


Policy Department C  
Citizens' Rights and Constitutional Affairs



**COMPARATIVE STUDY ON THE APPLICATION OF  
DIRECTIVE 2004/38/EC OF 29 APRIL 2004  
ON THE RIGHT OF CITIZENS OF THE UNION AND  
THEIR FAMILY MEMBERS TO MOVE AND RESIDE FREELY  
WITHIN THE TERRITORY OF THE MEMBER STATES**

**LEGAL AFFAIRS**





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OF THE MEMBER STATES  
STUDY**

Summary:

This study provides a comparative analysis of the national transposing acts and of the current state of application at administrative level of the Directive 2004/38/EC. Firstly, it summarises the Directive's historical background and the context of its adoption. Secondly, the study reports general findings on the national transposing measures, highlighting cases of late transpositions and the way transposition was achieved by the Member States. Thirdly, the study contains detailed country reports for ten Member States, which have been selected in accordance with several criteria such as their important migratory patterns and their problems in the implementation of the Directive. Furthermore, it presents in detail the non-conformity issues identified in the ten selected Member States against the broader picture emerging generally across the EU-27, focusing on the following areas: entry and residence rights, definition of sufficient resources, situation of registered partners and third country national family members, equal treatment, grounds for expulsion and other more scattered problems grouped under the heading 'miscellaneous'. In its last chapters, the study provides an evaluation of the administrative services that underpin the application of the Directive in the ten selected Member States and analyses the role of the European Commission with regard to the application of the Directive. At last, it draws some conclusions on the shortages in the implementation's process and makes a number of proposals to strengthen the Commission's role in order to ensure a more effective application of the Directive.

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## ABBREVIATIONS

CE	Constitution of Estonia
CEUA	Citizen of the European Union Act (Estonia)
CIP	Italian Office of the engagement
CMB	Citizen and Migration Board (Estonia)
CMU	Converture Maladie Universelle (France)
CSN	National Authority for Financial Aid in Sweden
CSS	Citizens' Signpost Service
DATV	Direct Airside Transit Visa
DG	Directorate General
EC	European Community
ECAS	European Citizen Action Service
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECJ	Court of Justice of the European Communities
ECT	Treaty establishing the European Community
EEA	European Economic Area
EFTA	European Free Trade Association
EUROJUS	European Institute for Legal Studies
EP	European Parliament
EU	European Union
ID	Identification Document
INIS	Irish Naturalisation & Immigration Service
MEP	Member of the European Parliament
NGO	Non-governmental Organization
OJ	Official Journal
PACS	Pacte civil de solidarité (France)
PPS	Social Security Number
S.I.	Statutory Instrument (Ireland)
SOLVIT	Effective Problem Solving in Europe
TOC	Table of Correspondence
WHO	World Health Organization

## EXECUTIVE SUMMARY

This study by ECAS was commissioned by the Committee on Legal Affairs of the European Parliament and carried out by an editorial team and a network of legal experts in all Member States of the European Union. The study began in June 2008 and ended in January 2009.

As requested by the Committee, the study is not intended to be as comprehensive as that carried out by the European Commission<sup>1</sup> and reflected in its report of 10 December 2008 on the application of Directive 2004/38/EC.<sup>2</sup>

This study sets out the measures transposing the Directive into national law for all 27 Member States in a comparative table. However, in order to comply with the terms of the Parliament's mandate, it focuses in more depth on 10 Member States. These Member States are Belgium, Estonia, France, Greece, Hungary, Ireland, Italy, Romania, Sweden and the United Kingdom. These Member States were chosen on the grounds of representation of the problems of applying the Directive, significant migration flows and a reasonable geographical balance within EU 27.

Following the presentation of detailed reports on the application of Directive in these 10 selected Member States, the study then goes on to describe issue-by-issue the main findings and refers to the other 17 Member States. The issues are the right of entry, short-term and permanent residence, the definition of sufficient resources, the situation of registered partners, problems encountered by third country national family members, ground for expulsion, procedural safeguards and any other miscellaneous problems.

The European Parliament also asked for an evaluation of the provision of information and administrative services to mobile citizens. The study refers throughout not only to the formal instruments, but how they are applied in practice. In addition, a chapter of this study is dedicated to these matters.

Knowing that there have been a number of problems with the late and incorrect implementation of the Directive, the European Parliament also asked for an evaluation of the role of the Commission to ensure it is correctly transposed. Such is the overall organisation of this study.

### **I. The 'citizenship Directive' and overall assessment**

The Directive is, as the study points out, 'a landmark policy development' that has consolidated free movement rights:

- It grants the right to cross borders and right of residence for up to three months without any conditions or any formalities other than the requirement to hold a valid passport or ID card.
- It establishes progressive residence rights - unconditional residence right up to three months; residence right to the acquisition of the permanent resident status; permanent residence.
- It confirms equal treatment rights and protection of migrant Union citizens in a host Member State.
- It defines the status of 'family members' and makes travelling and residence easier for them.

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<sup>1</sup> Hereinafter 'Commission'

<sup>2</sup> Hereinafter 'Directive'

- It simplifies lengthy administrative procedures.
- It extends Union citizens' family reunification rules.
- It guarantees the right of permanent residence after 5 years of residence.
- It provides for an autonomous right of residence of family members in the event of death, departure, divorce or termination of a registered partnership.
- It limits the circumstances of rejection and revocation of the right of residence for motives of public order, public security and public health.

Commonly known as the 'citizenship Directive', this comprehensive approach has brought together nine former pieces of legislation. It also clarifies and applies the case-law of the European Court of Justice.<sup>3</sup> The ECJ in a number of judgements has given substance to Article 18 of the EC Treaty making free movement a primary right of citizenship. By establishing a single legal regime for free movement and residence, the Directive ought to be easier to understand for citizens and easier to apply for the authorities.

To what extent has the spirit of the Directive – before examining its letter – brought together the concept of citizenship and better regulation and been carried through to Member States in their transposing measures? The general findings on the implementation of the Directive show that this has been the case only to a limited extent. Some Member States have shown that it is possible to go further than the provisions of the Directive in recognition of European citizenship and unrestricted free movement. However, the majority of Member States have not respected the spirit of this Directive:

- Implementation has been inconsistent with the concept of 'European citizenship' through obstacles in some Member States to the laws on entry, settlement and removal of foreigners from the territory or immigration provisions.
- Whilst some Member States have adopted a 'copy and paste approach' or a single legislative measure, others have scattered implementation across a wide range of existing laws, thus undermining the concepts of consolidation and better regulation. Many Member States have amended their implementing provisions more than once.

The problem of the gap between the spirit of the Directive and the way it has been applied has been compounded by other legislative initiatives or measures cutting across the implementation of the Directive.

The comparative study raises the following questions: Should these problems have been foreseen by the Commission? Was it sufficient just to ensure the Directive was adopted rather than ensuring that it is also implemented? On the one hand, it may not have been envisaged that there would be problems in implementing the Directive as it consolidates law already in force. On the other hand, the wide scope of the Directive, the case law of the ECJ, debates on the impact of enlargement on free movement of people and the wider debate on migration ought to have alerted the European Commission to act at an earlier stage. Initial advice by the Commission concentrated largely on late transposition (c.f. the table in the study) and infringement procedures against 19 Member States for their failure to meet the deadline of 30 April 2006.

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<sup>3</sup> Hereinafter 'ECJ'

## **II. Selected country reports**

This study contains a chapter with ten detailed country-reports on the transposition of the Directive.

### **1. Belgium**

The Directive has been implemented by multiple measures on the basis of the Act of 25 April 2007 on the entry to the territory, the residence and the expulsion of foreigners. This measure was followed by two implementing royal decrees.

Issues have been identified concerning the proportionality of sanctions for a failure to report presence on the Belgian territory, the duration of the validity of the ‘residence card’ for third country national family members, the facilitation of the entry and residence of certain family members and with the registration of some categories of Union migrants such as job seekers from new Member States. Doubts are expressed about the information efforts, which, because of the very late transposition of the Directive, are directed more at the administration than the public. It should be noted that in some respects Belgian law has actually been more expansive or sets out more favourable provisions than the Directive. This applies to the definition of ‘family member’ and to permanent residence which is granted after 3 years instead of 5. It is also mentioned that the application of the Directive by administrations varies from one region and commune to the next. In Flanders the quality of administrative services ranges from ‘poor’ to ‘satisfactory’ depending on the service in question. In general in Wallonia, the administrative service provided to Union citizens is poor.

The study finds that overall ‘the transposition level of the Directive can be considered satisfactory in both quantitative and qualitative terms.’

### **2. Estonia**

The main act that transposes the Directive is the Citizen of European Union Act of 17 May 2006.<sup>4</sup> The Estonian CEUA extends the concept of ‘Union citizen’ to include the European Economic Area and Swiss citizens.

There are some inconsistencies that have been identified in the transposition of the Directive. In general, these concern unequal treatment between Union citizens, registration requirements and ID cards. Access to employment for third country national family members seems to be a problem that needs to be addressed. The treatment of third country nationals in the Embassies and at the borders should receive more attention and maybe supervision. The practice on how expulsion on the grounds of public health or security will be implemented is not clear. Also there are no concrete definitions as to what is public health or security. This results in much discretion for officials to issue expulsion orders on these grounds. As the process to determine sufficient resources is not in place, it can lead to rejections of the applications of third country family members to settle with the Union citizen in Estonia. In Estonia, more favourable provisions exist concerning a right to permanent residence before five years. Lastly, administrative services can be considered either ‘good’ or ‘satisfactory’ depending on the service in question.

It can be concluded from the situation reported in Estonia, that the rights of the Union citizen

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<sup>4</sup> Hereinafter ‘CEUA’

appear to be observed, whereas the rights of family members who are third country nationals are not sufficiently regulated.

### **3. France**

The Directive was transposed by two measures – Law nr 2006-911 of 24 July 2006 on immigration and integration and Ministerial Decree nr 2007-371 of 21 March 2007.

The country report shows that in rewriting the Directive and structuring the provisions differently, transposition in France gives rise to a number of points of non-compliance or ambiguity i.e. on the definition of partnership (notwithstanding France's own national law), delay for registering with the authorities and the proportionality of sanctions, documents attesting the right of residence for Union citizens and their third country national family members, access to permanent residence, protection against expulsion and the situation of Union citizens from the new Member States. The main discrepancies are the re-introduction of a 'residence title' which Union citizens may require 'on a voluntary basis' and the failure to provide administrative instructions for the effective implementation of the registration certificate at the level of local authorities. In particular, the failure to implement the registration certificate is aggravated by the incoherent administrative practice of the authorities in charge of delivering residence documents (i.e. *préfectures*). All of this goes against the general philosophy of the Directive, which is to facilitate formalities for Union citizens and their family members. Concerning administrative services, information available on the web-portal of the French administration can be considered as very user-friendly, however 'face-to-face' services can be considered as insufficiently accessible.

The study concludes that the transposition of the Directive into French law is 'imperfect' and 'incomplete'. Paradoxically, it has become more difficult for Union citizens and their family members to establish their right of residence in France under EC law than before the implementation of the Directive.

### **4. Greece**

The Directive has been transposed by Presidential Decree 106/2006 on Free movement – residence in Greece of Union citizens and the members of their families of 21 June 2007.

National provisions are mostly explicit and clear and in some respects more favourable to the citizen who does not, for example, have to report his or her presence. On the other hand, there are concerns with administrative formalities for residence documents, the recognition of registered partnerships, the right of residence for third country national family members particularly with regard to registration and procedures. The situation for citizens from new Member States is also elucidated. Concerning administrative services, their provision can be considered as 'satisfactory' or 'poor' depending on the service in question. It is notable that there is no central registry or information portal.

The study concludes that the literal transposition of the Directive is relatively well done, however several gaps and weaknesses can be identified concerning third country national family members. Further, the number and complexity of the relevant legislative and administrative acts may be in line with the provisions of implementing legislation, but might result in difficulties when applied.

## **5. Hungary**

The Directive was transposed by multiple measures: Act No I of 2007 on the Entry and Residence of Persons with the Right of Free Movement and Residence, Government Decree 113/2007 of 24 May 2007 and Decree No 25/2007 of 31 May 2007.

A reason submitted for non-conformities between Act No I of 2007 and the Directive is that the Hungarian Act covers different categories of beneficiaries, as it also applies to family members of Hungarian nationals not having Hungarian citizenship themselves, which does not go against the spirit of the Directive, but may result in situations in which family members of Hungarian nationals are treated more favourably than family members of Union citizens. Issues have been identified concerning the right of residence granted to partners and ‘other family members’, the failure to recognise registered partnerships and inconsistencies between the Directive and national measures concerning permanent residence documents have been identified. Transposition of the limitations on entry and residence rights on the grounds of public policy and public security and certain safeguard clauses is insufficient. The situation is similar to France insofar as the two main problems concern residence cards and grounds for expulsion. Finally, administrative services are generally considered as ‘good.’

It was concluded that the transposition of the majority of the provisions of the Directive has been satisfactory as the entry and residence rights of Union citizens seems to have been observed, although problems were identified and these are set out in the report.

## **6. Ireland**

The Directive was transposed by Statutory Instrument 226 of 2006. This legislation was subsequently repealed in light of the accession of Bulgaria and Romania and replaced by Statutory Instrument 656 of 2006. A further statutory instrument, Statutory Instrument 310 of 2008 amended Statutory Instrument 656 of 2006.

The overriding issue was the insistence by the Irish Naturalisation and Immigration Service (INIS) on prior residence by non-EEA family members of EEA nationals in another Member State before granting a residence card. This adversely affected a large number of couples and was the subject of numerous complaints. The matter was ultimately resolved in the case of *Metock & Others v Minister for Justice Equality and Law Reform*<sup>5</sup> which was referred to the ECJ from the High Court in Ireland pursuant to Article 234 of the EC Treaty. The ECJ delivered its judgement in *Metock*<sup>6</sup> that secondary legislation requiring a non-EEA spouse of an EEA national to have lived in another Member State of the EU prior to applying for a residence card in Ireland was contrary to EU law. All those who had been adversely affected by Article 3(2) of Statutory Instrument 656 of 2006 as previously drafted and the practice of INIS, have been invited by INIS to return to have their cases reviewed. The country report also shows that there have been more minor problems with onerous requirements and delays in issuing residence cards and potential problems in the failure to implement safeguards against expulsion. Furthermore, the Immigration, Residence and Protection Bill 2008, which is not yet in force, would, according to the Immigration Council, allow the Irish authorities to deport any person who is unlawfully present in Ireland without prior notification. Finally, administrative services for Union citizens exercising their free movement rights in Ireland are considered as ‘poor.’

