

REPORT
on the Free Movement of Workers
in Spain in 2011-2012

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Introduction

In 2011-12, there are important developments affecting the free movement of EU workers and their families. Among these we can highlight the following:

- 1) The execution of the judgment of the Supreme Court June 1, 2010 (discussed in the 2010 report) gave rise to amend the Royal Decree 240/2007, with the approval of Royal Decree 1710/2011 of 18 November. Specifically, we have modified the articles 8.4, 9.4, 9.5, 14.4, 15.2 and 18.2 of Royal Decree 240/2007.
- 2) After 6 years of the finalization of the date of transposition of Directive 2004/38, the Spanish government has transposed Article 7 and article 8.3 and 8.4 of the Directive. The Spanish government now justifies the adaptation because otherwise there was economic harm to Spain for failing to ensure recovery of the costs of health and social services offered to European citizens. Royal Decree-Law 16/2012 of 20 April,¹ in his fifth final Disposition, modifies completely Article 7 of the Royal Decree 240/2007.
- 3) In connection with the expulsion and entry ban Spanish court has adopted systematically decision confirming the expulsion and the entry ban without taking into account the limits set by the jurisprudence of the Court of Justice of the European Union.
- 4) Spanish courts have rendered judgments involving reverse discrimination. But have also prevented the expulsion of a Spanish family arguing the case *Ruiz Zambrano*.
- 5) With the Instruction DGI/SGRJ/5/2011 the Spanish Ministry of Employment and Immigration provides the interpretation of the reestablishment of the transitional period for Romanian workers and their families.

¹ Royal Decree-Law 16/2012, of 20 April, on urgent measures to ensure sustainability of the NHS and improve the quality and safety performance. *Official Gazette*, 24th April 2012.

Chapter I

The Worker: Entry, residence, departure and remedies

The Spanish legal framework is Royal Decree 240/2007, of February 16, on the entry, free movement and residence in Spain of citizens of the Member States of the European Union and other states parties to the agreement of the European Economic Area, in force, since April 2, 2007 (Hereinafter, Royal Decree 240/2007).

In 2011-2012, the main novelty is the modification of the Royal Decree 240/2007 twice. The first one, the Royal Decree-Law 16/2012 of 20 April, in his Fifth final Disposition, modifies completely Article 7 of the Royal Decree 240/2007 to implement the article 7, 8.3 and 8.4 of the Directive 2004/38. The second one, to execute the judgment of the Supreme Court June 1, 2010 (discussed in the 2010 report) the Royal Decree 240/2007 has been amended, with the approval of Royal Decree 1710/2011 of 18 November. Specifically, we have modified the articles 8.4, 9.4, 9.5, 14.4, 15.2 and 18.2 of Royal Decree 240/2007.

1. TRANSPOSITION OF PROVISIONS SPECIFIC FOR WORKERS

1.1. Article 7(1a); Right of residence for more than three months

The Spanish legislator with the modification introduced with the Royal Decree-law 16/2012, 20th April, has transposed literally the EU citizens' condition *to be workers or self-employed* established in article 7. (1.a), Directive 2004/38, in the article 7. (1.a), of Royal Decree 240/2007.

1.2. Article 7 (3 a-d); Retention of the status of worker:

The new wording of the Article 7 (3.a-d) of Royal Decree 240/2007 introduced by Royal Decree 16/2012 *repeats literally the provisions of Article 7. (3.a-d) Directive 2004/38.*

1.3. Article 8 (3a); Registration certificate (...).

The article 8 is reproduced almost literally in the new article 7.5, 7.6 and 7.7 of the Royal Decree 240/2007, after its reform by Royal Decree-law 16/2012, 20th April. The article 8 (3a) is reproduced in article 7.6 of the Royal Decree 240/2007.

1.4. Article 14 (4 a-b), Retention of the right of residence.

The only novelty in 2011-2012 is in relation with the article 14.2 of the Directive. The Royal Decree 171/2011, 18 November,² introduced a new paragraph 5 in the article 9 of the Royal Decree 240/2007, in the same terms that article 14.2 of the Directive.

2 Royal Decree 1710/2011 of 18 November, amending the Royal Decree 240/2007, of February 16, on the entry, free movement and residence in Spain of citizens of the Member States of the European Union and other states parties to the agreement of the European Economic Area.

