<sup>12</sup> Quarterly Feedback report October-December 2015, page 23.

<sup>13</sup> Quarterly Feedback report April-June 2016, page 25.

<sup>14</sup> Quarterly Feedback report April-June 2015, page 19.

<sup>15</sup> Quarterly Feedback report October-December 2015, page 21.

<sup>16</sup> Quarterly Feedback report January-April 2016, page 21.

Sweden, where EU citizens were complaining about difficulties in securing their residence rights because they were asked to present an S1 portable document as proof of health insurance. This is a recurrent problem and has been going on for many years.

Furthermore, the use of the European Health Insurance Card (EHIC) is a problem for EU citizens as well. Some hospitals do not accept the identity documents presented by EU citizens<sup>17</sup>.

***Problems encountered by EU citizens in regard to their Identity and/or Residence documents in their interaction with private companies***

***1. Opening cross-border bank accounts***

The problems mainly concern banks and financial services because banks still operate in a national context and opening cross-border accounts is difficult for EU citizens. Such issues occurred in Norway<sup>18</sup>, Sweden<sup>19</sup>, Romania<sup>20</sup>, Malta<sup>21</sup> and Germany<sup>22</sup>. Banks often refuse to open bank accounts because they do not accept national identity cards from EU citizens and request instead that they show an ID document, and sometimes a residence card, from the country where the bank account is to be opened.

***2. Unawareness by private companies of visa exemptions and the correct travel documents for family members of EU citizens***

Unawareness of visa exemptions for family members of EU citizens is shown not only by public authorities but also by private companies, mostly airlines. The notion of valid travel documents is misunderstood and private transport company staff appears to be unaware of the visa exemptions. As a consequence, family members of EU citizens and, with them, EU citizens themselves are refused boarding even though they have a valid residence or permanent residence card<sup>23</sup>.

Some cases received during the last quarter of 2015 also highlight that there is a lack of knowledge amongst private companies about the rights attached to identity cards. In the UK, identity card holders complained that their identity cards were not accepted as valid documents by private businesses<sup>24</sup>.

***Problems encountered by EU citizens with regard to their Identity and/or Residence documents as consumers***

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<sup>17</sup> Quarterly Feedback report October-December 2015, page 39.

<sup>18</sup> Quarterly Feedback report April-June 2015, page 64.

<sup>19</sup> Quarterly Feedback report July-September 2015, page 65, Quarterly Feedback report April-June 2016, page 67.

<sup>20</sup> Quarterly Feedback report January-March 2015, page 65.

<sup>21</sup> Quarterly Feedback report January-March 2015, page 65.

<sup>22</sup> Quarterly feedback report January-April 2016, page 66.

<sup>23</sup> Quarterly Feedback report October-December 2015, page 20 and 21; Quarterly Feedback report January-April 2016, page 20 and 65.

<sup>24</sup> Quarterly Feedback report October-December 2015, page 72.

### 1. Discrimination on grounds of residence documents by private service providers

Service providers discriminate against consumers in their general conditions of access to services on the grounds of their place of residence<sup>25</sup> or nationality<sup>26</sup>. Sometimes, retailers refuse even to sell to EU citizens who do not hold nationality of the country in which the retailer is selling. This issue very often involves private service providers, especially mobile phone or internet subscriptions. Telephone providers only accept foreign passports, not EU identity cards, as indicated by a case in Spain.

## **3.2 Considerations of the REFIT Platform Government group**

### *8 MS submitted comments*

The Government group acknowledges that EU citizens can encounter difficulties with ID and residence documents when moving from one EU country to the other and supports the recommendation that the European Commission undertakes a feasibility study on the harmonisation of these documents in order to ensure a better diffusion of ID documents of EU nationals.

Such a feasibility study would need to assess technical, legal and economic parameters involved, such as for example possible financial consequences in the Member States' budgets associated to the necessary IT developments).