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<sup>5</sup> 2008 IEHC 77

<sup>6</sup> Case C-127/08 *Metock and others* [2008] ECR 00000.

The study concludes that following the judgment in *Metock*, Ireland is now in a period of adjustment. However, it is currently difficult to assess whether the *Metock* decision will pave the way for full and proper implementation of the Directive.

## **7. Italy**

The Directive has been transposed into Italian law by Legislative Decree No 30 of 6 February 2007 which was subsequently amended by Legislative Decree No 32 of 28 February 2008.

In reality there are numerous problems, stemming from other laws or legislative proposals, particularly the ‘Pacchetto Sicurezza’ (security package). Because of the expulsion of Roma from Italy, this issue has been highlighted in debates in the European Parliament. In some other respects, transposition does not appear to be in line with the Directive. Consider, for example, the requirement to provide proof of sufficient resources for the Union citizen and family members. Italian law also does not recognise civil partnerships or the status of ‘partner’ granted by other Member States, so partners are not included in the definition of family members. The law applicable to third country national family members accompanying or joining a Union citizen does not contain any definition of ‘dependent’ which gives discretionary power to the administration to decide on their status. It is highlighted in the report that non-Italian citizens have been asked to prove that they have been residing on the Italian territory for at least ten years or in the same Region for at least five years in order to access a range of social benefits; this is a problem of equal treatment. Concerning administrative services, the user-friendliness of the relevant documents and the competences of the personnel contacted for the research at the Department for European affairs of the Italian Presidency of the Council was very good. However, documents translated into the main foreign languages and the personnel contacted at the police headquarters who are able to speak foreign languages can be considered as ‘very poor.’

It was concluded that infringement proceedings could ensue for the various issues of non-compliance identified in the report.

## **8. Romania**

There are four measures transposing the Directive into Romanian law: Government Emergency Ordinance No 102 of 14 July 2005, Law 260 of 5 October 2005, Government Ordinance 30 of 19 July 2006 and Law 500 of 28 December 2006.

In the transposing legislation, various beneficiaries of the Directive are not included. A partner is not included in the category of family member, nor are descendants and relatives in the ascending line of a partner. There are other problems relating to non-compliance or provisions that go against the spirit of the Directive with regard to administrative formalities for the right of residence, the renewal of residence cards and retention of the right of residence for third country national family members, grounds for expulsion and equal treatment in expulsion orders between third country national family members and Union citizens. Problems were also identified concerning Law 248/2005 concerning the freedom of movement of Romanian citizens abroad. This raises the issue of the compatibility with the spirit of the Directive of a law which places restrictions on Romanian citizens’ freedom to travel to other Member States. These restrictions are based on Admission Agreements signed by Romania with EU Member States before accession when its citizens were repatriated on account of their illegal residence. The country report finds that access to the services for registration in Romania is unproblematic and

that all the documents are drawn up in Romanian, English and French and are ‘easily understandable and user-friendly.’

The country report concludes the implementation of the Directive has been difficult and lengthy, yet it has not succeeded in ensuring that Union citizens are able to benefit from the rights conferred by the Directive as certain important provisions and its spirit have not been fully implemented into Romanian law.

## **9. Sweden**

The Directive has been transposed into Swedish Law by the Aliens Act of 30 April 2006 and has been amended several times.

The country report states that transposition could be improved and the national expert is of the view that ‘the text of the Act has been introduced by pieces into the previous Aliens Act and makes the reading, the interpretation and even the understanding of the full text difficult.’ As with some other EU Member States such as France, Sweden has opted for the ‘registration’ clause. However, no clear practice has been established, so the old system of residence cards remains. How can the Directives’ abolition of residence cards be compatible with Sweden’s system of identification cards? This very specific situation in Sweden is an obstacle to free movement. Another problem is that Sweden has a study loan system considered to be particularly generous and has placed requirements of at least two years prior residence in Sweden for accessing the system on an equal basis to Swedish students. On the basis of pending court cases, the right of reunification for family members is the biggest issue. Problems were also identified concerning the application for a residence card by third country national family members. Administrative services are considered to range between ‘good’ and ‘poor’ depending on the service in question.

It is concluded that the transposition process of the Directive is unfortunately rather imperfect and could be improved, although the *overall* evaluation of the transposition of the Directive via the Aliens Act has been satisfactory and the rights of Union citizens and their family members seem to have been observed. In practice, free movement and the right of residence has been limited by administrative difficulties.

## **10. The United Kingdom**

The Directive has been transposed by the Immigration (European Economic Area) Regulations 2006 (Statutory Instrument 2006 No 1003). Separate legislation exists for Gibraltar through the recently adopted Immigration Control (Amendment) Act 2008.

A number of problematic areas have been identified. Firstly, these concern the right of residence. There is considerable divergence between the Directive and the Regulations as regards third country national family members of Union citizens in relation to their rights of entry and residence; more specifically, concerning the condition of prior residence for family reunification rights and problems in processing applications for residence cards and entry visas. There is no provision specifying a right to equal treatment in the implementing Regulations and issues were identified concerning higher education, sickness insurance and social welfare benefits. Also, the UK is another example of a Member State which has found it difficult to implement the spirit of the Directive particularly on including registered partners in the definition of ‘family member.’ Partners in a mixed-sex partnership registered in another Member State are not being considered as a ‘family member’, whereas registered same-sex



partnerships would be. Concerning grounds for expulsion and procedural safeguards, expulsion measures can be taken for recourse to social assistance and there is no possibility to appeal against the decision to refuse entry, deportation orders, refusal to issue an EEA family permit or a removal order if the concerned persons are in the UK at the time an appeal is made. Further, the nature of the transposition of the provision on ‘sufficient resources’ poses a problem of legal certainty resulting in a myriad of possible outcomes and therefore to possible inconsistencies in the assessment of the personal situation of citizens by the immigration authorities. Finally, administrative services were considered as satisfactory.

The country report concludes that the majority of the rights contained in the Directive have been correctly implemented into UK law. If the problems identified can be addressed and rectified, the implementation of the Directive will have been successful.

### **III. Non conformity issues identified for EU-27 with special focus on the 10 Member States selected**

A chapter of this study examines the issues of non-compliance focussing on the 10 selected Member States, citing examples from the other Member States where appropriate. The overall result is comparable to that of the Commission’s report of 10 December, but the approach is more qualitative. In other words, the survey does not attempt to give an exact picture across the EU 27 of how each Article has been implemented, that has been done by the Commission based on a more extensive survey which has not unfortunately been published. The survey does however give more analysis and qualitative background than the Commission’s approach. The two exercises therefore come to similar conclusions and are complementary.

#### **1. Entry and residence rights**

The analysis of the transposition and application begins with the right of entry and of residence, which could be considered as the foundation of the Directive. It is the section of the Directive which is most closely linked to the Treaty and it is arguably the most crucial part of the Directive in the everyday life of Union citizens, as all other rights flow from the exercise of the rights of entry and residence. It is interesting to note that the study has identified a number of inconsistencies throughout the Member States. The inconsistencies identified ranged from oppressive questioning by border guards to difficulties in securing permanent residence rights. Notably, the study identified the widespread breaches committed in relation to the three month period prior to registration. Another cause of concern is the disproportionate penal sanctions imposed on Union citizens who fail to respect national implementing laws. The current status of the various residence cards that proliferate in the absence of the previous residence card replaced by the certificate is highly confusing to Union citizens.

#### **2. Sufficient resources**

It is shown that Member States have taken different approaches to the threshold requirement of sufficient resources. This was allowed for in the Directive but leaves a considerable margin of interpretation for Member States. The uncertainty caused by the divergent approaches could be considered as an obstacle to free movement of Union citizens and their families. It is one of the points on which it would be useful for the Commission to provide common guidelines.

### **3. Equal treatment**

Likewise, with regard to the equal treatment principle, many Member States have failed to ensure the implementation of Article 24 of the Directive in a clear manner by including an express provision in the main transposing act or adding an equal treatment clause to the sector-specific laws. More specifically, it is submitted that even if a Member State has recourse to the application of Article 24(2) of the Directive allowing temporary restrictions on access to certain social benefits, the transposition must clearly limit its application to those beneficiaries and to those periods that are covered by this Article in order to avoid any restrictive or vague interpretation of the limitations.

### **4. Third country national family members**

The treatment of third country national family members remains, by far, the most problematic area as it is on the boundary of free movement rights and immigration. Transposing measures were intended to clearly and unequivocally make the difference between the rules applicable to third country nationals and those third country nationals *who are family members of the Union citizen*. Member States tend to verify the family relationship in a meticulous and therefore time-consuming manner and tend to issue visas that are no different to those given to other third country nationals. Therefore, they are failing to ensure that national law complies with the relevant Articles of the Directive which can cumulatively be understood to create and establish a distinction between third country nationals and third country national family members.

### **5. Other issues**

It can be noted that there have been many national provisions introduced by the transposing instruments that are clearly not in conformity with the Directive. For example, replacing residence cards by registration certificates is a daily problem in Spain. There are also those provisions which will touch upon a very limited number of people, e.g. some over restrictive expulsion procedures and limited right of appeal against them, but which are crucial for safeguarding the very principles of European citizenship. It transpires that Member States should align their notion of public policy, public security and public health to what is established by the Directive and to the interpretations that flows from the jurisprudence of the ECJ.

### **6. Information requirement**

In order to comply with Article 34 of the Directive, Member States are required to disseminate information about the Directive. Confusion caused by delayed transposition has hampered these efforts. So far, actions have been mainly limited to putting the relevant information on-line. In an ideal world targeted information campaigns should be organised to enable a larger number of persons to be aware of their free movement rights. Likewise, professional and language training should be organised for the personnel of the authorities dealing with citizens' requests on residence rights. Information leaflets, brochures and forms should be translated at least in one foreign language and preferably in the languages used by a significant number of migrants. Under the Directive, Member States are required to launch awareness campaigns and they have not done so.

#### **IV. The Role of the Commission with regard to the implementation of Directive 2004/38/EC**

In order to present a comprehensive picture of application of the Directive, this report covers not only Member States' role but also that of the Commission in ensuring the implementation of the Directive by Member States.

In its report of 10 December, the Commission states 'that the overall transposition of Directive 2004/38/EC is rather disappointing. Not one Member State has transposed the Directive effectively and correctly in its entirety. Not one Article of the Directive has been transposed effectively and correctly by all Member States.' The Annex on the state of play of transposition shows – as does this study – that some Member States have even found it possible to provide more favourable treatment for citizens than the Directive. According to the Commission, only 63% of the Directive's transposition can be considered as correct and complete. This is low by single market scoreboard standards. In the remaining 37%, 16% represents incorrect and incomplete transposition and it is also found in this comparative study that there are some Articles that are not transposed at all, or are transposed in an ambiguous way.

The report provides summary information on the Commission's own role in monitoring the transposition of the Directive (heading 5 of the report). It is stated that between June 2006 and February 2007, infringement proceedings were initiated against 19 Member States for their failure to communicate the text of the provisions of national law adopted to transpose the Directive (<sup>7</sup>) most often tantamount to the delay in transposition. These proceedings were dropped as Member States adopted the transposition measures. On the substance, the Commission has registered 115 complaints and opened five infringement cases for incorrect application. Of course, in addition there have been many more national complaints and court cases. In the preparation of this comparative study it has not been possible to obtain information about which Member States are involved in the complaints, or to what extent the Commission has been able on its own initiative or in response to complaints to improve the application of the Directive by Member States.

This study shows that the Institution should have the same political will to ensure that European law is correctly applied as it does to see it adopted in the first place by the European Parliament and Council. The Commission has also lacked the resources necessary to deal with the scale of the problem of implementing this Directive, and thus had to prioritise and deal with the most serious problems. The Commission appears to have been most active and made most progress in areas where there have been significant numbers of complaints, linked to public debate and interventions by the European Parliament and individual MEPs:

- The situation of the Roma and the security package in Italy has led to several interventions by the Commission as well as delegations of the European Parliament visiting Rome and endless negotiations.
- Complaints from non-active British residents in France supported by associations(<sup>8</sup>) and MEP's that they were being denied sickness cover, led the French government to

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<sup>7</sup> All Member States except Denmark, Ireland, the Netherlands, Austria, Slovenia, Slovakia, Bulgaria and Romania.

<sup>8</sup> Association of British citizens created for this purpose and ECAS which formed the complaint to the Commission.

reconsider amending legislation to restrict access to universal sickness cover ('CMU'). The complaints led the Government to soften the impact of the new measure, linked to the implementation of the Directive, so that it will not apply to those already resident, but after a transitional period to those newly arrived or coming to France in the future until they have acquired permanent residence.

The problem though is that the well-publicised cases are only a *tip of the iceberg*, and there other problems with implementation in the Member States, but the same ones can occur in more subtle, less overt form elsewhere. Nor is it easy to set priorities, i.e. apparently minor problems over the status of residence permits, time limits, definition of sufficient resources etc. have less dramatic impact than expulsion orders, but affect large numbers of people.

Two major problems were already apparent before the transposition of the Directive and where the Commission should have been more active. The Commission itself recognises that these are priorities in heading 4 of its report:

- **Registration certificates and identity cards**

Due to the late transposition of the Directive in a majority of Member States, European citizens and the authorities have been unclear as to whether a residence card was still required. Interpretations differed across different services, so that whilst residence cards were in practice required in some countries to access a broad spectrum of services and entitlements, they were also difficult to obtain. The 'registration certificate' is supposed to replace the residence card, but is considered a 'weak' document providing insufficient data. As a result, Union citizens are witnessing a proliferation of additional ID and residence cards. Here, preventive action by the Commission would have been desirable, because this is a weakness of the Directive.

- **Third country national family members**

In this comparative study and in the Commission's own report, there are numerous violations of the principle of family reunion, which has always been recognised as fundamental to the exercise of Union citizens' free movement rights, and in particular to recognise the status of third country national family members. In those cases, too, the Commission should have been more pro-active before the *Metock* ruling of 25 July 2008, which as the Commission's report itself points out has led to controversy not only in Ireland, but also in Denmark and to calls among Member States for revision of the Directive.

The authors of this comparative study have regretfully concluded that the Commission has not done enough to secure full and timely compliance. It is ultimately for the Commission to explain its position (as the Commission may have done more than meets the eye), but a number of points can be made here.

First, the Commission did not properly 'prepare' the Member States for transposition. It could have followed the approach taken in the Services Directive, where it engaged in extensive assistance and communication efforts. Apart from different tools available to different DGs of the European Commission, one may wonder whether the Commission's extensive assistance in case of the Services Directive is linked to its commercial implications and for that reason the assistance is somewhat scarce for the Citizenship Directive.