1.5. Article 17, Cases in which the right of permanent residence in the host MS shall be enjoyed before completion of a continuous period of five years of residence

The same situation described in the report 2010-2011.

1.6. Article. 24, 2 Equal treatment.

Article 24 (2) of Directive 2004/38 has not been transposed into Spanish legislation. Regarding equal treatment in general, article 3 (4) of Royal Decree 240/2007 establishes that

‘All the Union citizens residing on the basis of this Royal Decree in Spain shall enjoy equal treatment with the Spanish people within the scope of the Treaty. The benefit of this right shall be extended to family members who are not nationals of a Member State, or other States parties to the agreement of the European Economic Area, and who have the right of residence or permanent residence.’

It is important to realize that the terms of the article 3 (4) of Royal Decree 240/2007 only mention equal treatment for those family members ‘who have the right of residence or permanent residence’ but not in the case of entry or transit.

2. SITUATION OF JOB-SEEKERS

Royal Decree 240/2007 is in accordance with the stipulations set out in article 6 and recital 9 but not with article 14.4 of Directive 2004/38 which, as we have mentioned in previous years it has not been transposed.

3. OTHER ISSUES OF CONCERN

The expulsion measures adopted by the Spanish authorities against nationals of the EU and their compatibility with EU Law have given rise to different case law which requires an analysis.

The High Court of Justice of Castile and Leon has developed a jurisprudence confirming decisions to expel EU citizens that it may be contrary to EU law and the jurisprudence of the ECJ.

The Court always maintains public policy reasons to justify the expulsion, but not always justified sufficiently the gravity of the conduct. These statements include the following:

- 1) The High Court of Justice of Castile and Leon in the Judgment of 13 April 2012³ confirms the judgment dated 14 June 2011 on the expulsion and entry ban for two years a citizen of Romanian nationality. The Court considers that his behaviour is a genuine and sufficiently serious threat to public order and public safety. The Tribunal considers that this measure is consistent with the interpretation of public order and public safety under the STJUE of July 10, 2008.
- 2) In its judgment of 9 April 2012,⁴ the High Court of Justice of Castile and Leon, confirms the decision of expulsion and entry ban of three years against Portuguese citizen to be a

3 Sentencia núm. 717/2012 de 13 abril JUR 2012\150982.

4 Sentencia núm. 678/2012 de 9 abril JUR 2012\145407.

real and effective against order and safety public. The Tribunal considers that the measure 'is a proportionate punishment, which is specifically established by law and which may be lawfully imposed by the administration within the legal options provided. And all this despite the existence of children in Spanish territory with Spanish nationality. The reason alleged is that the father had a bad restraining order of his children and father has spent periods in conditional prison. However, this statement is contrary to EU law and jurisprudence of the ECJ.

- 3) In its judgment of 30 March 2012,⁵ the High Court of Justice of Castile and Leon confirms the decision of expulsion and entry ban of 1 year to a Romanian citizen justified in a criminal conviction for injury, detention police, and it not have family roots, employment and social integration.
- 4) In the judgment March 16, 2012,⁶ the High Court of Justice of Castile and Leon confirmed the expulsion of Romanian citizen who has no criminal convictions but had been arrested several times for theft and actions against private property. The High Court considers this behavior contrary to public order and public safety.
- 5) Finally, by Order of the Provincial Court of March 13, 2012,⁷ the Provincial Court cancels the Order of the Magistrate's Court in Murcia from 28 February 2012 adopting an order of detention during 60 days in a Detention Center before the expulsion of a Romanian citizen.

4. FREE MOVEMENT OF ROMA WORKERS

The Spanish government has sent in March 2012 a report to the EU Commission highlighting the key elements of our integration programme at different level and it based in the main areas analysed last year.