One Member State proposes to discuss these issues within the Council preparatory structures.

### **Individual contributions from Member States**

**Member State 1** considers that harmonising the said ID and residence documents is a choice that needs to take into account both the need for enchanting such documents and the cost that such a harmonisation will trigger for Member States.

In case such a harmonisation is decided, MS1 considers that, if not all, some of the security features should be common. Also, security features should probably be similar to those already in place for the harmonized passports and residence permits.

MS1 considers that any action towards harmonizing the residence documents should ensure the rights to free movement and residence, as these derive from the Treaties and should not pose any administrative obstacles. This means that in case of such a decision, probably the free movement directive will have to be amended (e.g. article 8 of the directive foresees that the registration certificate shall be issued immediately, which will be impossible in case of a more enhanced document).

<sup>25</sup> Quarterly Feedback report October-December 2014, page 59 to 60; Quarterly Feedback report April-June 2016, page 61.

<sup>26</sup> Quarterly Feedback report January-April 2016, page 61.

**Member State 2** supports the Stakeholder group's proposal for harmonizing the ID and residence documents. It must also be taken into account that the Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals is already in force. The proposal for a regulation of the European Parliament and of the Council amending that Council Regulation is under discussion.

**Member State 3** fully recognizes and shares in large the position on existing necessity to respond to the challenges identified as burdens to EU citizens mobility.

MS3 recognizes presented problems faced by EU citizens in other Member States regarding use of their national identity documents. However MS3 considers that the domain of establishing those documents lies within national competence. Therefore MS3 believes that to solve those issues Member States and European Institutions should firstly focus on promoting use of existing tools among all national authorities and private institutions (i.e. PRADO) and ensure that those entities follow existing rules and procedures. MS3 sees the possibility to explore the idea of establishing some basic common rules for ID documents; however, any potential proposal in this matter should be drafted with close cooperation with Member States and focused rather on solving technical and practical issues.

Referring to the problems encountered by EU citizens in regard to their identity and/or Residence documents in their interaction with public authorities or administrations, first of all it should be stated that MS3 recognizes the valid travel documents as well as ID cards issued to EU citizens by Member States of their citizenship as documents confirming their identity while crossing borders and during the stay on the Member States territory, with no limitations, accordingly to the wording of Directive 2004/38/EC introducing the mentioned alternative.

MS3 agrees that Member States should be encouraged to raise awareness of this issue among the migration authorities.

Concerning the suggestion that one of the main burdens in mobility is the fact that EU citizens administrative cases are dealt through the ordinary immigration authorities where bureaucrats are not fully aware of the specific rights a citizen of the EU and recommendation that therefore each Member State should establish special departments which only dealt with the cases pertaining to EU-citizens, we would like to raise that this practice is already generally in use in MS3.

MS3 supports the presented approach that separation of the paths of proceedings for that concerning the rights of TCN and that dedicated to EU citizens is one of guarantees of the special treatment of the mobile EU citizens. That's why in MS3 the Directives on rights to entry and stay of TCNs and EU citizens, as well as theirs family members, were implemented to national law by different acts of law, namely Act of 12 December 2013 on Foreigners and Act of July 14, 2006 on entering the territory of MS3, residence and departure from this territory of nationals of Member States of the European Union and their family members.

Considering the fact that Directive 2004/38/EC introduced different forms of residence documents, including registration certificates and residence cards, what often causes the confusion, especially in connection to fact that some Member States are issuing the residence

cards to the EU citizens and some others not (that is not mandatory), MS3 agrees that harmonisation on that matter would be justified.

**Member State 4** agrees with the consideration of the Stakeholder group that the European Commission should be encouraged to analyse the feasibility of harmonising the variety of ID and residence documents across the EU, or any of their key features. This could facilitate free movement and tackle the challenges encountered by EU mobile citizens in their host countries.