It is only now, that the Commission foresees in its steps to be taken to issue guidelines in the first half of 2009 to Member States (<sup>9</sup>), but even at this late stage, the intention is not to cover all issues that proved problematic in the transposition and application of the Directive. It was only in September 2008 that the Commission created a group of experts for Member States. The question of assistance is the question of resources yet an imbalance between citizenship and Services Directives - two equally broad pieces of legislation is striking. It is regrettable that the same effort expended for the Services Directive has not been expended for a Directive so central to the life of Union citizens.

Secondly, the preparation phase for the Citizenship Directive being virtually non-existent, it comes as no surprise that the errors and delays in transposition are numerous with consequent infringement procedures.

Thirdly, the Commission has failed to properly handle the large number of complaints from Union citizens in relation to transposition of the Directive. Commission officials claim to be overstretched in dealing with such a high number of complaints.

Fourthly, the Commission could provide more information about its role in enforcement. Whilst it is understandable that the detail of negotiations with Member States if published could jeopardise the Commission's powers to investigate and start infringement procedures, the recent report could have provided more information.

The European Parliament could make the following recommendations to the Commission:

### **1. A comprehensive approach to enforcement**

On the basis of its own report and the finding that not one Article of the Directive has been transposed effectively by all Member States, a comprehensive approach is necessary to bring implementation in line with the Directive's objectives. The Commission is right in heading 4 to single out the 'core rights' of Union citizens related to entry and residence of third country national family members and the residence requirements. However, these are by no means the only issues highlighted by this comparative study and the Commission's own report. Similarly, the guidelines to be issued by the Commission should also be comprehensive and not just focus on 'problematic areas' such as expulsions and abuse. Such an approach requires human and financial resources. Furthermore, the Commission should be asked to accompany a strategy for better enforcement of the Directive with a timetable.

### **2. A right combination of persuasion and infringement procedures against Member States**

It is a welcome step forward that the Commission is now engaging with Member States and assisting them with the implementation of the Directive both through meetings and by issuing guidelines. But is this likely to be enough where Member States have already adopted and put in place laws and practices which are contrary to the Directive? In line with its own report, the Commission should combine persuasion of Member States with infringement procedures covering all aspects of the Directive and all Member States named under the specific headings.

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<sup>9</sup> Report from the Commission to the European Parliament and the Council on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2008) 840/3, p.10.

### **3. An approach to Member States to regain the spirit of a Citizenship Directive, easy to understand and apply to facilitate free movement**

As already noted, the application of this Directive suffers from a paradox. At the outset it was designed as an initiative to clarify free movement rights and bring together in a single text existing Directives aimed at particular groups in society. This meant though, especially bearing in mind also the case law of the ECJ, that the new Directive covers a wide scope. Whilst a number of Member States have implemented the Directive in a way which reflects its original intentions, the majority have not, often amending several existing laws. The Commission should now set out to convince all Member States, in turn, to consolidate their implementing legislation in a single and easily understandable text.

### **4. An awareness campaign for European citizens**

Among the steps to be taken, the Commission rightly identifies ‘awareness campaigns to inform citizens of their rights under the Directive’ as required under Article 34 of the Directive. In this comparative study, the quality of information services available, largely through the Internet, has been shown to vary, in particular in the extent that different language versions are available. Similar variations exist in the quality of administrative services to citizens ‘on the move’. Although this Directive was singled out as a priority for the Commission’s communication policy in 2008, there is no real sign that apart from the guide for citizens, any extra measures have been taken. Here, the main responsibility lies with the Member States, but none have launched ‘awareness campaigns’. For the Czech Presidency of the Council with its slogan ‘A Europe without barriers’ this should be a priority issue.

Finally, the Commission should provide more information from the study on which its communication is based and a more detailed account of its informal requests and formal procedures in relation to Member States. The follow-up measures should be supported by a timetable and action plan.

## SHORT PRESENTATION OF THE METHODOLOGY

This study was requested by the Committee on Legal Affairs of the European Parliament and was delivered by European Citizen Action Service (ECAS) (<sup>10</sup>).

The principal aim of this research is to provide a detailed and objective comparative analysis of the implementing provisions and of the current state of application at administrative level and, when it is relevant, at judicial level, of Directive 2004/38/EC (<sup>11</sup>) 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 ten selected Member States of the EU.

The project began upon signature of the contract in June 2008 and was conducted in three subsequent phases over eight months. A team of 27 national experts were designated in the tender bid, who conducted country-specific research on each Member State of the European Union. In the first phase of this study a questionnaire for national experts was elaborated in order to obtain comparable and systematic results. The responses to the first questionnaire were delivered for all 27 Member States in mid-July 2008. The next step was the meeting of national experts held on 24 July 2008 in order to discuss the first findings and the second phase of the research. The choice was then made of ten Member States that would be subject to detailed study on three grounds; the existence of important migratory patterns, problems in the transposition of the Directive and geographic balance (<sup>12</sup>). The ten Member States that were selected are Belgium, Estonia, France, Greece, Hungary, Ireland, Italy, Romania, Sweden and the United Kingdom. The baseline questionnaire was then significantly developed and answered by the national experts responsible for the ten selected Member States in order to produce detailed country reports. Over the next month the horizontal rapporteurs revised and cross-checked the questionnaires. In the third phase of the research, rapporteurs elaborated the comparative analysis as presented in this report.

The editorial team has provided guidance throughout the study and contributors also acknowledge constructive input of the European Parliament at all stages of the project.

**Drafting of this manuscript was completed on 5 December 2008 and the updating exercise (limited in scope) was completed on 28 January 2009. Recent amendments of the transposing instruments – in Luxembourg and Denmark are recorded in this study; however the evaluation of administrative services refers to the practice that was in place before these amendments.**

**Due to the timetable of the project, this study does not take account of developments after December 2008 apart from where expressly stated.**

<sup>10</sup> Contract reference number IP/CJURI/IC/2008-007.

<sup>11</sup> Council Directive of 29 April 2004 on the right of the Union and their family members to move and reside freely within the territory of the Member States OJ L 229/35

<sup>12</sup> In determining the geographical scope and balance, authors ensured that some of the ‘new’ Member States and Member States with common law systems were selected.

National experts based their responses on the legal practice in their country of residence and the questions they received through the Citizens' Signpost Service. While assessing the national administrative services they conducted interviews with officials and scrutinised information available on-line and on the telephone that is designed for citizens and their family members exercising their free movement rights.

**Concerning the evaluation of administrative practices, the exercise was limited in time and scope and therefore the assessment presented should be treated only as indicative of existing problems and practices.**

The study is organised into the following chapters:

- Chapter I summarises the Directive's historical background and the context of its adoption.
- Chapter II presents the general findings on the national transposing measures: name of measure(s), dates of publication, adoption and entry into force as well as the adopting authorities. Special attention was drawn to the late transposition in several Member States. The contributors also tried to identify whether the transposition was achieved by a new measure or amendment to the previous measures and in the second case whether a Member States amended for that purpose their general immigration legislation.
- Chapter III contains detailed country reports for ten selected Member States.
- Chapter IV presents in detail the issues of non-conformity identified in these ten Member States against the broader picture emerging generally across the EU-27. The choice was made to focus on the following areas: entry and residence rights, definition of sufficient resources, situation of registered partners and third country national family members, equal treatment, grounds for expulsion and various other issues grouped under the heading 'miscellaneous'.
- Chapter V provides an evaluation of the administrative services that underpin the application of the Directive in the ten selected Member States.
- Chapter VI analyses the role of the European Commission with regard to the Directive, i.e. its monitoring activity and actions adopted as a result thereof.
- Chapter VII sets out the conclusions.

**National experts and rapporteurs have made every possible effort to render this study accurate, objective and exhaustive. The responsibility for the accuracy of information on transposition and application of the Directive in the Member States remains with national experts. Likewise the final judgement on conformity/non-conformity remains with the national experts.**



## CHAPTER 1

### **HISTORICAL BACKGROUND AND THE CONTEXT OF THE ADOPTION OF THE DIRECTIVE 2004/38/EC**

#### **An overview of the development of the concept of ‘citizenship of the Union’ in EC law**

Although European citizenship formally derives from the Treaty establishing a European Community (<sup>13</sup>), many of the fundamental rights attached to citizenship were developed before this chapter was entered into the Treaty(<sup>14</sup>). Therefore, in order to understand the foundations of citizenship, it is important to look at the development of freedoms within the Community, especially the free movement of workers.

The implementation and interpretation of the free movement rights has taken place in a progressive manner since the European Economic Community was formed in 1957. The free movement of ‘workers’ and other categories (self-employed, services providers and receivers), fundamental to an *economic* union, gradually gave way to the free movement of ‘persons’, reflecting the broader social and political goals of the European project. The free movement of persons is an essential condition to the functioning of the common market, a fundamental freedom, and a core element of European citizenship. This concept of ‘European citizenship’ was made a concrete reality by the provisions in the EC Treaty in relation to the free movement of persons and through the adoption of Directive 2004/38/EC also known as the ‘Citizenship Directive’(<sup>15</sup>). This measure provides full, effective and transparent, legal recognition to ‘citizenship of the Union’.

#### **1.1. Legal Basis**

The legal bases for free movement of persons are contained in the EC Treaty.

Article 14 (1) establishes an internal market without frontiers in which, *inter alia*, the free movement of persons is ensured; and

Article 18 (1) provides that ‘every citizen of the Union shall have the right to move and reside freely within the territory of the Member States; and

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<sup>13</sup> Consolidated Version of the Treaty Establishing the European Community OJ 2002 C325/1-184. Hereinafter ‘EC Treaty’ or ‘ECT’ or ‘the Treaty’.

<sup>14</sup> For an overview of the history of the free movement rights in the EU please see: Baldoni E, ‘The Free Movement of Persons in the European Union: A Legal-historical Overview’, (2003) 2 *PIONEUR Working Paper* 1 and Carrera S, ‘What Does Free Movement Mean in Theory and Practice in an Enlarged EU?’ (2005) 11(6) *European Law Journal* 699.

<sup>15</sup> OJ L 158 of 30.04.2004. Hereinafter ‘the Directive.’

Article 39 (3) stipulates that freedom of movement shall entail (a) the right to accept offers of employment actually made, (b) the right to move and reside freely within the territory of Member States for this purpose, (c) the right to stay in a Member State for the purpose of employment, (d) and the right to remain in the territory of a Member State after having been employed in that State.

These rights are subject to limitations according to conditions laid down in the Treaty and by the measures adopted to give it effect as set out in Article 18 (1) ECT, and on the grounds of public policy, public security or public health (as set out in Article 39 (3) ECT).

## **1.2. Development of free movement of persons**

In the early days of the European project, only those engaged in an ‘economic activity’ benefited from free movement. This is apparent, for example, from the wording of Article 39 (3) (b) and (d) ECT which provide that the right to reside and move freely within the territory of a Member State and a right to remain in the territory of a Member State derives from the status as a ‘worker.’

The free movement of workers enshrined in the Treaty was supplemented in the late 1960s by Regulation (EEC) No 1612/68 on the freedom of movement for workers within the Community (<sup>16</sup>) and with Directive 68/360/EEC concerning the elimination of movement and residence restrictions of Member State workers and their family in the whole Community (<sup>17</sup>). Freedom of movement of workers was also confirmed by the Court of Justice of the European Communities (<sup>18</sup>) in the case of *Royer*, in which it was held that the rights of entry and residence, reserved solely for those holding the nationality of an EU Member State, conferred directly by the EC Treaty can be exercised, ‘to look for or pursue an occupation or activities as employed or self-employed persons, or to rejoin their spouse or family’ (<sup>19</sup>).

It was not until later that secondary legislation expressly extended free movement rights to categories of people who are not workers. Subsequent legislation encompassed workers, self-employed persons seeking establishment, service providers and receivers, students, retired persons and a residual category of those capable of financially supporting themselves (persons of independent means).

It has been widely acknowledged that the ECJ has been crucial in giving a broad interpretation to the free movement rights and as a corollary of the European citizenship concept. It was the ECJ that took a broad approach to the concept of a ‘worker’ to encompass not only those engaged in an economic activity (worker/employee, self-employed and service providers) but also students in vocational training and unemployed persons looking for work. It was also able to give a broader and bolder dimension to free movement because of the nature of the cases that were brought before it by emphasising the social and individual dimension of free movement, which was no longer conceived in terms of a mere instrument

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<sup>16</sup> Council Regulation 1612/68 of 15 October 1968 on freedom of movement for workers within the Community OJ L 257 2

<sup>17</sup> Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families OJ L 257/13

<sup>18</sup> Hereinafter ‘ECJ’

<sup>19</sup> Case C-48/75: *Jean Noël Royer* [1976] ECR 497 at paragraph 31.

for the construction of an economic common market. In other words, there was a shift in emphasis from the free movement of *workers* to the free movement of *persons*.

### **1.3. Introduction of ‘European citizenship’**

The concept of ‘European citizenship’ became a provision of primary law in the EC Treaty along with the set of rights and responsibilities it entails. Articles 17 to 22 ECT not only affirmed the rights of movement and residence but also created a number of new rights for European citizens<sup>(20)</sup> including the right to vote and the opportunity to stand for election in municipal and European Parliament elections in the Member State of residence<sup>(21)</sup>, as well as an explicit right of entry and residence<sup>(22)</sup>. These rights are acquired first at national level because of the link with the nationality of a Member State<sup>(23)</sup> and then result in automatic European citizenship that complements citizenship of a particular Member State.

### **1.4. Development of the concept of citizenship**

The ECJ has played a pivotal role in developing the concept of citizenship and ensuring a broad interpretation of the rights of citizens. It has repeatedly emphasised that *‘Union citizenship is destined to be the fundamental status of nationals of Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for’*<sup>(24)</sup>.

- In 1998, the seminal case of *Martinez Sala*<sup>(25)</sup> was the first to lay down central principles for European Citizenship. In this case it was held that an EU Member State national who is found to be lawfully resident within another Member State, is entitled to equal treatment with regard to child care benefits based on a combined reading of Article 12 ECT and Article 17 (2) ECT. Importantly, this entitlement *is not* predicated upon involvement in any economic activity (nor was it necessary to show preparation for a future economic activity as a student etc.) but derived from lawful residence in the country.

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<sup>20</sup> Craig P & DeBurca G, *EU Law: Text, Cases and Materials*, Oxford: Oxford University Press, 2007, p. 847. The group of political, economic, social, and judicial rights as well as duties linked to Union citizenship can be mainly found in Articles 18-21 ECT.

<sup>21</sup> Article 19 ECT.