An overview can be seen in the follow table:

	KEY ELEMENTS
Education	<p>The sound strategy includes in particular the following positive elements:</p> <p>Overall accurate depiction (supported by data) of the problems faced by Roma communities which inspire ambitious policies.</p> <p>Goal of increasing the proportion of Roma girls and boys that have attended pre-school prior to their compulsory schooling and increasing school completion of Roma girls and boys in primary education.</p> <p>Reduction of absenteeism in primary education and of early school leavers prior to 16.</p> <p>Increase of completion of compulsory secondary education and increase in academic success of Roma pupils.</p> <p>Reduction of illiteracy.</p>

5 Sentencia núm. 606/2012 de 30 marzo JUR 2012\139258

6 Sentencia núm. 523/2012 de 16 marzo JUR 2012\130606

7 Auto núm. 149/2012 de 13 marzo JUR 2012\124919

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Employment	<p>The sound strategy includes in particular the following positive elements: Improvement of access to normalised employment and reduction of job precariousness among the Roma. Improvement of professional qualifications of Roma.</p>
Health	<p>The sound strategy includes in particular the following positive elements: Comprehensive strategy for improvement of Roma health and reduction of social inequalities in healthcare through interventions in the adult population and among children. Reorientation of health services to reduce health inequalities. Clear, achievable targets and timelines set up on very concrete situations (i.e. traffic accidents, obesity, smoking etc. with a specific focus on Roma women. Focus on health of Roma immigrants. Comprehensive Action Plan for the development of the Roma population in place with focus on improving health of Roma.</p>
Housing	<p>Clear short and mid terms reachable objectives, mainly on two aspects: eradication of slums and sub-standard housing; improvement of accommodation quality for Roma.</p>
Structural requirements and funding	<p>Consultation on the strategy has taken place at horizontal level with the relevant Ministries and with autonomous communities, the Federation of Municipalities and Provinces, and civil society organisations. Strong political will to further improve collaboration among the various decision-making levels, especially as regards a coordinated effort to make better use of EU Funds. Balance between universal and targeted policies and the reliance on mid- and long-term indicators and goals. Boosting the use of the ERDF in accordance with the possibilities offered by Article 7.2 of its regulations (reconstruction of housing and eradication of segregated settlements). The involvement of social agents and partners (Roma organizations and the Social Third Sector) is foreseen.</p>

Chapter II

Members of the Family

1. THE DEFINITION OF FAMILY MEMBERS AND THE ISSUE OF REVERSE DISCRIMINATION.

The most important aspect in 2011-12 has been the implementation of the Supreme Court Decision, June 1, 2010 (discussed last year), declaring incompatible with the Directive 2004/38 some provisions of Royal Decree 240/2007.

Specifically, the Supreme Court annulled the reference to family members of Community citizens '*from another Member State*' to included under the Royal Decree 240/2007 the family member of Spaniards avoiding inverse discrimination. The Spanish Supreme court also eliminated from the drafting of article 2. a), c) and d) the reference to '*legal separation*' as a reason to not apply Royal Decree 240/2007 to the family member of a national of the EU/EEA or to family member of a Spaniard. Precisely, the order to eliminate the reference to '*legal separation*' has been included in the Royal Decree 240/2007 with its reform with the Royal Decree 1710/2011, November 18, redrafting the article 9.4 and 9.5 of Royal Decree 240/2007.⁸

In its Decision, the Spanish Supreme Court set up that the legal separation will not entail an impediment to the concession or renewal of a residence permit of a family member of a citizen of the Union; the legal separation will not affect the right to residence of the spouse holding a family residence permit of a Citizen of the EU/EEA in force. Finally, The Supreme Court, also, stated that the expression '*relationship to the second level*' foreseen in the Nineteenth Additional Provision entails an interpretative restriction and a limited transposition of the concept, more extended, of '*any other member of the family*' stipulated in article 3.2.a) of Directive 2004/38.

Regarding cases of reverse discrimination, the Spanish courts have handed down decisions that may involve a violation of EU law and jurisprudence of the ECJ. Specifically, the

8 Art. 9.4. 'In the case of nullity of marriage, divorce or termination of registered partnership of a national of a third country with a national of a Member State of the European Union or a State party to the Agreement on the European Economic Area, that will be required to communicate that fact to the competent authorities. To preserve the right of residence, must prove one of the following assumptions:

