

MAZZESCHI

ITALIAN IMMIGRATION & CITIZENSHIP

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IMMIGRATION AND CITIZENSHIP

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NON-EU FAMILY
MEMBER OF AN EU
NATIONAL: HOW
LONG CAN I STAY IN
THE EUROPEAN
UNION?





As a family member of an EU national, the duration you can stay in the EU depends on whether you are accompanying or joining your EU family member, and the type of documentation you hold.



SHORT-TERM STAY (UP TO 3 MONTHS PER EU COUNTRY)

If you have the required documents, you are entitled to stay for up to three months in each EU country without any additional conditions or formalities. This rule applies as long as you are accompanying or joining your EU family member. You can combine stays in different EU countries without an overall time limit.

These 27 countries are current members of the European Union.

Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden.



Example Scenario

Marco, an Italian national, lives in France. He travels for an EU-wide research project, spending three months in Austria, three months in Germany, and two months in Luxembourg. His American spouse, Susan, can join him for the entire duration of his stay in each country because her stays are not subject to an overall time limit.





LONG-TERM STAY (MORE THAN 3 MONTHS)

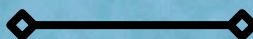
For stays longer than three months, you may need to apply for a visa and then residence card as a family member of an EU national in the host country. This usually requires proof of your relationship (e.g., marriage or birth certificate) and proof that your family member resides in that country. The residence card allows you to stay for longer periods, typically up to five years, and can be renewed.

Permanent Residence

After legally residing in the host EU country for five continuous years, you may be eligible to apply for permanent residence.

Traveling Independently

If you travel on your own without a valid residence card or residence permit, you are subject to the standard Schengen rules, which limit your stay to 90 days within a 180-day period across the entire Schengen area.



VAN DER ELST PERMIT IN ITALY: IS IT REALLY AN OPTION?

Van Der Elst permit in Italy: Under the principle of free movement of services within the European Union, companies established in a Member State should have the right to provide services in another EU Member State without needing to obtain a separate work authorization for their non-European employees.



HOW WAS THIS RECEIVED BY THE ITALIAN LEGISLATION?



In Italy, the Van Der Elst principle was incorporated into national law with Law 46/2007, according to Article 27, paragraph 1-bis (legislative decree 286/1998 and its subsequent amendments), for the provision of services based on a pre-existing service agreement. Pursuant to this article, the Italian host company must file an online notice of transfer under its legal representative's name, submitting the following documents to the authorities:



Service Agreement Contract: Detailing the number of employees, the duration of the temporary period, and the services to be provided between sending and receiving entities;



Support Letter: From the sending entity confirming the conditions of the deployment;
Notification to Trade Unions: From the receiving entity;



Social Security Evidence: Such as a certificate of coverage;



Valid Work Authorization: From the EU Member State where the sending entity is based.

Filing the online notice of transfer is mandatory for both visa and non-visa nationals, for short-term (within 90 days) and long-term mobility (over 90 days).



ARTICLE 27 QUINQUIES: SHORT-TERM WORK. MIGHT THIS STILL BE CONSIDERED A BYPRODUCT OF THE VAN DER ELST IMPLEMENTATION?



Additionally, Article 27 paragraph quinquies (legislative decree 286/1998 and its subsequent amendments) provides the possibility for non-EU employees of working in Italy for short periods for the provision of services based on an intra-company assignment.

Managers, specialists, and trainees holding an EU ICT Permit issued by another EU State can be temporarily transferred to a company of the same group in Italy without applying for a visa or work authorization for short stays (up to 90 days in 180 days). The main requirement is submitting a declaration of presence to the local police within the first 8 days of arrival in Italy.



Despite being implemented in 2007, the Van Der Elst procedure faces several practical challenges in Italy due to the implementation of such an immigration scheme:

1 Work Initiation Delays: Work can only begin after an appointment at the Immigration office and in-country registration for the residence permit application, reducing the procedure's effectiveness.

2 Directive Compliance: Obligations under Decree n. 136/2016 (EU Posted Workers Directive) apply to Service Agreement assignments, adding complexity to the process.

3 Residence Permit Complications: The absence of a work authorization and visa may complicate the residence permit application process, with Immigration Police potentially refusing to issue a residence permit due to the lack of a 'necessary' work authorization and visa.



While the Van Der Elst principle aims to facilitate the free movement of services and worker mobility within the EU, its implementation in Italy, mostly under Article 27, paragraph 1-bis, presents various challenges and practical issues, which acts as a deterrent, and for the time being should induce corporations to lean towards more familiar allies such as a standard service agreement pursuant art. 27 clause i of the legislative decree 286/1998.