<sup>22</sup> Jacobs F G, ‘Citizenship of the European Union – a legal basis,’ (2007) 13 (5) *European Law Journal* 59.

<sup>23</sup> Carrera S, ‘What Does Free Movement Mean in Theory and Practice in an Enlarged EU?’ (2005) 11 (6) *European Law Journal* 699

<sup>24</sup> Please see Recital 3 to Preamble of the Directive 2004/38/EC. *Op. cit. Bidar* at paragraph 28. See also:

Case C-224/98: *Marie-Nathalie D’Hoop v Office national de l’emploi* [2002] ECR I-06191 at paragraph 35.

Case C-184/99: *Grzelczyk v Centre public d’aide sociale d’Ottignies-Louvain-la-Neuve*, [2001] ECR I-6193 at paragraph 31.

Cases C-502/01 and C-31/02: *Silke Gaumain-Gerri v Kaufmännische Krankenkasse—Pflegekasse and Maria Barth v Landesversicherungsanstalt Rheinprovinz* [2004] ECR I-6483.

<sup>25</sup> Case C-85/96: *Maria Martinez Sala v Freistaat Bayern* [1998] ECR I-2691.

- In 1995, in *Schempp* <sup>(26)</sup>, the issue of an ‘obstacle’ to the right to move and reside in another Member State *independent of any discrimination* was examined. Advocate General Kokott commented that a harmonised approach which aligns the right to freedom of movement or residence to the other fundamental freedoms corresponds to the ‘fundamental status’ of Union citizenship established by the Court and reiterated in the Directive <sup>(27)</sup>.
- In 2002, in *Bambaust* <sup>(28)</sup>, the ECJ confirmed the direct effect of Article 18 ECT, meaning that a Union citizen can rely directly on this Article of the Treaty to exercise their rights to reside in a host Member State. The ECJ held that the effect of the introduction of ‘citizenship of the Union’ into the Treaty confers a right ‘for every citizen, to move and reside freely within the territory of the Member States’ <sup>(29)</sup>. Recalling that Article 18 (1)ECT provides that this right can be subject to limitations and conditions laid down in the Treaty and by the measures adopted to give it effect, in compliance with the relevant secondary legislation <sup>(30)</sup>. The citizens in question were covered by sickness insurance and showed sufficient resources not to become a burden for the host State <sup>(31)</sup>. It must be noted that Mr Baumbast was no longer working in the UK and was thus not entitled to rely on Article 39 ECT or Regulation (EEC) No 1612/68 on the free movement of workers within the Community. It is clear that the ECJ has used citizenship as an ‘independent source of rights’ <sup>(32)</sup>.

Emphasis has also been placed by the ECJ on the need to interpret the free movement rights in connection with fundamental rights especially Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms <sup>(33)</sup>, which is also protected under EC law <sup>(34)</sup>. Indeed, recital 31 of the Citizenship Directive provides that ‘The Directive respects the Fundamental Rights and Freedoms and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union’ <sup>(35)</sup>.

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<sup>26</sup> Case C-403/03: *Schempp v Finanzamt München V* [2005] ECR I-6421

<sup>27</sup> Kokott, J., ‘Union citizenship – citoyens sans frontières?’, 2005 European Law Lecture *Durham European Law Institute Online Paper* p. 15.

<sup>28</sup> Case C-413/99: *Baumbast and R v Secretary of State for the Home Department* [2002] ECR I-7091.

<sup>29</sup> *Ibid.* See also Judgment of 19 October 2004 in Case C-200/02: *Zhu and Chen v Secretary of State for the Home Department* [2004] ECR I-9925.

<sup>30</sup> Please see Article 1 of Council Directive of 28 June 1990 on the right of residence, Directive 90/364/EEC [1990] OJ L 180/26 and Article 1 of Council Directive of 29 October 1993 on the right of residence for students, Directive 93/96/EEC [1993] OJ L317/59.

<sup>31</sup> *Baumbast op. cit.*

<sup>32</sup> Jacobs, *op. cit.* p. 593.

<sup>33</sup> Hereinafter ‘ECHR’. *Chen op. cit.*

<sup>34</sup> Case C-109/01, *Secretary of State for the Home Department v Hacene Akrich* [2003] ECR I-9607 at paragraph 58. Article 8 of the European Convention for Human Rights signed in Rome on 4 November 1950 reads as follows: ‘Everyone has the right to respect for his private and family life, his home and correspondence’. Case C-127/08: *Metock and Others v Minister for Justice, Equality and Law Reform*. [2008] ECR 000, Case C-60/00, *Carpenter v Secretary of State for the Home Department* [2002] ECR I-279.

<sup>35</sup> Of particular note within the Charter is Chapter V, which deals with Citizens’ Rights, and Article 45 of this Chapter V, which deals with the Freedom of movement and of residence.

## **2. The context of adoption of Directive 2004/38/EC**

### **2.1. A Directive encompassing previous legislation and principles**

Despite the advances due to the case-law of the ECJ, by the late 1990's it was apparent that European citizens were not benefiting from all rights envisaged for them in the EC Treaty and steps were taken to improve enforcement through legislation. Also, it was increasingly clear that the various rights deriving from the treaties, case law and secondary legislation would benefit from consolidation and simplification.

Before the Directive came into force, European citizenship was fragmented by the sector-by-sector approach to the application of free movement rights. The various groups, as mentioned above, were workers, self-employed persons seeking establishment, service providers and receivers, students, retired persons, and a residual category of those capable of financially supporting themselves (persons of independent means).

The first proposal of the Directive was presented in 2001<sup>(36)</sup> to overcome a number of difficulties experienced by Union citizens when moving to another Member State. These difficulties had been identified by a High-Level Panel<sup>(37)</sup>, on the basis of numerous complaints received by the Commission and regular five-year reports adopted by the Commission on the application of the different instruments on free movement<sup>(38)</sup>. The most common concerns included lengthy administrative procedures in obtaining residence documents and problems associated with the application of the rights of third country national family members.

On 30 April 2004, the European Parliament and the Council of the European Union adopted Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States<sup>(39)</sup> on the basis of Articles 12, 18, 40, 44 and 52 ECT<sup>(40)</sup>.

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<sup>36</sup> [2001] OJ C 270 E/150 COM (2001) 257 final.

<sup>37</sup> European Commission (1997), *Report of the High Level Panel on the Free Movement of Persons*, chaired by Mrs Simone Veil, presented to the Commission on 18 March. The Final Report of the High Level Panel greatly influenced the subsequent proposal of the European Parliament and the Council Directive of 2001.

<sup>38</sup> For example, third Report on the application of Directives 93/96/EEC, 90/364/EEC and 90/365/EEC. On 14 January 1996, the Commission had requested the Panel chaired by Simone Veil, to identify and assess the problems still arising in this area and to propose solutions. On 18 March 1997, the High-Level Panel presented its report which makes over eighty recommendations in the seven main areas of interest to citizens of the Union wishing to move within the Community area.

<sup>39</sup> [2004] OJ L 158/77.

<sup>40</sup> European Parliament legislative resolution and position adopted at first reading on 11 February 2003 [2004] OJ C 43E/42. Council Common Position of 5 December 2003 2004 OJ C 54E/12 and Position of the European Parliament of 10 March 2004.

Please see:

<<<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P5-TA-2004-0160>>>.

The Directive aims to consolidate, simplify and strengthen pre-existing legislation and case law into a single measure for the purposes of legal certainty and transparency. It amended Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community and repealed nine existing Directives <sup>(41)</sup>.

A single piece of legislation marked an end to the fragmented regime applying to different categories of free movement and is considered to be an attempt at simplification – a model example of the Commission’s commitment to ‘better regulation’. The Directive also aimed to contribute to the achievement of a more coherent internal market through facilitating the movement of persons as citizens of the Union.

## **2.2. Key benefits of the Citizenship Directive**

The Directive sets out the conditions and rules for the exercise of free movement rights by Union citizens and their family members and provides for an incremental development of residence status.

It provides in a single piece of legislation:

- A right of residence for up to three months without any conditions or any formalities other than the requirement to hold a valid passport or ID card (Article 6), residence rights up to the acquisition of permanent resident status and the actual acquisition of permanent residence (Articles 7,14, 16-18).
- An extended concept of family members of Union citizens. Previously, under Article 10 of Regulation (EEC) No 1612/68 on freedom of movement of workers, only limited categories of persons had the right to reside with an EU worker in another Member State (the worker’s spouse and their descendants who are under the age of 21 years or are dependents, as well as the dependent relatives in the ascending line of the worker and his spouse). Article 2 (2) of the Directive expands that list of people by

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<sup>41</sup> The citizenship Directive enshrined in a single piece of legislation the following rights and principles:

-Freedom of movement for workers – Council Regulation of the Council of 15 October 1968 on freedom of movement for workers within the Community, Regulation (EEC) No 1612/68, OJ L295/12;

-The abolition of restrictions on movement and residence within the Community for workers – Council Directive of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families, Directive 68/360/EEC OJ L257/13;

-The abolition of restrictions on movement and residence within the Community for nationals of Member States – Council Directive of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services, Directive 73/148 OJ L 172/14;

-The Right of residence – Council Directive of 28 June 1990 on the right of residence, Directive 90/364 OJ L180/26;

-The Right of residence for employees and self-employed persons – Council Directive of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity, Directive 90/365 OJ L 180/28;

-The Right of residence for students – Council Directive of 29 October 1993 on the right of residence for students, Directive 93/96 OJ L 317/59.

including ‘the partner with whom the Union citizen has contracted a registered partnership on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State’<sup>(42)</sup>.

- An offer of a higher level of protection and more judicial safeguards than the previous system under Directive 64/221/EEC on the coordination of special measures related to the movement and residence of foreign nationals<sup>(43)</sup> that are justified on grounds of public policy, public security, or public health<sup>(44)</sup>. Article 28 of the Directive states that ‘before taking an expulsion decision on grounds of public policy or public security, the host Member State shall take into account of considerations such as how long the individual concerned has resided on its territory<sup>(45)</sup>, their age, state of health, family and economic situation, social and cultural integration into the host Member State and the extent of their links with the country of origin’.
- An *obligation* is imposed on Member States to inform citizens of their rights as contained in this Directive.
- Also, the Commission is bound both as ‘Guardian of the Treaty’ as derived from Article 211 ECT and by Articles 39 and 40 of the Directive to monitor closely the transposition of this Directive. Elsewhere the Commission has committed itself to giving the utmost priority to ensuring that the Directive is correctly transposed into national law<sup>(46)</sup>.

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<sup>42</sup> Case C-59/85: *State of the Netherlands v Ann Florence Reed* [1986] ECR I-1283, at paragraph 30, in which the ECJ held that ‘a Member State which permits the unmarried companions of its nationals, who are not themselves nationals of that Member State, to reside in its territory cannot refuse to grant the same advantage to migrant workers who are nationals of other Member States’.

<sup>43</sup> Council Directive 64/221/EC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health OJ L 56/850

<sup>44</sup> Article 31 (Procedural safeguards) of Directive 2004/58/EC provides that ‘1. The persons concerned shall have access to judicial and, where appropriate, administrative redress procedures in the host Member State to appeal against or seek review of any decision taken against them on the grounds of public policy, public security or public health’.

<sup>45</sup> Following Article 28 (3) (a) of Directive 2004/58/EC, a decision of expulsion will not be taken ‘except on imperative grounds of public security’ if the person involved has resided in the host Member State for the previous ten years.

<sup>46</sup> SCADPlus on Directive 2004/38/EC <<<http://europa.eu/scadplus/leg/en/lvb/l23003.htm>>>

## **CHAPTER II**

### **GENERAL FINDINGS ON THE TRANSPOSITION OF DIRECTIVE 2004/38/EC IN THE EU-27**

#### **1. National transposing measures, dates of publication, adoption and entry into force, adopting authority and methods of transposition.**

This chapter presents the general findings on the national transposing measures in Table 1 below. This Table sets out the name of measures(s), dates of publication, adoption and entry into force as well as the adopting authority.

#### **2. General Findings**

##### **2.1. Transposing measures**

In this table, it is identified whether transposition was achieved by a *single* or *multiple* measures.

Member States that transposed the Directive in a single measure are:

- Bulgaria
- Cyprus
- The Czech Republic
- Denmark
- Finland
- Greece
- Latvia
- Malta
- Poland
- Portugal
- Spain
- Sweden
- The UK (although separate legislation had to be adopted for Gibraltar).

Member States which transposed the Directive by introducing or amending several national measures are:

- Austria
- Belgium
- Estonia
- France
- Germany
- Hungary
- Ireland
- Italy
- Lithuania
- Luxembourg
- The Netherlands
- Romania
- Slovakia



- Slovenia

It is submitted that by fragmenting national provisions by introducing or amending several national measures, citizens may often be confused when exercising their free movement rights.

## **2.2. Transposition by a new law or by amending previous legislation**

Another distinction can be made to whether the transposition was achieved by a *new law* or by *amending previous legislation*.

A new law was adopted by the *majority* of Member States. Most through direct transposition in the form of a ‘copy and paste approach’ – for example Bulgaria and the Czech Republic. Several countries adopted a new law but had to amend several pieces of existing legislation, notably Belgium, Estonia, France, Italy, Lithuania and Luxembourg. Only Denmark, France, Finland, Lithuania, Malta, the Netherlands, Slovakia, Slovenia and Sweden chose to amend existing national legislation.

In the second case, a group of Member States can be identified which *amended their immigration legislation*. These are Denmark, France, Malta, the Netherlands, Slovenia and Sweden. Such an implementation can be considered as unsatisfactory as it may engender a tendency to assimilate Union citizens with third country national migrants.

TABLE 1 – GENERAL FINDINGS ON THE TRANSPOSITION OF DIRECTIVE 2004/38/EC		
Country	Title of the measure(s) transposing Directive 2004/38/EC into National Law 1) Date of Adoption 2) Date of Publication 3) Date of Entry into Force 4) Adopting Authority	Transposing measure(s) is/are a new law or a revision of existing law
Austria	Multiple measures <sup>(47)</sup> :  <b>Bundesgesetz über die Niederlassung und den Aufenthalt in Österreich ('NAG'), which is part of 'Fremdenrechtspaket 2005' <sup>(48)</sup>.</b> 1) 21 July 2005; 2) 16 August 2005; 3) 1 January 2006; 4) The National Parliament.	New law
Belgium	Multiple measures:  <b>I. Act of 25 April 2007</b>  <b><u>In Flanders</u> <sup>(49)</sup>: Wet van 25 april 2007 tot wijziging van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen, en van de wet van 4 mei 2007 tot wijziging van de artikelen 39/20, 39/79 en 39/81 van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen <sup>(50)</sup>.</b>	New law  However, in order to fully implement the Directive, the Law of 15 December 1980 (regarding the entry and stay of foreigners) was modified several times. It was completed by Royal Decrees

<sup>47</sup> Multiple measures encompass the main transposing measure adopted by the Federal Parliament and executive acts adopted in regions.