- a) Duration of at least three years of marriage or registered partnership, to the initiation of legal proceedings for nullity of marriage, divorce or termination of registered partnership, which must demonstrate that at least one of the years was spent in Spain.
- b) Extension by agreement or court order, custody of the children of EU citizens, the former spouse or registered partner who is not a citizen of a Member State of the European Union or of a State party to the Agreement on the EEA.
- c) Existence of especially difficult circumstances such as:
 1. ° Have been a victim of domestic violence during the marriage or registered partnership situation, a circumstance to be considered provisionally accredited when there is an order of protection for or report the Public Prosecutor indicating the existence of signs of violence, and a final decision adopted court showing that the circumstances have been alleged are real.
 2. ° Have been subjected to trafficking in human beings by their spouse or partner during the marriage or registered partnership situation, a circumstance to be considered provisionally accredited when there is a lawsuit in which the spouse or partner has the status of accused and his family the potential victim, and a final decision is when the court showing that the circumstances have been alleged.
- d) Resolution or mutual agreement between the parties to determine access rights, the younger son of the former spouse or registered partner who is not a citizen of a Member State of the European Union or a State party to the Agreement on the European Economic Area, where the latter resides in Spain and that order or agreement is in effect.'

High Court of Justice Castile and Leon issued the judgment of 24 February 2012⁹, confirming the expulsion of a father of a minor Spanish citizen and reduce the entry ban of 7 years to 5 years. The judgment of the Superior Court of Murcia, 26 March 2012¹⁰ confirming the refusal to renovate community family card because it is subject to an expulsion and prohibition of entry of 10 years despite being married with Spanish and he has a Spanish daughter. The High Court of Justice of Castile and Leon in its Decision of March 30, 2012¹¹ confirms the order of expulsion of EU parent of a minor Spanish.

2. ENTRY AND RESIDENCE RIGHTS

The Decision of June 1, 2010 of the Supreme Court *contributed to the use of the right of residence of the family members of the citizens of the EU/EEA-Switzerland in the event of their decease*. Thus, the Supreme Court annulled the second paragraph of article 9.2 of Royal Decree 240/2007, as we analysed the last year. The effect of this annulment, in the event the decease of a citizen of the EU-EEA-Switzerland, was that *their family members may maintain the right to reside in Spain* under the Community Alien Regime (Royal Decree 240/2007) on condition that they has resided in Spain in their capacity as member of the family previous to the death and communicates this decease to the Spanish authorities.

3. IMPLICATIONS OF THE *METOCK* AND *CHEN* JUDGMENT

In the period 2011-2012 there have been many references to the jurisprudence of the ECJ in the Spanish court decisions.

Among these decisions ARE the following:

- Supreme Court, Judgment of 20 October 2011, the magistrates made reference in its decision, to the ECJ Judgment of 19 October 2004, Case C-200/02 and STJUE of January 9 2007, Case C-1/05, Judgment of May 25, 2000, Judgment of February 5, 1991, Roux, C-363/89.
- The Supreme Court in its judgment of 22 November 201, the Supreme Court invokes the Case Zhu and Chen, C-200/02.

Other Decisions with references to the Cases, Metock, Chen and MRAX are:

- Provincial Court of Madrid, Auto no. 577/2011 of 23 September
- Provincial Court of Madrid, Auto no. 359/2011 of 7 June
- High Court of Madrid, judgment no. 10260/2011 of 20 June
- High Court of Madrid, judgment no. 212/2011 of 10 March
- High Court of Madrid, judgment no. 147/2011 of 18 February
- High Court of Madrid, judgment no. 136/2011 of 18 February
- Provincial Court of Madrid. Order no. 480/2011 of 23 September
- High Court of Madrid, judgment no. 755/2011 of 20 July
- High Court of C. Valencia, judgment no. 591/2011 of 20 July
- High Court of Madrid. Judgment no. 719/2011 of 12 July

9 Sentencia núm. 100/2012 de 24 febrero JUR 2012\121177

10 Sentencia núm. 304/2012 de 26 marzo JUR 2012\137244

11 Sentencia núm. 622/2012 de 30 marzo JUR 2012\139034

4. ABUSE OF RIGHTS, I.E. MARRIAGES OF CONVENIENCES AND FRAUD

No new information.

5. ACCESS TO WORK

No new information this year. See the commentaries about the impact of the Supreme Court Decision 1 June, 2010 in the previous report 2010-2011. Specially, it is important remember here that the Supreme Court established that the residence permits of family members of citizens of the EU/EEA, issued to them will not state any reference regarding a limitation of their right to work as employed or self-employed persons.

6. THE SITUATION OF FAMILY MEMBERS OF JOB-SEEKERS

No new information.

Chapter III

Access to Employment

1. ACCESS TO EMPLOYMENT IN THE PRIVATE SECTOR

1.1. Equal treatment in access to employment

Despite the severe economic crisis in Spain and the high unemployment rate we do not found discriminatory practices in the private sector.