SHORT-TERM STAY REGULATIONS FOR INTERNATIONAL STUDENTS IN ITALY



Italy has specific regulations for international students who are attending institutions in Italy which are branches or affiliates of foreign universities and higher education institutions. Here's a brief overview of the key points regarding short-term stays for these students.



These regulations are relevant for students whose stay in Italy does not exceed 150 days. If the student's stay falls within this timeframe, they must not apply for a residence permit. Instead, they must file a declaration of presence with the relevant Police Office within 8 days of arrival.



WHAT IS THE DECLARATION OF PRESENCE?



The declaration of presence is a formal notification that a foreign national, who is not required to obtain a residence permit due to the short duration of their stay, provides to the Italian authorities. This requirement ensures that the authorities are aware of the foreign national's presence in the country and their intended stay. The declaration must be made within 8 days of the foreign national's arrival in Italy.



DECLARATION REQUIREMENTS FOR INTERNATIONAL STUDENTS



In this case, the declaration of presence must be accompanied by a statement from the legal representative of the affiliated institution. This statement includes the commitment to notify the police within 48 hours of any changes in the student's address/status during their study period in Italy.



ITALIAN INVESTOR VISA AND THE ITALIAN PERMIT OF STAY FOR INVESTORS

Once the investor has entered Italy with the Investor Visa, the next step is to apply for the Italian Permit of Stay for Investors (Permesso di Soggiorno per Investitori).



DISTINCTIONS BETWEEN A VISA AND A PERMIT OF STAY

Visa: The visa is an entry document that allows the investor to enter Italy legally within its validity. It is issued by Italian consulates or embassies abroad and is typically valid for a defined duration. Investors are granted a two-year multiple entry visa. After its expiration, the visa does not need to be renewed. It will be replaced by the residence permit card.



Italian Permit of Stay: The permit of stay is a residency document that allows the investor to legally reside in Italy. It is issued in the size of a credit card by the Italian police and it is renewable, as substitute of the visa. For investors, the permit of stay is valid for two years and is renewable for subsequent three-year periods. The validity of the permit of stay starts from the date of application to the Police.



APPLICATION PROCESS FOR THE ITALIAN PERMIT OF STAY FOR INVESTORS



1 Entry into Italy: Enter Italy with the Italian Investor Visa.

2 Submit Permit Application: Within 8 days from entry, apply for the Permit of Stay for Investors at the local Police immigration office (Questura). The accommodation documents will determine the competent police office for the application. Submit the required documentation, including the documents that were submitted for the nulla osta and visa application. On the same day, the investor will have to provide biometric data (fingerprints and photographs).

3 Permit Issuance: Upon approval, the Permit of Stay for Investors is issued, granting legal residency in Italy. The processing time for approval may vary depending on each Police department, however Investors are granted priority by law.



IMPORTANT: within 3 months from entry date, the investor must execute the investment (which has been approved by the Ministry) and upload proving documents in the Ministry's portal.

NOT AS STRAIGHTFORWARD AS IT LOOKS:

The Italian Investor visa was only introduced in January 2017 and, due to its nature and restrictive requirements for the capital investments, there have not been many applications for this kind of permit since. Not all police stations are aware of and accept to follow the regulations on prioritization of investors' applications. Some police officers tend to request for additional documents that generally do not apply to this particular permit category.



The immigration process of family members of investors can also be particularly challenging, especially given the recent introduction of the regulations concerning the families of investor visa holders.

How we can help you: Thanks to our experience, we can liaise with the competent offices to make sure that the regulations are correctly followed and, at the same time, easing the communication between the investor and the officers.



BENEFITS OF THE ITALIAN PERMIT OF STAY FOR INVESTORS:



Residency Rights: right to settle and work in Italy, even if Investor Visa has no requirements for minimum stay in Italy



Travel to other Schengen countries: freedom to travel within the Schengen Area without additional visas (max. 90 days any 180 days period)



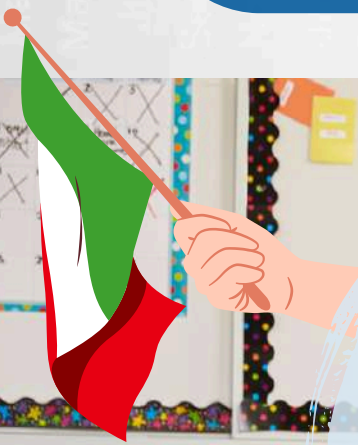
No Residency liens: The Permit of Stay for Investors is the only permit of stay that has no requirements for minimum stay in Italy. Accordingly, if the Investor spends only limited time in Italy and does not meet the criteria for residency (and tax) registration in an Italian Municipality.