<sup>48</sup> Federal Law on the Settlement and Residence in Austria, which is part of the Foreigners' Rights Package of 2005.

<sup>49</sup> The Act and two Royal Decrees are the same for Wallonia and Flanders, i.e. there is only one law translated in French and Dutch as this dossier belongs to the federal level of competence.

<sup>50</sup> Act of 25 April 2007 amending the Act of 15 December 1980 on the entry to the territory, the residence and the expulsion of foreigners, as well as amending the Act of 4 May 2007 amending Articles 39/20, 39/79 and 39/81 of the Act of 15 December 1980 on the entry to the territory, the residence and the expulsion of foreigners.

Country	Title of the measure(s) transposing Directive 2004/38/EC into National Law 1) Date of Adoption 2) Date of Publication 3) Date of Entry into Force 4) Adopting Authority	Transposing measure(s) is/are a new law or a revision of existing law
Belgium	<p><b><u>In Wallonia:</u> Loi du 25 avril 2007 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers <sup>(51)</sup>.</b> 1) 25 April 2007; 2) 10 May 2007 <sup>(52)</sup>; 3) 1 June 2008; 4) The Federal Parliament.</p> <p><b>II. Two Royal Decrees <sup>(53)</sup>:</b></p> <p><b><u>In Flanders:</u> Koninklijk besluit van 7 mei 2008 tot wijziging van het koninklijk besluit van 8 oktober 1981 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen <sup>(54)</sup> and</b></p> <p><b>Koninklijk besluit van 7 mei 2008 tot vaststelling van bepaalde uitvoeringsmodaliteiten van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen <sup>(55)</sup>.</b></p>	which modified the Royal Decree of 8 October 1981 concerning the access to the territory, the residence, the establishment and removal of foreigners.

<sup>51</sup> Law of 25 April 2007, relevant articles: Article 18 to Article 37.

<sup>52</sup> In German: 20 December 2007.

<sup>53</sup> First Decree concerns the registered partnership and the criteria of a stable partnership, the second – the administrative formalities.

<sup>54</sup> Royal Decree of 7 May 2008 amending the Royal Decree of 8 October 1981 on the entry to the territory, the residence, the settlement and the expulsion of foreigners.

<sup>55</sup> Royal Decree of 7 May 2008 laying down specific implementation modalities of the Act of 15 December 1980 on the entry to the territory, the residence and the expulsion of foreigners.

Country	Title of the measure(s) Transposing Directive 2004/38/EC into National Law 1) Date of Adoption 2) Date of Publication 3) Date of Entry into Force 4) Adopting Authority	Transposing measure(s) is/are a new law or a revision of existing law
Belgium	<p><b>In Wallonia : Arrêté royal du 7 mai 2008 fixant certaines modalités d'exécution de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers <sup>(56)</sup> and</b></p> <p><b>Arrêté royal du 7 mai 2008 modifiant l'arrêté royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers <sup>(57)</sup>.</b></p> <p>1) 7 May 2008; 2) 10 May 2008; 13 May 2008 (Wallonia); in German: 16 July 2008; 3) 1 June 2008; 4) The King of Belgium.</p>	
Bulgaria	<p><b>Single measure:</b></p> <p><b>Закон за влизането, пребиваването и напускането на Република България на гражданите на Европейския съюз и членовете на техните семейства <sup>(58)</sup>.</b></p> <p>1) 20 September 2006; 2) 20 December 2007; 3) 1 January 2007 – entry into force after the accession; 4) The National Parliament.</p>	New law

<sup>56</sup> Royal Decree 7 May 2008 Concerns the definition of the registered partnership.

<sup>57</sup> Royal Decree 7 May 2008 Concerns the administrative formalities (entry, stay of three months or more than three months).

<sup>58</sup> Law for Entering, Residing and Leaving the Republic of Bulgaria of European Union Citizens and Members of their Families.

Country	Title of the measure(s) Transposing Directive 2004/38/EC into National Law 1) Date of Adoption 2) Date of Publication 3) Date of Entry into Force 4) Adopting Authority	Transposing measure(s) is/are a new law or a revision of existing law
Cyprus	<p>Single measure:</p> <p>Του Δικαιώματος των Πολιτών της Ένωσης και των Μελών των Οικογενειών τους να Κυκλοφορούν και να Διαμένουν Ελεύθερα στη Δημοκρατία Νόμος του 2007. Ν. 7(I)/2007 <sup>(59)</sup>.</p> <p>1) 9 February 2007; 2) 9 February 2007; 3) 9 February 2007; 4) The House of Representatives.</p>	New law
Czech Republic	<p>Single measure:</p> <p>Zákon č. 161/2006 Sb. kterým se mění zákon č. 326/1999 Sb., o pobytu cizinců na území České republiky a změně některých zákonů, ve znění pozdějších předpisů a některé další zákony <sup>(60)</sup>.</p> <p>1) 27 April 2006; 2) 27 April 2006; 3) 27 April 2006; 4) The National Parliament.</p>	New law

<sup>59</sup> The Right of the Citizens of the European Union and the members of their family to move and reside freely in the territory of the Republic.

<sup>60</sup> Act No 161/2006 Coll. which amends the Residence Act. No 326/1999 Coll. about Residence of Foreigners on the Territory of the Czech Republic.

Country	Title of the measure(s) Transposing Directive 2004/38/EC into National Law 1) Date of Adoption 2) Date of Publication 3) Date of Entry into Force 4) Adopting Authority	Transposing measure(s) is/are a new law or a revision of existing law
Denmark	<p><b>Single measure:</b></p> <p><b>Udlaendingeloven (LBK nr 945 af 01/09/2006 (Bekedendtgoerelse nr 358 af 21/04/06 om ophold i Danmark for udlaendinge, der er omfattet af den Europaeiske Unions regler (EU-Opholdsbekendtgørelsen) <sup>(61)</sup>).</b></p> <p>1) 1 September 2006; 2) 22 September 2006; 3) 22 September 2006; 4) The National Parliament on proposals from the Government and its Ministries.</p> <p>Last amendment made: <b>EU -opholdsbekendtgørelsen <sup>(62)</sup>: by Law BEK No 984:</b></p> <p>1) 2 October 2008; 2) 4 October 2008; 3) 5 October 2008; 4) The National Parliament.</p>	<p><b>Revision of existing immigration law</b></p> <p>The Aliens Act <sup>(63)</sup> No 945 is a consolidation of Act No 826 of 24 August 2005, with the amendments following from</p> <ul style="list-style-type: none"> <li>- Act No 323 of 18 May 2005,</li> <li>- Act No 428 of 6 June 2005,</li> <li>- Act No 430 of 6 June 2005,</li> <li>- Act No 431 of 6 June 2005,</li> <li>- Act No 243 of 27 March 2006,</li> <li>- Act No 301 of 19 April 2006,</li> <li>- Act No 429 of 10 May 2006,</li> <li>- Act No. 532 of 8 June 2006.</li> </ul> <p>Recent amendments:</p> <ul style="list-style-type: none"> <li>- BEK No 300 from 29 April 2008 (concerning <i>the right to stay</i> in Denmark);</li> <li>- Vejledning (VEJ) No 19 from 4 April 2008 (Guide on settlement in Denmark for Union citizens).</li> </ul>

<sup>61</sup> Consolidated Aliens Act No 945 of 1 September 2006 including provisions implementing Directive 2004/38/EC, and comprising Law of Application No 358 of 21 April 2006, on the stay in Denmark of Foreigners included by the European Union rules (EU Application law), and Law No 984 of 2 October 2008. Please notice that ‘Aliens Act’ is the official translation adopted by Denmark.

<sup>62</sup> Please see <<[www.retsinformation.dk](http://www.retsinformation.dk)>>.

<sup>63</sup> Please note that ‘Aliens Act’ is the official Danish translation in English.

Country	Title of the measure(s) Transposing Directive 2004/38/EC into National Law 1) Date of Adoption 2) Date of Publication 3) Date of Entry into Force 4) Adopting Authority	Transposing measure(s) is/are a new law or a revision of existing law
Estonia	<p><b>Multiple measures:</b></p> <p><i>Main Transposition Act</i></p> <p><b>I. Euroopa Liidu Kodaniku Seadus</b> <sup>(64)</sup>.</p> <ol style="list-style-type: none"> <li>1) 17 May 2006,</li> <li>2) 8 June 2006,</li> <li>3) 1 August 2006;</li> <li>4) The National Parliament.</li> </ol> <p><b>II. Sissesõidukeelu ja väljasõidukohustuse seadus,</b> <sup>(65)</sup>.</p> <ol style="list-style-type: none"> <li>1) 21 October 1998;</li> <li>2) 12 November 1998.</li> <li>3) 1 April 1999;</li> <li>4) The National Parliament.</li> </ol> <p><b>III. Isikut tõendavate dokumentide seadus</b> <sup>(66)</sup>,</p> <ol style="list-style-type: none"> <li>1) 15 February 1999;</li> <li>2) 12 March 1999;</li> <li>3) 1 January 2000;</li> <li>4) The National Parliament.</li> </ol>	<p><b>New law</b></p> <p>1<sup>st</sup> ‘version’ of Citizen of European Union Act was published on 16 February 2002, and entered in force on 1 May 2004 – date of accession of Estonia to the EU.</p> <p>The new version of the act - Citizen of European Union Act <sup>(67)</sup> amended some of its principles and therefore CEUA enforced in 2006 can be considered as new law. Other laws specified in the column to the left were also amended by the new version of CEUA at the same time when</p>

<sup>64</sup> Citizen of the European Union Act, as amended.

<sup>65</sup> Obligation to Leave and Prohibition on Entry Act.

<sup>66</sup> Identity Documents Act.

<sup>67</sup> Hereinafter ‘CEUA’.

Country	Title of the measure(s) Transposing Directive 2004/38/EC into National Law 1) Date of Adoption 2) Date of Publication 3) Date of Entry into Force 4) Adopting Authority	Transposing measure(s) is/are a new law or a revision of existing law
Estonia	<b>IV. Riigipiiri seadus</b> <sup>(68)</sup> . 1) 30 June 1994; 2) 21 July 1994; 3) 31 July 1994; 4) The National Parliament.	the CEUA was introduced.
Finland	<b>Single measure:</b>  <b>Ulkomaalaislaki 301/2004</b> <sup>(69)</sup> . 1) 30 April 2004; 2) 30 April 2004; 3) 30 April 2004; 4) The Parliament.  Amendment to the law: <b>Act 360/2007</b> . 5) 23 March 2007; 6) 30 April 2007; 7) 30 April 2007; 8) The Parliament.	<b>Revision of existing law</b>  The Foreigners Act is an amendment to the existing Foreigners Act 301/2004.  Original Foreigners Act No 301/2004 was published on 30 April 2004 and it was already drafted much in accordance with Directive 2004/38/EC.

<sup>68</sup> State Borders Act.

<sup>69</sup> The Finnish Foreigners Act as amended by the Act 360/2007 and further amended by the Act 358/2007.



Country	Title of the measure(s) Transposing Directive 2004/38/EC into National Law 1) Date of Adoption 2) Date of Publication 3) Date of Entry into Force 4) Adopting Authority	Transposing measure(s) is/are a new law or a revision of existing law
France	<p><b>Multiple measures:</b></p> <p><b>I. Loi n° 2006-911 du 24 juillet 2006 relative à l’immigration et à l’intégration <sup>(70)</sup>. ‘Dispositions relatives à l’entrée et au séjour des citoyens de l’Union européenne et des membres de leur famille’</b></p> <p>1) 24 July 2006; 2) 25 July 2006 <sup>(71)</sup>; 3) 26 July 2006; 4) The National Parliament.</p> <p><i>The Law is a legislative act whereas the Ministerial Decree below is of regulatory nature</i></p> <p><b>II. Décret n° 2007-371 du 21 mars 2007 relatif au droit de séjour en France des citoyens de l’Union européenne, des ressortissants des autres Etats parties à l’Espace économique européen et de la Confédération suisse ainsi que des membres de leur famille (JORF n°69 du 22 mars 2007) <sup>(72)</sup>.</b></p> <p>1) 21 March 2007; 2) 22 March 2007; 3) 22 March 2007; 4) The Prime Minister signed jointly with the competent Ministers.</p>	<p><b>Revision of existing immigration law</b></p> <p>Both transposition measures are set out as a separate chapter in the Code de l’entrée et du séjour des étrangers et du droit d’asile <sup>(73)</sup>.</p> <p>The two Laws amended the legislative part of the Code (Articles « L »); the Decree amended the regulatory part of the Code (Articles « R »). Loi n°2007-1631 du 20 novembre 2007 relative à la maîtrise de l’immigration, à l’intégration et à l’asile <sup>(74)</sup> further amended relevant articles of the Code.</p>

<sup>70</sup> Law No 2006-911 of 24 July 2006 on immigration and integration.

<sup>71</sup> Rectification in the *Official Journal of the French Republic (JORF)* of 16 September 2006.

<sup>72</sup> Decree No 2007-371 of 21 March 2007 on the right to stay in France of Union citizens, of nationals of other EEA Member States and the Swiss Confederation and of their family members.

<sup>73</sup> Code on the entry and the stay of foreigners and the right of asylum, entered in force on 1 March 2005, latest consolidated version dates from 5 January 2009. Hereinafter ‘Code’.

<sup>74</sup> Law nr 2007-1631 of 20 November 2007 on the control of immigration, on integration and on asylum.

Country	Title of the measure(s) Transposing Directive 2004/38/EC into National Law 1) Date of Adoption 2) Date of Publication 3) Date of Entry into Force 4) Adopting Authority	Transposing measure(s) is/are a new law or a revision of existing law
Germany	<b>Multiple measures</b> <sup>(75)</sup> :  <b>Gesetz über die Allgemeine Freizügigkeit von Unionsbürgern</b> <sup>(76)</sup> . 1) 30 July 2004; 2) 5 August 2004; 3) 1 January 2005; 4) The National Parliament.	<b>New law</b>  However, the General Foreigners Law was changed: the amendment: <i>Novelle des Gesetzes über die Allgemeine Freizügigkeit von Unionsbürgern</i> was signed by the President on 30 July 2004, published on 5 August 2004 and came into force on 1 January 2005 <sup>(77)</sup> .
Greece	<b>Single measure:</b>  <b>Προεδρικό Διάταγμα 106/2007 ‘Ελεύθερη κυκλοφορία - διαμονή στην Ελλάδα των πολιτών της Ευρωπαϊκής Ένωσης και των μελών των οικογενειών τους’</b> <sup>(78)</sup> . 1) 21 June 2007; 2) 21 June 2007; 3) 21 June 2007; 4) The President of the Hellenic Republic.	<b>New Law</b>

<sup>75</sup> Multiple measures encompass main transposing act adopted by the Federal Parliament and executive acts adopted in Bundesländer (regions). The federal law deals with the resident rights and the procedures concerning these rights. The regulations by the ‘Bundesländer’ deal with responsibilities concerning infringements of the regulations.