1.2. Language requirement

No questions.

2. ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR

The same commentaries report 2010-2011.

2.1. Nationality condition for access to position in the public sector.

Royal Decree 264/2011 of 28 February,¹² whereby the public offer of employment in the State Administration for 2011 was approved with 2235 posts distributed in free access posts and those with internal promotion and those for professional staff and those for auxiliary staff. The announcement does not refer to the requisite of nationality to access these posts. In 2012 the supply of jobs in the public sector has been frozen.

2.2. Language requirements

No requirements found it.

2.3. Recognition of Professional experience for access to the public sector

No new issues.

3. OTHER ASPECTS OF ACCESS TO EMPLOYMENT

As the previous report the analysis of several orders and resolutions announcing access to certain civil service posts take into account seniority in similar posts in the Spanish Administration or training courses taken which are related to the post announced. These evaluation criteria, other than nationality, may entail a disadvantage for citizens of the EU-EEA-Switzerland. Among many others, the following can be cited as examples of announcements

¹² *Official Gazette*, 1.3.2011, num.51.

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in the State Administration: *TAP/1368/2011 Order of 19 May*¹³ on selection processes for entry or access to the Central Government and the Standing Committee of Selection will be responsible. The Order mentions in the Annex I to VI *the criteria of seniority in Spanish administration that suppose a disadvantage for non-nationals.*

¹³ *Official Gazette*, 26.5.2011, num.125.

Chapter IV

Equality of Treatment on the Basis of Nationality

1. WORKING CONDITIONS- DIRECT OR INDIRECT DISCRIMINATION

No new information.

2. SOCIAL AND TAX ADVANTAGES

No new information.

3. GENERAL SITUATION AS LAID DOWN IN ARTICLE 7(2) REGULATION 1612/68.

No questions.

4. SPECIFIC ISSUE: THE SITUATION OF JOBSEEKERS.

See: Job-seeker's Questionnaire.

Chapter V
Other Obstacles to Free Movement of Workers

Chapter VI Specific Issues

1. FRONTIER WORKERS

In 2011, The Autonomous community of Navarra also created its Register of trans-workers through the Special Regional Order 59/2011, April 29¹⁴, of the Regional Minister of Economy and Inland Revenue, whereby the procedure is regulated and form 047 for the application for the recognition of the condition of trans-frontier workers. Only the trans-frontier workers registered in this registry can invoke the Agreement to prevent dual condition between Spain and France.

2. SPORTSMEN/SPORTSWOMEN

Basketball:

The Competition Bases of the Adecco League Gold/Silver and the Women's League for the 2011/2012 Season: point 4.3.1 regarding the configuration of the teams stipulates that,

'1. The teams must maintain a minimum of eight and a maximum of eleven players registered and contracted during the full season, respecting the following configuration: an obligatory minimum of 6 home grown players. A non-obligatory maximum of 2 non-Community alien players. 2. A 'home grown player' is considered to be a player who in his first year in the junior category and his first year in the senior category (inclusive) regardless of his nationality and age, he has been registered with any club affiliated to the Spanish Basketball Federation in a continual period which is no less than 3 seasons.

In order to calculate the seasons, at least 6 months permanence in each one of these must be calculated'. The definition of home grown player and the reservation of 6 places for these entails a clear quota preferably in favour of national or long-term resident alien players (whether these are Community or not).

Handball:

Point 1.6 in the regulations regarding licences of the Royal Spanish Handball Federation for the 2011/2012 season establishes that '*at least three must be national players who can be selected for Spanish national teams*'.

Volleyball:

Point 9.4 of the regulations of the Royal Spanish Volleyball Federation for the 2011/2012 season stipulates that '*in the League of the Spanish Volleyball Federation First Division and second Division it will not be possible to process more than five licences of players who's Federation of origin is not the Royal Spanish Volleyball Federation. In each match a maximum of five players who's Federation of origin is not the Royal Spanish Volleyball Federation can form part of the line up*'. This rule means that there is a clear limitation when re-

14 *Official Gazette of Navarra*, 13.5.2011, num.92.

quiring a quota of five players who had not been previously registered in the Royal Spanish Volleyball Federation.

3. THE MARITIME SECTOR

The same comments that 2010-2011 report. See. Seafarers Analysis 2011.