Family Reunification: Eligible family members can join the investor in Italy under family reunification provisions.




Pathway to permanent residency and Citizenship: After five years of continued legal residency (also tax residency), investors may be eligible to apply for permanent residency. After ten years of continuous residency (to be defined by the date of first residency registration in an Italian municipality), investors may also be eligible to apply for Citizenship. For more details please see our dedicated page: <https://www.mazzeschi.it/italian-citizenship-by-naturalization/>



ITALY'S REVOLUTIONARY
CITIZENSHIP REFORM:
ITALIAN CITIZENSHIP
FOR THOSE THAT HAVE
ATTENDED SCHOOL IN
THE COUNTRY?




Italian Citizenship updates:



Italian Citizenship: The recent success of the Italian Team and the Tokyo Olympics has revamped the discussions. In fact, several athletes of Italy's Olympic team were born abroad or have parents born abroad. Paola Egonu (born in Italy to Nigerian parents), the most prominent member of the volleyball team that won the gold medal, obtained citizenship only because she was a minor when her father obtained citizenship by naturalization (10+ years of residency).

Marcell Jacobs, the double gold medal winner in Tokyo, is an Italian citizen being born to an Italian mother, but his teammate and also gold medal winner Fausto Desalu, born in Italy to Nigerian parents, had to wait until he was 18 to apply.



Second-generation immigrants: "ghost citizens"

There are over one million second-generation immigrants who were born in Italy or arrived in the country at a very young age that have this status. Italy's current citizenship law, in fact, set forth that a child born in Italy to immigrant parents can apply for citizenship only at the age of 18 after having legally resided on Italian territory from birth without any interruption. This makes many young second-generation immigrants a kind of "class B" citizens: they are fully integrated into the society, Italian is their first language but they are not "citizens" and are excluded from many rights.

Citizenship for young athletes

Proposals to change citizenship law have been discussed for years without reaching an agreement due to the opposition of some political parties.

In 2016 a law was approved to allow athletes younger than 18 to be registered with Sport Federations, on condition that they are legally residing in Italy since the age of 10.

This exception, however, does not allow them to compete with a National Team until they turn 18 and obtain citizenship.

Citizenship for special merits

In exceptional circumstances, Italy allows citizenship to be granted for special merits, this includes sports achievements. The athlete Yassine Rachik was granted citizenship in 2015 for sports merits. He is originally from Morocco and emigrated to Italy with his parents very young.

Under the Italian flag, he won the bronze medal in the Men's Marathon at the 2018 European Championships. Other athletes who were granted citizenship are the Cuban wrestler Abraham de Jesus Conyedo Ruano and the US ice hockey player Chelsea Marie Furlani.

The draft reform: "ius scholae"

Said that however, the above exceptions would not solve the problem of a hundred thousand VNP (very normal people).

After several failed attempts to change the law, one political party that is in the Government coalition, has refreshed the proposal to include in the citizenship legislation the so called "ius scholae" or "ius culturae", which translated from Latin meaning "right deriving from school's attendance". If the proposal is approved, citizenship would be granted to those that have attended school in the country for a certain number of years (5 or 10, timing is still under discussion).



Opposition against the reform is still strong

Despite the support of many parts of the society, the proposal is still giving rise to strong opposition by some parties.

The proposal is not new and if we look at previous attempts we can see that when the previous draft bill was presented, many amendments were filed mainly for the purpose to delay the final discussion on the draft and many others were kind of bizarre.

such as (i) conditioning citizenship adjudication to having obtained a diploma with a minimum score of 90/100, or (ii) to passing an exam on odd subjects like showing adequate knowledge of Italian traditional food products, knowing the most popular traditional festivities or (iii) even requesting to prepare a written excerpt of a popular folk song.

What are the rules in the other EU countries?

A comparative overview of the frameworks in place across the Member States of the European Union (EU) on access to national citizenship for new migrants from third countries, through naturalisation can be found in this study prepared in 2020 by the European Migration Network.



CONTACT INFORMATION

Mazzeschi SRL
www.mazzeschi.it
info@mazzeschi.it

WRITERS & EDITORS

Marco Mazzeschi
Giuditta Petreni
Yuu Shibata
Chiara Faggioli
Giuditta De Ricco
Daniele Redi
Louise D. Machetti

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