<sup>76</sup> Law on the General Freedom of Movement of European Union Citizens.

<sup>77</sup> Germany used the ‘opportunity’ to anticipate changes made necessary by the new EU framework. When the Directive finally entered into force, Germany only had to change a few provisions in the new German Foreigners Law of 2005.

<sup>78</sup> Presidential Decree 106/2007 on free movement and residence in Greece of Union citizens and the members of their families.

Country	Title of the measure(s) Transposing Directive 2004/38/EC into National Law 1) Date of Adoption 2) Date of Publication 3) Date of Entry into Force 4) Adopting Authority	Transposing measure(s) is/are a new law or a revision of existing law
Greece	Administrative rules - Circular No 10 Εγκύκλιος 10 του Υπουργείου Εσωτερικών με α.π. 4174/28-2-2008 με θέμα « Την εφαρμογή των διατάξεων του ΠΔ 106/2007 σχετικά με την «Ελεύθερη κυκλοφορία και διαμονή στην ελληνική επικράτεια των πολιτών της Ευρωπαϊκής Ένωσης και των μελών των οικογενειών τους» <sup>(79)</sup> . It is an administrative act issued by the Ministry of Interior, Reference No 4174, from 28 February 2008.	
Hungary	<p><b>Multiple measures:</b> <i>Main Transposition Act :</i> <b>A szabad mozgás és tartózkodás jogával rendelkező személyek beutazásáról és tartózkodásáról szóló 2007. évi I. törvény</b> <sup>(80)</sup>.</p> <p>1) 18 December 2006; 2) 5 January 2007; 3) 1 July 2007; 4) The National Parliament.</p> <p><i>Enforcement Acts :</i> <b>- 113/2007. (V. 24.) Korm. rendelet a szabad mozgás és tartózkodás jogával rendelkező személyek beutazásáról és tartózkodásáról szóló 2007. évi I. törvény végrehajtásáról</b> <sup>(81)</sup>.</p> <p>1) 24 May 2007; 2) 24 May 2007; 3) 1 July 2007; 4) The Hungarian Government.</p>	<p><b>New law</b></p> <p>However, the implementation of Article 24 of the Directive (principle of equal treatment) required the amendment of different legal acts: more than 50 acts and decrees have been amended. There is thus a large number of additional implementing Acts relating to Article 24 of the Directive.</p>

<sup>79</sup> Circular on the Implementation of the Provisions of PD 106/2007.

<sup>80</sup> Law No I of 2007 on the Entry and Residence of Persons with the Right of Free Movement and Residence.

<sup>81</sup> Government Decree No 113/2007 for implementing Law No I of 2007.

Country	Title of the measure(s) Transposing Directive 2004/38/EC into National Law 1) Date of Adoption 2) Date of Publication 3) Date of Entry into Force 4) Adopting Authority	Transposing measure(s) is/are a new law or a revision of existing law
Hungary	- 25/2007. (V. 31.) IRM r. A szabad mozgás és tartózkodás jogával rendelkező személyek beutazásáról és tartózkodásáról szóló 2007. évi I. törvény, valamint a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról szóló 2007. évi II.örvény végrehajtásáról <sup>(82)</sup> . 2) 31 May 2007; 4) The Minister of Justice and Law enforcement	
Ireland	<p><b>Multiple measures <sup>(83)</sup></b></p> <p><b>I. Statutory Instrument 226 of 2006.</b> 1) 28 April 2006; 2) 28 April 2006; 3) 28 April 2006; 4) Minister for Justice, Equality and Law Reform.</p> <p><b>II. Statutory Instrument 656 of 2006 European Communities (Free Movement of Persons) (No. 2) Regulations 2006 <sup>(84)</sup>.</b> 1) 18 December 2006; 2) 1 January 2007; 3) 1 January 2007; 4) Minister for Justice, Equality and Law Reform.</p>	New Law

<sup>82</sup> Decree No 25/2007 implementing both, Law No I of 2007 and Act No II of 2007 on Entry and Residence Rights of Third Country Nationals.

<sup>83</sup> Three Statutory Instruments.

<sup>84</sup> This later S.I. provides that the replacement was consequent upon enlargement of the European Union on 1<sup>st</sup> January 2007.

Country	Title of the measure(s) Transposing Directive 2004/38/EC into National Law 1) Date of Adoption 2) Date of Publication 3) Date of Entry into Force 4) Adopting Authority	Transposing measure(s) is/are a new law or a revision of existing law
Ireland	<b>III. Statutory Instrument 310 of 2008, European Communities Free Movement of Persons (Amendment) Regulations 2008.</b> 1) 31 July 2008; 2) 31 July 2008; 3) 31 July 2008; 4) Minister for Justice, Equality and Law Reform <i>The third Statutory Instrument provides that the 2008 legislation was consequent upon the decision of the ECJ in C-127/08 Metock v Minister for Justice, Equality and Law Reform [2008] ECR 000.</i>	
Italy	<b>Multiple measures:</b> <b>I. Decreto Legislativo 6 febbraio 2007, n. 30 Attuazione della direttiva 2004/38/CE relativa al diritto dei cittadini dell'Unione e dei loro familiari di circolare e di soggiornare liberamente nel territorio degli Stati membri <sup>(85)</sup>.</b> 1) 6 February 2007; 2) 27 March 2007 <sup>86</sup> ; 3) 11 April 2007; 4) The Italian Government by proxy of the National Parliament.	<b>New law</b>  However, Article 9 paragraph 3, (b) and (c) of the Decree 30/2007 refer to Article 29 paragraph 3 (b) of the Italian Decree No 286 of 25 July 1998 published on 18 August 1998.

<sup>85</sup> Legislative Decree No 30 Transposition of Directive 2004/38/EC on the right of Union citizens and their family members to move and reside freely within the territory of the Member States.

<sup>86</sup> Date of publication of the decree on the Italian official journal.

Country	Title of the measure(s) Transposing Directive 2004/38/EC into National Law 1) Date of Adoption 2) Date of Publication 3) Date of Entry into Force 4) Adopting Authority	Transposing measure(s) is/are a new law or a revision of existing law
Italy	<p><b>II. Decreto Legislativo 28 febbraio 2008, n. 32 Modifiche e integrazioni al decreto legislativo 6 febbraio 2007, n. 30, recante attuazione della direttiva 2004/38/CE relativa al diritto dei cittadini dell'Unione e loro familiari di circolare e di soggiornare liberamente nel territorio degli Stati membri</b> <sup>(87)</sup>.</p> <p>1) 28 February 2008; 2) 1 March 2008; 3) 2 March 2008; 4) The Italian Government by proxy of the National Parliament.</p>	
Latvia	<p><b>Single measure:</b></p> <p><b>I. Ministru kabineta 18.07.2006. noteikumi Nr. 586 'Kārtība, kādā Latvijas Republikā ieeļo un uzturas Eiropas Savienības dalībvalstu, Eiropas Ekonomikas zonas valstu un Šveices Konfederācijas pilsoņi un viņu ģimenes locekļi'</b> <sup>(88)</sup>.</p> <p>1) 18 July 2006; 2) 20 July 2006; 3) 21 July 2006; 4) The Cabinet of Ministers.</p>	New law

<sup>87</sup> Legislative Decree No 32 Amendments and integrations to the Legislative Decree of 6th February 2007, No 30, transposing Directive 2004/38/EC.

<sup>88</sup> Regulation of the Cabinet of Ministers No 586 from 18.07.2006: Procedures for Entry and Residence in Latvia for Citizens of the EU, European Economic Area States and the Swiss Confederation, and their family members.

Country	Title of the measure(s) Transposing Directive 2004/38/EC into National Law 1) Date of Adoption 2) Date of Publication 3) Date of Entry into Force 4) Adopting Authority	Transposing measure(s) is/are a new law or a revision of existing law
Lithuania	<p><b>Multiple measures:</b></p> <p><b>I. Respublikos Konsulinio mokesčio įstatymas <sup>(89)</sup>. Last amendment:</b>  1) 18 October 2007;  2) 8 November 2007;  3) 1 January 2008 came into force;  4) The National Parliament.</p> <p><b>II. Lietuvos Respublikos Gyvenamosios vietos deklaravimo įstatymas <sup>(90)</sup>. Law amended on 7 December 2006.</b>  1) 7 December 2006;  2) 28 December 2006;  3) 28 December 2006;  4) The National Parliament.</p> <p><b>III. Lietuvos Respublikos Įstatymas dėl užsieniečių teisinės padėties <sup>(91)</sup>.</b>  1) 1 February 2008;  2) 22 February 2008;  3) 23 February 2008;  4) The National Parliament.  Executive Rules are adopted by the relevant Minister.</p>	<p><b>Revision of existing law</b></p> <p>The Law on Consular Fees was passed on 23 June 1994. It was first amended on 24 March 2005 and published on 12 April 2005.</p> <p>The Law on Declaration of the Place of Residence was originally from 2 July 1998. Both Laws were amended according to the requirements of Directive 2004/38/EC.</p> <p>The Law on the Legal Status of Foreigners, dates from 1 July 1999 and it was amended on 29 April 2004 No IX -2206. Last amended was made on 1 February 2008 No X-1442.</p>

<sup>89</sup> Republic of Lithuania Law on Consular Fees No I-509 (last amendment No. X-1300, 18 October 2007).

<sup>90</sup> Republic of Lithuania Law on Declaration of the Place of Residence No. VIII-840 (last amendment No. X-961).

<sup>91</sup> Republic of Lithuania Law on the Legal Status of Foreigners No. IX-2206 (last amendment No. X-1142).

Country	Title of the measure(s) Transposing Directive 2004/38/EC into National Law 1) Date of Adoption 2) Date of Publication 3) Date of Entry into Force Adopting Authority	Transposing measure(s) is/are a new law or a revision of existing law
Luxembourg	<p><b>Multiple measures:</b></p> <p><b>I. Loi du 29 août 2008 sur la libre circulation des personnes et l'immigration <sup>(92)</sup>.</b>  1) 29 August 2008;  2) 10 September 2008;  3) 10 September 2008;  4) Parliament (Chamber of Deputies). The Grand Duke enacts orders and regulations for carrying laws into effect.</p> <p><b>II. Règlement grand-ducal du 4 juillet 2007 modifiant le règlement grand-ducal modifié du 12 mai 1972 déterminant les mesures applicables pour l'emploi des travailleurs étrangers sur le territoire du Grand-Duché de Luxembourg <sup>(93)</sup>.</b>  1) 4 July 2007;  2) 6 July 2007;  3) 6 July 2007;  4) Grand-Duke of Luxembourg.</p> <p><b>III. Règlement grand-ducal du 21 décembre 2007 modifiant le règlement grand-ducal modifié du 28 mars 1972 relatif aux conditions d'entrée et de séjour de certaines catégories d'étrangers faisant l'objet de conventions internationales <sup>(94)</sup>.</b>  1) 21 December 2007;  2) 31 December 2007;  3) 31 December 2007;  4) The Grand Duke.</p>	<p><b>New law</b>  However, 1<sup>st</sup> Regulation amends the Regulation of 12 May 1972 on foreign workers' employment; 2<sup>nd</sup> Regulation amends the Regulation 28 March 1972 on the rights of entry and residence.</p>

<sup>92</sup> Law of 29 August 2008 on free movement of persons and immigration.

<sup>93</sup> Grand-Duke Regulation of 4 July 2007 on foreign workers employment on the territory of Luxembourg.

<sup>94</sup> Grand-Duke Regulation of 21 December 2007 on rights of entry and residence for certain foreigners concerned by international conventions.



Country	Title of the measure(s) Transposing Directive 2004/38/EC into National Law 1) Date of Adoption 2) Date of Publication 3) Date of Entry into Force 4) Adopting Authority	Transposing measure(s) is/are a new law or a revision of existing law
Luxembourg	<p><i>Enforcement Acts:</i></p> <p><b>IV. Règlement grand-ducal du 5 septembre 2008 définissant les critères de ressources et de logement prévus par la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration <sup>(95)</sup></b></p> <p>V. Règlement grand-ducal du 5 septembre 2008 portant sur l'attestation de prise en charge en faveur d'un étranger prévue à l'article 4 de la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration <sup>(96)</sup>.</p> <p>VI. Règlement grand-ducal du 5 septembre 2008 fixant les conditions et modalités relatives à la délivrance d'une autorisation de séjour en tant que travailleur salarié <sup>(97)</sup>.</p> <p>VII. Règlement grand-ducal du 5 septembre 2008 relatif à l'exercice d'une activité salariée par un étudiant, tel que prévu par la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration <sup>(98)</sup>.</p> <p>IX. Règlement grand-ducal du 5 septembre 2008 portant exécution de certaines dispositions relatives aux formalités administratives prévues par la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration <sup>(99)</sup>.</p> <p>1) 10 September 2008; 2) 5 September 2008; 4) Grand-Duke of Luxembourg.</p>	

<sup>95</sup> Grand-Duke Regulation of 5 September 2008 on the definition of resources and residence criteria foreseen by the Law of 29 August 2008.

<sup>96</sup> Grand-Duke Regulation of 5 September 2008 on the declaration in favour of a foreigner, as foreseen by Article 4 of the Law of 29 August 2008.

<sup>97</sup> Grand-Duke Regulation of 5 September 2008 on the conditions and modalities for the delivery of a residence card as an employed worker.

<sup>98</sup> Grand-Duke Regulation of 5 September 2008 concerning the exercise of a working activity by a student, as foreseen by the Law of 29 August 2008.

<sup>99</sup> Grand-Duke Regulation of 5 September 2008 on the enforcement of certain provisions concerning administrative formalities foreseen by the Law of 29 August 2008.