**Member State 5** considers that as a general principle, travel documents – passports – of the EU citizens are secured on the high level. Huge differences are really in identity documents; Greek and Italian identity cards mentioned in the document are poorly secured and frequently misused. It logically may cause problems to all legal holders of such documents. Not only passports but also the national identity cards should be standardised (harmonised) but only in terms of minimal security standards. The appearance and the format of the national identity cards should remain in the responsibility of Member States and their national legislation.

**Member State 6** partially supports the proposal. With regard to the EU COM action plan (doc. st15502 de16 / ""Action plan to strengthen the European response to travel document fraud"" ) MS6 proposes to discuss these issues within the Council preparatory structures to ensure appropriate follow-up of the implementation of the Action plan to strengthen the European response to travel document fraud. As a consequence of an EU wide higher level of document security of national documents the acceptance of national ID documents would increase accordingly. MS6 is aware of possible difficulties caused by the different security levels of the national ID cards used as travel documents by the EU citizens. Therefore a EU COM action plan is executed which addresses these issues already. Another decisions about national ID documents and their use within the EU Member States isn't required.

**Member State 7** supports the Stakeholder group suggestion under certain conditions. MS7 notes its support to the implementation of common European standards for identity documents. From the point of view of border control, MS7 considers that the authenticity of the document combined with the identity of the holder cannot always be attested and the validity of the documents cannot be systematically verified. Public authorities and police departments have little means of verifying the validity of these documents if they are issued by another Member State. Indeed, many identity documents issued by the Member States do not contain a biometric identifier.

MS7 indicates that the diversity of identity documents and the inadequacy of their level of security create difficulties for European citizens on the move in the Schengen area. In order to take account of the financial consequences in the Member States' budgets, the necessary developments and the technical complexity of this issue, a gradual approach should be envisaged with a view to the eventual unification of safety standards at European level.

MS7 therefore supports the proposal for a feasibility study by the European Commission on common safety standards, taking into account the different technical, legal and economic parameters involved.

**Member State 8** indicates that the Royal Decree 240/2007, of 16 February, over access, free movement and residence in Spain of citizens of the Member states of the European Union (EU) and other States part of the Agreement of the European Economic Space (EES), has incorporated, among others the Directive 2004/38/EC of the European Parliament and of the Council 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.

In this Royal Decree is stated that, for residency periods over 3 months, the Member State of residence may oblige the EU citizens to be registered by the competent authorities.

The term stipulated for the registry must not be lower than 3 months being counted since the entry date. A registry certificate will be immediately issued with the information of the name and address of the registered person and the registry date. Not complying with the registry obligation may imply for the obliged person, proportionate and non-discriminatory penalties.

To issue the registry certificate, the Member states may require the EU citizen to show a valid ID or passport, as well as to prove fulfil requirements such as: having lively hoods, health insurance and others that may be considered.

A residency card of familiar of EU or EES citizen will be issued for the family members of an EU or EES Member State citizen that are not nationals of a state of any of both categories.

On the regulation of the ID issuing for the EU nationals, each Member State is sovereign to decide the characteristics of the **ID** of its own nationals. A different issue is the recognition made by the generality of the EU members of the ID cards of the nationals of each of the Member States.

**Regarding the uniformity for the residency card of a familiar of a EU citizen**, MS9 supports the **unification of the models** of the card, to be made by the Member states. This will be based on the characteristics of the cards and their security measures.

On this point, MS8 conveys the demand by EU nationals of replacing the registry certificate, with does not include the photography of its titular, by a similar card to their familiars (that are EU citizens).

On the **application of the rules of immigration** by the public organizations and the private entities, it is reminded that norms are binding after their publication on the respective official journal.

Finally, and for a better understanding of all Member states, it is recommended a **better diffusion of the ID documents** of the EU nationals, to facilitate the mobility of all their members, and **it is proposed that all documents include, in addition to those in the respective language, the Latin alphabet characters in its keys.**