4. RESEARCHERS/ARTISTS

No questions.

5. ACCESS TO STUDY GRANTS

See Spanish Report on Study grants 2011.

6. YOUNG WORKERS

See Spanish Thematic Report 2009.

Chapter VII

Application of Transitional Measures

The European Commission adopted the Decision of 11 August 2011, authorizing Spain to temporarily suspend the application of Articles 1 to 6 of Regulation (EU) No 492/2011 of the European Parliament and of the Council on freedom of movement for workers within the Union with regard to Romanian workers.¹⁵ As a result of this Decision the Spanish Government approved the Instructions DGI/SGRJ/5/2011 of 22 July, governing entry, stay and work in Spain for Romanian workers and their families. The Instruction of July 2011 have been repealed, dated April 12, 2012, by the Instructions SGIE/1/2012, on the regime applicable to workers Romanian and their families, applicable until 31st December 2012. The next year will analyze the former Instruction and its effects.

In relation with the Instructions of July 2011, the Spanish Government, invoking the Spanish job market situation, through the Council of Ministers, decided to reactivate the transitional period for Romanian citizens and once more to set limits for entry to the job market for wage earners from Romania. This measure does not affect Romanian citizens who were already in Spain on 22 July 2011 and were registered with the Spanish Social Security system, or were registered as job seekers with the public employment services. Romanian citizens living in Spain prior to said date of 23 July 2011 and who are registered with the appropriate social security scheme or as job seekers with the public employment services on that date are not subject to the requirement to obtain an employment permit in order to be able to work in Spain. So, in practice, these Instructions are a legal way to force the legalization of Romanian staying in Spain but not registered at all.

The government will evaluate the effects of this transition period at the end of 2012 and, depending on the conclusions reached, will decide whether to continue it or not.

As result of the Instruction the answer is, what kind of authorization does a citizen of Romania need in order to have access to the labour market? The provisions of Article 64(3) of the Regulation implementing Organic Law 4/2000 regarding the rights and freedoms of foreign nationals living in Spain and their social integration, as reformed by Organic Law 2/2009, approved by Royal Decree 557/2011 of 20 April 2011, except for the provision relating to the fact that the national employment situation permits their recruitment, shall apply to Romanian citizens who enter Spanish territory since 23 July 2011, or who are already in Spanish territory but not registered with the social security scheme or as job seekers with the public employment services on that date, and seek to carry out work as an employed person in Spain for a period of one year or more or for a fixed term. In order to be able to work in Spain they must obtain the appropriate initial temporary residence and employment permit. In order to obtain the employment permit, the employer shall initiate the procedure pursuant to Article 67 of the Regulation implementing Organic Law 4/2000. In the event that the employment permit procedure is resolved before the worker enters Spain, it shall not become valid until the worker has registered as appropriate with the social security scheme (Article 67(7) of the Regulation implementing Organic Law 4/2000). The worker must enter Spanish territory within a maximum period of three months from the date on which the employer applying for the employment permit is notified that it has been granted.

15 OJ L207/22, 12.8.2011.

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FAMILY SITUATION	RULES APPLICABLES	CONDITIONS: PRIOR TO 22 JULY 2011	CONDITION: POSTERIOR TO 22 JULY 2011.
Access to labor market applies to family, nationals of EU / EEA, of Romanian workers	It will be applicable the Community rules on foreigners (RD 240/2007) in its entirety, regardless of the legal regime applicable to such national of Romania.	Independently of the Romanian Worker	
Access regime applicable to the labor market to Romanian families of Romanian employees	RD 240/2007	When the family had entered Spain prior to July 22, 2011 and remains in Spanish territory and the worker is already in Spanish territory and registered in the corresponding Social Security or registered as unemployed in the Public Employment Services that date, shall be subject to the RD 240/2007.	When family members do not meet the conditions specified in the first paragraph above, will be applicable to the provisions of Law 4/2000 and the Regulations on work permits for others, but do not take into account the national employment situation for obtaining authorization.
Romanian family members of EU citizens and citizens of another European Economic Area or Swiss		When the family had entered Spain prior to July 22, 2011 and remains in Spanish territory and the worker is already in Spanish territory and registered in the corresponding Social Security or registered as unemployed in the Public Employment Services that date, shall be subject to the RD 240/2007.	When family members do not meet the conditions specified in the first paragraph above, will be applicable to the provisions of Law 4/2000 and the Regulations on work permits for others, but do not take into account the national employment situation for obtaining authorization.