<b>Luxembourg</b>	<p>X. Règlement grand-ducal du 26 septembre 2008 établissant des règles de bonne conduite à appliquer par les agents chargés de l'exécution d'une mesure d'éloignement et modifiant le règlement grand-ducal du 21 décembre 2006 portant transposition de la Directive 2003/110/CE du Conseil du 25 novembre 2003 concernant l'assistance au transit dans le cadre de mesures d'éloignement par voie aérienne <sup>(100)</sup>.</p> <p>XI. Règlement grand-ducal du 26 septembre 2008 portant création des traitements de données à caractère personnel nécessaires à l'exécution de la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration et déterminant les données à caractère personnel auxquelles le ministre ayant l'immigration dans ses attributions peut accéder aux fins d'effectuer les contrôles prévus par la loi <sup>(101)</sup>.</p> <p>XII. Règlement grand-ducal du 26 septembre 2008 déterminant le niveau de rémunération minimal pour un travailleur hautement qualifié en exécution de la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration <sup>(102)</sup>.</p> <p>1) 29 September 2008;  2) 26 September 2008;  3) Grand-Duke of Luxembourg.</p> <p>XIII. Règlement grand-ducal du 14 novembre 2008 déterminant les modalités d'octroi de l'agrément pour les organismes de recherche visés à l'article 65, paragraphe (4), de la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration <sup>(103)</sup>.</p> <p>1) 12 December 2008;  2) 14 November 2008;  3) Grand-Duke of Luxembourg.</p>	
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<sup>100</sup> Grand-Duke Regulation of 26 September 2008 on rules of good conduct to be applied by agents commissioned for the enforcement of expulsion decisions.

<sup>101</sup> Grand-Duke Regulation of 26 September 2008 on the treatment of personal data needed for the enforcement of the Law of 29 August 2008.

<sup>102</sup> Grand-Duke Regulation of 26 September 2008 defining the level of minimum salary for a highly qualified worker for the enforcement of the Law of 29 August 2008.

<sup>103</sup> Grand-Duke Regulation of 14 November 2008 on the agreement of research institutes wishing to hire a third country national.

Country	Title of the measure(s) Transposing Directive 2004/38/EC into National Law 1) Date of Adoption 2) Date of Publication 3) Date of Entry into Force 4) Adopting Authority	Transposing measure(s) is/are a new law or a revision of existing law
Malta	<b>Single Act:</b> <b>Free Movement of European Union Nationals and their Family Members Order</b> <sup>(104)</sup> 1) 20 July 2007; 2) 20 July 2007; 3) 20 July 2007; 4) The National Parliament. <i>Administrative acts:</i> <b>Legislazzjoni Sussidjarja 61.02 Regolamenti Dwar IL</b> <sup>(105)</sup> ; <b>Att Dwar Il-Kartita' l-Identita</b> <sup>(106)</sup> . <b>Immigration Act (amended by Legal Notices 274 and 411 of 2007).</b>	<b>Revision of existing immigration law</b> The Immigration Act dates from 21 September 1970. The Act has been amended numerous times – also for the purpose of the Directive. The last amendment was made in 2008, adapted to comply with the <i>acquis communautaire</i> .
The Netherlands	<b>Multiple measures:</b> <b>I. Besluit van 24 april 2006, houdende wijziging van het Vreemdelingenbesluit 2000 in verband met de implementatie van Richtlijn 2004/38/EG van het Europees Parlement en de Raad van 29 april 2004 betreffende het recht van vrij verkeer en verblijf op het grondgebied van de lidstaten voor de burgers van de Unie en hun familieleden (Wijzigingsbesluit Vreemdelingenbesluit 2006)</b> <sup>(107)</sup> . 1) 24 April 2006; 2) 27 April 2006; 3) 29 April 2006; 4) The National Parliament, ratified by the Minister for Justice.	<b>Revision of existing immigration law</b> <ul style="list-style-type: none"> <li>- The Foreigners Act 2000 was amended in order to transpose the Directive.</li> <li>- The Social Assistance Act</li> <li>- The Study Grant Act has also been amended in view of Directive 2004/38/EC.</li> </ul>

<sup>104</sup> Part of Maltese Immigration Act, Chapter 217, *Laws of Malta*.

<sup>105</sup> Passports (Amendment) Regulations.

<sup>106</sup> Identity Card Act, Chapter 258, *Laws of Malta*.

<sup>107</sup> Decree of 24 April 2006 amending the Foreigners Act 2000, with reference to 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 (Foreigners Decree 2006), as amended.

Country	Title of the measure(s) Transposing Directive 2004/38/EC into National Law 1) Date of Adoption 2) Date of Publication 3) Date of Entry into Force 4) Adopting Authority	Transposing measure(s) is/are a new law or a revision of existing law
The Netherlands	<p><b>II. Besluit van 23 november 2000 tot uitvoering van de Vreemdelingenwet 2000 (Vreemdelingenbesluit 2000) <sup>(108)</sup>.</b></p> <p>1) 23 November 2000; 2) 7 December 2000; 3) 7 December 2000; 4) The Minister for Immigration.</p> <p><i>Administrative acts:</i> <b>Foreigners Circular 2000 (Chapter B 10)</b> <b>Revision of Foreigners Circular 2000 (Chapter B 10)</b></p>	
Poland	<p><b>Single measure:</b></p> <p><b>Ustawa z dnia 14 lipca 2006 roku o wjeździe na terytorium Rzeczypospolitej Polskiej, pobycie oraz wyjeździe z tego terytorium obywateli państw członkowskich Unii Europejskiej i członków ich rodzin (Dz.U.06.144.1043) z późniejszymi zmianami <sup>(109)</sup>.</b></p> <p>1) 14 July 2006; 2) 11 August 2006; 3) 26 August 2006; 4) The National Parliament, signed by the President.</p>	New Law

<sup>108</sup> Decree of 23 November 2000 implementing the Foreigners Act 2000 together with the Foreigners Decree 2006.

<sup>109</sup> Act of 14 July 2006 on the terms and conditions of entry and the stay in the territory of the Republic of Poland of the citizens of the EU Member States and members of their families.

Country	Title of the measures(s) Transposing Directive 2004/38/EC into National Law 1) Date of Adoption 2) Date of Publication 3) Date of Entry into Force 4) Adopting Authority	Transposing measures(s) is/are a new law or a revision of existing law
Poland	<p><i>Enforcement acts</i>::  <b>Ministerial Ordinances</b> <sup>(110)</sup>:  - <b>24 August 2006</b> on documents and applications to be supplied by Union citizens residing in the Republic of Poland; and on documents and applications by Union citizens and their family members for documents confirming permanent residence;  - <b>31 August 2006</b> on fees for certificate of residence and a residence card; and on fees for documents – permanent residence;  - <b>18 January 2007</b> on the list of illnesses that may justify the removal of a Union citizen’s family members who are not a national of a Member State from the Republic of Poland on the ground of public health.</p>	New law
Portugal	<p><b>Single measure:</b>  <b>Lei 37/2006, de 9 de Agosto, regula o exercício do direito de livre circulação e residência dos cidadãos da União Europeia e dos membros das suas famílias no território nacional e transpõe para a ordem jurídica interna a Directiva n.º 2004/38/CE, do Parlamento Europeu e do Conselho, de 29 de Abril</b> <sup>(111)</sup>.  1) 9 August 2006;  2) 14 August 2006;  3) 14 August 2006;  4) The National Parliament</p>	New Law

<sup>110</sup> Administrative ordinances supplementing the Directive.

<sup>111</sup> Law 37/2006 of 9 August 2006 which regulates the exercise of free movement and residence of the European Union citizens and their family members within the national territory and transposes into national law Directive 2004/38/EC of the European Parliament and Council of 29 April 2004.

Country	Title of the measure(s) Transposing Directive 2004/38/EC into National Law 5) Date of Adoption 6) Date of Publication 7) Date of Entry into Force 8) Adopting Authority	Transposing measure(s) is/are a new law or a revision of existing law
Portugal	. <i>Enforcement Act</i> :: Portaria 1637/2006, 17 de Outubro, aprova os modelos de certificado de registo, do documento de residência permanente de cidadão da União Europeia e do cartão de residência de familiar de cidadão da União Europeia, em conformidade com o disposto na Lei 37/2006, de 9 de Agosto <sup>(112)</sup>	
Romania	<p><b>Multiple measures:</b> <i>Four transposing acts, each subsequent one amending some aspects of the previous ones, without, however, repealing them</i></p> <p><b>I. Ordonanta de Urgenta a Guvernului Nr.102 privind libera circulație pe teritoriul României a cetățenilor statelor membre ale Uniunii Europene și Spațiului Economic European <sup>(113)</sup>.</b> 1) 14 July 2005; 2) 21 July 2005; 3) 1 January 2007 – entry into force after the accession; 4) The Government.</p> <p><b>II. Lege Nr.260 din 5 octombrie 2005 pentru aprobarea Ordonanței de urgență a Guvernului Nr. 102/2005 privind libera circulație pe teritoriul României a cetățenilor statelor membre ale Uniunii Europene și Spațiului Economic European <sup>(114)</sup>.</b> 1) 5 October 2005; 2) 7 October 2005; 3) 1 January 2007 – entry into force after the accession; 4) The National Parliament.</p>	New law

<sup>112</sup> Government Decree 1637/2006 which approves the models of registration certificates, document of permanent residence for European Union citizens and residence card for their family members according to Law 37/2006 of 17 October 2006.

<sup>113</sup> Government Emergency Ordinance No. 102 with regard to free movement of citizens of the Member States of the European Union and the European Economic Area on the Romanian territory.

<sup>114</sup> Law No 260 approving, with modifications and completions, Government Emergency Ordinance No. 102/2005.

Country	Title of the measure(s) Transposing Directive 2004/38/EC into National Law 1) Date of Adoption 2) Date of Publication 3) Date of Entry into Force 4) Adopting Authority	Transposing measure(s) is/are a new law or a revision of existing law
Romania	<p><b>III. Ordonanta Guvernului Nr. 30 pentru modificarea și completarea Ordonanței de urgență a Guvernului Nr. 102/2005 privind libera circulație pe teritoriul României a cetățenilor statelor membre ale Uniunii Europene și Spațiului Economic European <sup>(115)</sup>.</b>  1) 19 July 2006;  2) 24 July 2006;  3) 1 January 2007 – entry into force after the accession;  4) The Government.</p> <p><b>IV. Lege Nr. 500 privind aprobarea Ordonanței Guvernului Nr. 30/2006 pentru modificarea și completarea Ordonanței de urgență a Guvernului Nr. 102/2005 privind libera circulație pe teritoriul României a cetățenilor statelor membre ale Uniunii Europene și Spațiului Economic European <sup>(116)</sup>.</b>  1) 28 December 2006;  2) 30 December 2006;  3) 1 January 2007 – entry into force after the accession;  3) The National Parliament.</p> <p><i>Administrative act :</i>  <b>Hotărârea de Guvern Nr. 1.864 din pentru aprobarea Normelor metodologice de aplicare a Ordonantei de urgenta a Guvernului Nr. 102/2005 privind libera circulație pe teritoriul Romaniei a cetatenilor statelor membre ale Uniunii Europene si Spatiului Economic European si pentru stabilirea formei si continutului documentelor care se elibereaza cetatenilor Uniunii Europene si membrilor lor de familie <sup>(117)</sup>.</b></p>	

<sup>115</sup> Government Ordinance No. 30 amending and supplementing Government Emergency Ordinance No.102/2005.

<sup>116</sup> Law No 500 approving Government Ordinance No.30/2006 that amended Government Emergency Ordinance no.102/2005.

Country	Title of the measure(s) Transposing Directive 2004/38/EC into National Law 1) Date of Adoption 2) Date of Publication 3) Date of Entry into Force 4) Adopting Authority	Transposing measure(s) is/are a new law or a revision of existing law
Slovakia	<p><b>Multiple measures:</b></p> <p><b>I. Zakon c. 653/2004 Z.z. Zakon, ktorým sa mení a doplná zákon c. 381/1997 Z.z. o cestovných dokladoch v znení neskorších predpisov a ktorým sa mení a doplná zákon Národnej rady Slovenskej republiky c. 145/1995 Z.z. o správnych poplatkoch v znení neskorších predpisov</b> <sup>(118)</sup>.</p> <p>1) not determined <sup>(119)</sup>;  2) 10 December 2004;  3) 1 January 2005;  4) The National Parliament.</p>	<p><b>Revision of existing law</b></p> <p>There has been revision of existing law:  - Law c. 653/2004 amended Law 381/1997 Coll. on travelling documents.  - Law c. 558/2005 amended the Law 48/2002 Coll. on residence of foreigners.</p> <p>- Law No 48/2002 Coll. on residence of foreigners was</p>

<sup>117</sup> Government Decision No. 1864 approving the Methodological Norms for the implementation of Government Emergency Ordinance No.102/2005 and for establishing the form and the content of the documents issued to European Union citizens and their family members (please note this is not a transposing measure).

<sup>118</sup> The Law which is amending the Law 381/1997 Coll. on travelling documents as amended and which is amending the Law 145/1995 Coll. on administrative charges as amended.

<sup>119</sup> Please note that the Collection of Laws of the Slovak Republic does not state the dates of adoption of the legal acts.



Country	Title of the measure(s) Transposing Directive 2004/38/EC into National Law 1) Date of Adoption 2) Date of Publication 3) Date of Entry into Force 4) Adopting Authority	Transposing measure(s) is/are a new law or a revision of existing law
Slovakia	<p><b>II. Zakon c. 558/2005 Z.z. Zakon, ktorým sa mení a doplná zákon c. 48/2002 Z.z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov a o zmene a doplnení niektorých zákonov</b> <sup>(120)</sup>.</p> <p>1) not determined; 2) 15 December 2005; 3) 15 December 2005; 4) The National Parliament.</p> <p><b>III. Zakon c. 463/2006 Z.z. Uplne znenie zakona c. 48/2002 Z.z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov</b> <sup>(121)</sup>.</p> <p>1) not determined; 2) 20 July 2006; 3) not determined <sup>(122)</sup>; 4) The National Parliament.</p> <p><b>IV. Zakon c. 647/2007 Z.z. o cestovných dokladoch a o zmene a doplnení niektorých zákonov</b> <sup>(123)</sup>.</p> <p>1) not determined; 2) 29 December 2007; 3) 15 January 2008 (with exception of Article III which came into force on 1 Jan'08); The National Parliament.</p>	<p>Originally published in the Collection of Laws <sup>(124)</sup> of the Slovak Republic on 2 February 2002 and came into force on 1 April 2002. This law was amended several times: latest amendment are Law No 233/2008 Coll. which was published on 27 June 2008 and came into force on 1 July 2008 <sup>(125)</sup>.</p>

<sup>120</sup> The Law No 558/2005 amending the Law No 48/2002 Coll. on residence (stay) of foreigners, as amended and on amendment of some other Laws.

<sup>121</sup> The Law No 463/2006 is the full text of the original Law No 48/2002 Coll. on residence of foreigners and about amendments of other Laws.