In the event that the procedure is completed after the worker has entered Spain, the employment permit shall not become valid until, within a period of one month, the worker has registered with the appropriate social security scheme.

In any event, within a period of three months from entering Spain, the Romanian citizen must apply personally for registration in the Central Register of Foreigners (*Registro Central de Extranjeros*), which shall send him a certificate of registration making reference to his work permit and the validity thereof (for the period commencing from the date on which the work permit becomes valid or, in any case, when the period restricting the free movement of Romanian workers comes to an end).

Seasonal activities: the validity of the employment permit shall not be subject to appropriate registration with the applicable social security scheme, without prejudice to the fact that the permit may expire in the event that the worker does not register within the month following his entry into Spain (if the procedure relating to the permit was completed prior to said entry) or the month following notification of the decision to grant the permit being made

to the employer (if the procedure relating to the work permit was completed after entry into Spain).

Romanian nationals who would like to undertake study, research, training, periods of practical training unrelated to work or voluntary services, and wish to pursue activities as employees that are compatible with their principal activity, shall be required to obtain an employment permit (Article 42 of the Regulation implementing Organic Law 4/2000) without consideration having to be given in this case to the national employment situation.

Activities exempt from the obligation to obtain a work permit: the provisions of Organic Law 4/2000 and its implementing regulations with regard to accreditation of what constitutes the alleged work permit exemption shall apply.

A non-EU family members of Romanian employees included in paragraphs 1-3 of the Instruction first, when they meet the conditions outlined in the preceding paragraph, shall apply the Organic Law 4/2000 and Regulation on work permits. However, their work permits are not subject to consideration by the national employment situation in the event that the worker had entered Spanish territory prior to that date (22 July) and it remains in the same or obtained after a work permit as an employee of duration less or superior than one year.

2. RELATIONSHIP BETWEEN REGULATION 1408/71-883/2004 AND ART. 45 TFUE AND REGULATION 1612/68: HEALTH CARE

In 2011, *Spanish pensioners, that have health insurance card* showing status of pensioner, *get prescription drugs for free*, and pensioners from other EU countries, when temporarily residing in Spain must submit a *document* and issued by health authorities in their country of origin, certifying that they are beneficiaries of a pension.

The Spanish authorities denied free drugs to pensioners in the EU because the European Health Insurance Card does not indicate that they are pensioners.

The EC considers that this measure violates European norms and constitutes ‘discrimination’ to pensioners who choose Spain as your holiday destination, and notes that the requirement to submit an additional document is contrary to the principles of the EHIC card, designed to streamline medical care in the twenty-seven member countries.

However, Spanish authorities have reiterated that Spanish citizens to obtain free medicines have specific *card attesting to its status as a pensioner*, because only who can prove this special condition can go to this benefit. So, EU citizens have to prove that pension terms to access these benefits.

This will change in 2012: Since the month of April 2012, EU residents and their families must prove, to obtain a Certificate of Registration of the European Union or the Family Community Card Union citizen, who have income and health insurance, public or private (Amendment of Royal Decree 240/2007 of 16 February on the entry, free movement and residence in Spain of citizens of the Member States of the European Union; Article 7, which refers to the residency requirements for more than three months).

Government is now up to issue an instruction to specify what constitutes sufficient economic income, shows how. This means that the Foreign Offices in Spain do not know exactly what conditions apply and, therefore, these authorizations are paralyzed health.

There are more delays in the resolution of these claims, as some foreign offices, including Madrid, are requesting a statement from Spanish family or community in which it identifies as being responsible for all expenses, accommodation, etc.

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We do not know exactly if requested in all provinces, or not, but until we have more news about the new requirements in the immigration offices, we can present this event

3. EXISTING POLICIES, LEGISLATION AND PRACTICES OF A GENERAL NATURE THAT HAVE A CLEAR IMPACT ON FREE MOVEMENT OF EU WORKERS

No information.

4. NATIONAL ORGANIZATIONS OR NON-JUDICIAL BODIES TO WHICH COMPLAINTS FOR VIOLATION OF COMMUNITY LAW CAN BE LAUNCHED.

The same as previous report.

5. SEMINARS, REPORTS AND ARTICLES

No information.