<sup>122</sup> This Law has date of publishing but does not have a date of coming into force because it is just a full text of the original Law No 48/2002 and its amendments.

<sup>123</sup> The Law on travelling documents and on amendment of some other Laws.

<sup>124</sup> <<<http://www.zbierka.sk/zz/predpisy/default.aspx?Text=2004%2f38%2fES>>>.

Country	Title of the measure(s) Transposing Directive 2004/38/EC into National Law 1) Date of Adoption 2) Date of Publication 3) Date of Entry into Force 4) Adopting Authority	Transposing measure(s) is/are a new law or a revision of existing law
Slovenia	<p><b>Multiple measures:</b></p> <p><i>Main Transposing Act:</i></p> <p><b>I. Zakon o tujcih</b> <sup>(126)</sup></p> <p>1) 29 September 2005; 2) 21 October 2005 <sup>(127)</sup>; 3) 21 October 2005; 4) The National Parliament.</p> <p><b>II. Navodilo o zavrnitvi vstopa v Republiko Slovenijo državljanu Evropske Unije</b> <sup>(128)</sup>;</p> <p>1) 10 July 2006; 2) 14 July 2006; 3) 29 July 2006; 4) The Ministry of Interior.</p> <p><b>III. Zakon o zaposlovanju in delu tujcev</b> <sup>(129)</sup>;</p> <p>1) 30 May 2007; 2) 12 June 2007; 3) 27 June 2007; 4) The National Parliament.</p>	<p><b>Revision of existing immigration law</b></p> <p>Most of the Acts were adopted before the Directive entered into force and were later just amended in view of the Directive's requirements. Main Transposing Act was first published in 1999.</p>

<sup>125</sup> The numbers of previous amendments are: 408/2002 Coll. (published on 25 July 2002), 480/2002 Coll. (published on 22 Aug 2002), 606/2003 Coll. (published on 31 Dec 2003), 69/2005 Coll. (published on 26 Feb 2005), 474/2005 Coll. (published on 26 Oct 2005), 558/2005 Coll. (published on 15 Dec 2005).

<sup>126</sup> Foreigners Act.

<sup>127</sup> Official consolidated text of Foreigners Act was published on 14 July 2008.

<sup>128</sup> Instruction on Refusal of Entry into the Republic of Slovenia to the Citizen of the European Union.

<sup>129</sup> Employment and Work of Foreigners Act (supplemented by Rules on work permits, registration and deregistration of work, foreigners' employment control) - amended. Original Act published in Official Gazette of the Republic of Slovenia, No. 66/2000, amendments published on 12 June 2007, Official Gazette of the Republic of Slovenia, No. 52/2007.

Country	Title of the measure(s) Transposing Directive 2004/38/EC into National Law 1) Date of Adoption 2) Date of Publication 3) Date of Entry into Force 4) Adopting Authority	Transposing measure(s) is/are a new law or a revision of existing law
Spain	<p><b>Single measures :</b></p> <p><b>Real Decreto 240/2007, de 16 de febrero, sobre entrada, libre circulación y residencia en España de ciudadanos de los Estados miembros de la Unión Europea y de otros Estados parte en el Acuerdo sobre el Espacio Económico Europeo <sup>(130)</sup>.</b></p> <p>1) 16 February 2007; 2) 16 February 2007; 3) 2 April 2008; 4) The Government (Council of Ministers).</p> <p><i>Enforcement Act:</i> <b>Order (16 February 2007)</b> which implements Royal Decree 240/2007 Instrucción DGI/SGRJ/03/2007, relativa al Real Decreto 240/2007, de 16 de febrero, sobre entrada, libre circulación y residencia en España de ciudadanos de los Estados miembros de la Unión Europea y de otros Estados parte en el Acuerdo sobre el Espacio Económico Europeo <sup>(131)</sup>. Order adopted by the Ministry of Security.</p>	<p><b>New law</b></p> <p>However, the 3rd final provision of Decree 240/2007 modifies Royal Decree 2393/2000, i.e. the implementing regulation of Basic Law 4/2000 on the rights of foreigners.</p>

<sup>130</sup> Royal Decree 240/2007 on the entry, free movement and residence in Spain of Union citizens and of citizens within the European Economic Area.

<sup>131</sup> Instruction DGI/SGRJ/2007 relating to the provisions of Royal Decree 240/2007.

Country	Title of the measure(s) Transposing Directive 2004/38/EC into National Law 1) Date of Adoption 2) Date of Publication 3) Date of Entry into Force 4) Adopting Authority	Transposing measure(s) is/are a new law or a revision of existing law
Sweden	<p>Single measure <i>(with numerous amendments)</i>:</p> <p><b>Lag om ändring i utlänningslagen (Utlänningslag)</b> <sup>(132)</sup>.</p> <p>1) 14 June 2006; 2) 28 June 2006. <i>Last Modifications: 15 May 2008, 27 May 2008, 1 July 2008;</i> 3) 1 July 2008; 4) The National Parliament</p> <p><i>Enforcement Act:</i> <b>The New Aliens Ordinance</b> In force from 30 April 2006 replacing the former Aliens Ordinance 1989.</p>	<p><b>Revision of existing immigration law</b></p> <p>The original Aliens Act from 1989 was amended several times. The Act points to Employment Act, Social Security Act – all dating back several years. The Aliens Act also covers the Passport Act <sup>(133)</sup> of 1978, the Act on Special Control of Foreigners of 1991 and the Study Loan Act of 1999.</p>

<sup>132</sup> The Main Act that regulates the conditions, rights and obligations of Union citizens and their relatives (EU or third country), spouses, partners. The Aliens Act. Please note that ‘Aliens Act’ is the official Swedish translation in English.

<sup>133</sup> Passlagen.

Country	Title of the measure(s) Transposing Directive 2004/38/EC into National Law 1) Date of Adoption 2) Date of Publication 3) Date of Entry into Force 4) Adopting Authority	Transposing measure(s) is/are a new law or a revision of existing law
The United Kingdom	<p>Single measure:</p> <p><b>I. The Immigration (European Economic Area) Regulations 2006 (Statutory Instrument 2006 No 1003);</b>  1) 30 March 2006;  2) 6 April 2006;  3) 30 April 2006;  4) The National Parliament.</p> <p>Separate rules were made for Gibraltar</p> <p><b>II. Immigration Control (Amendment) Act 2008 (Gibraltar)</b> <sup>(134)</sup>.  1) 26 June 2008;  2) 26 June 2008;  3) 26 June 2008;  4) The Legislature of Gibraltar.</p>	New law

<sup>134</sup> Whilst Gibraltar is part of the UK, the special constitutional arrangements in place in the territory require it to adopt separate legislation.

### 3. Late transposition

According to Article 40 (1) of the Directive, Member States ‘shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by two years from the date of entry into force of this Directive.’ **Therefore, the deadline for transposition was 30 April 2006.**

Austria, Bulgaria, the Czech Republic, Denmark, Germany, Ireland, the Netherlands, Romania, Slovakia, Slovenia, Sweden (<sup>135</sup>) and the UK completed the transposition of the Directive on time. Concerning Romania and Bulgaria, the accession date of 1 January 2007 was the mandatory date for the entry into force of the transposing instrument that formed part of the *acquis communautaire*.

For the purpose of this study, if the transposition was made within one year after the deadline (till 30 April 2007) it will be considered as ‘late transposition.’ Transposition made after this date is considered as an ‘extremely late transposition.’ Several Member States were a few months late in transposing the Directive without any political reason. These were Cyprus (9 months late), Estonia (3 months), France (3 months late) (<sup>136</sup>), Latvia (3 months), Poland (2 months) and Portugal (2 months).

The table below sets out the cases of extremely late transposition:

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<sup>135</sup> Despite the initial timely transposition, numerous amendments have been made subsequently. Technically Sweden was on time but in fact the transposition was completed in Sweden only as of 31 July 2008.

<sup>136</sup> Many of its provisions of the main legislative act, in order to be implemented in practice, needed to be detailed in the Decree which entered into force only on 22 March 2007. Moreover an ‘arrêté’ ministerial that shall define the model of certificate of registration (in the meantime the obligation to register does not apply) remains to be adopted and published so it is arguable that the implementation of the Directive is complete.

**TABLE 2 – LATE TRANSPOSITION**

Country	Extremely late transposition	Comments
<b>Belgium</b>	<p>The law of 25 April 2007, published on 10 May 2007, came into force on the 1 June 2008.</p> <p>The Royal Decrees came into force on 1 June 2008</p>	<p>Belgium was 2 years late in transposing the Directive and was referred to the ECJ by the European Commission.</p> <p>The official explanation given for the delay was that the Directive is mostly a consolidation of existing Directives and Belgium was compliant for the most part with the existing law. Due to the internal political situation from May 2007 to January 2008 and the limited powers of the government, it was impossible to adopt the Decrees for the execution of the law of 25 April 2007 (<sup>137</sup>).</p>
<b>Finland</b>	The Directive was transposed on 1 May 2007.	Finland was 1 year late in transposing the Directive.
<b>Greece</b>	The date of the transposition of the Directive is 21 June 2007.	Greece was 14 months late in transposing the Directive. The Commission launched infringement proceedings in 2007 ( <sup>138</sup> ).
<b>Hungary</b>	Transposition was completed on 1 July 2007.	The Directive was transposed into the Hungarian law with a significant delay of 15 months.

<sup>137</sup> During this so called period of ‘gestion des affaires courantes’, a Royal Decree was adopted in November 2007 to put the national legislation in place after the ECJ ruled against Belgium on two issues: proof of sufficient resources of the Union citizen and the illegality of an automatic expulsion decision when documents are not provided in time.

<sup>138</sup> Press Release IP/07/1016, Brussels, 4 July 2007: *Free Movement of EU citizens and their family members: Commission takes Greece, Malta, Luxembourg and United Kingdom to the ECJ.*

Country	Extremely late transposition	Comments
<b>Italy</b>	Legislative Decree 6 February 2007, No 30 entered into force on 11 April 2007. Legislative Decree 28 February 2008, No 32 entered into force on 2 March 2008.	<p>There were great political concerns and intense communication between the Italian Government and the European Commission in connection to the controversial law proposal - the ‘Security package’. The proposal concerning the amendments of Decree 30/2007 implementing the Directive into the Italian legal system was scrutinized by the European Parliament and the Commission and finally did not enter into force. Italy went beyond the transposition deadline and infringement procedures were launched was by the European Commission.</p> <p>The infringement proceedings for failure to implement the Directive were closed last November by the European Commission.</p>
<b>Lithuania</b>	<p>1. Law on Consular Fees was passed originally on 23 June 1994. It was amended according to the Directive. The first amendment was made on 24 March 2005. The last amendments were made on 18 October 2007, which came into force on 1 January 2008.</p> <p>2. Law on Declaration of the Place was amended according to the requirements of the Directive and the amendments came into force on 28 December 2006.</p> <p>3. Law on the Legal Status of Foreigners was amended the first time on 28 November 2006 and the last amendments came into force on 23 February 2008.</p>	Lithuania has three transposing Acts and only the first one has been transposed in accordance with the deadline – the other two entered into force late. Therefore, the overall transposition could be considered late. Essentially, existing laws were amended to meet the requirements of the Directive but the amendments became effective only after the 30 April 2006 deadline.



Country	Extremely late transposition	Comments
<b>Luxembourg</b>	<p>Regulation of 4 July 2007, entered into force on 7 July 2007.</p> <p>The Grand-Duke Regulation of 21 December 2007, entered into force on 1 January 2008.</p> <p>The Law of 29 August 2008 entered into force on 1 October 2008.</p> <p>The Grand-Duke Regulations of 5 September 2008 and 26 September 2008 entered into force on 1 October 2008.</p> <p>The Grand-Duke Regulation of 12 November 2008 entered into force on 15 November 2008.</p>	<p>The Directive was transposed more than two years after the deadline expired (<sup>139</sup>). Within the past two years, the Directive has certainly not been fully respected by the national authorities as it was only completely transposed into national law on 1 October 2008 (with the adoption and publication of the Law of 29 August 2008 and of the successive enforcement regulations adopted by the Grand-Duke).</p> <p>The Grand-Duke Regulations of 4 July 2007 and 21 December 2007 only amended work permit issues, as well as the old regulation of 28 March 1972 regarding residence cards.</p> <p>National authorities have indeed confirmed (<sup>140</sup>) that they have not referred to the text of the Directive for the past two years in order to grant residence cards.</p>
<b>Malta</b>	<p>The Main Transposing Act came into force on 20 July 2007.</p> <p>Immigration Act Passports (Amendment) Regulations (Legal Notice 59 of 2001 and Legal Notice 141 of 2007)</p> <p>Identity Card Act (Chapter 258) (amended by Act III of 2008).</p>	<p>The Commission launched infringement proceedings in 2007 because Malta had not complied with its communication obligation.</p>
<b>Spain</b>	<p>The Directive was transposed on 2 April 2008, i.e. the date in which Royal Decree 240/2007 entered into force.</p>	<p>The Directive was transposed 1 year and 11 months after the deadline for transposition.</p>

<sup>139</sup> Brussels, 4 July 2007 (see note 75 above).

<sup>140</sup> During a meeting held at the Ministry of Foreign Affairs, responsible for immigration purposes, with the national expert for the Grand-Duchy of Luxembourg on 9 July 2008.

**CHAPTER III**  
**SELECTED COUNTRY REPORTS**

**1.BELGIUM**

**1.1 Transposing measure(s)**

<b>1</b>	<b>Act of 25 April 2007 on the entry to the territory, the residence and the expulsion of foreigners <sup>(141)</sup></b>
<b>2</b>	<b>Royal Decree of 7 May 2008 on the entry to the territory, the residence, the settlement and the expulsion of foreigners <sup>(142)</sup></b>
<b>3</b>	<b>Royal Decree of 7 May 2008 laying down specific implementation modalities of the Act of 15 December 1980 on the entry to the territory, the residence and the expulsion of foreigners <sup>(143)</sup></b>

There are multiple measures transposing the Directive in Belgium.

It is to be noted that Belgium is a federal State and as policies relating to immigration and non-nationals falls within the competence of the federal States, the implementation of this Directive has been at federal level.

On 25 April 2007, Belgium adopted the Act of 25 April 2007 amending the Act of 15 December 1980 on the entry to the territory, the residence and the expulsion of foreigners, as well as amending the Act of 4 May 2007 amending Articles 39/20, 39/79 and 39/81 of the Act of 15 December 1980 on the entry to the territory, the residence and the expulsion of foreigners. This Act was published in the Belgian Official Journal (Moniteur Belge n.143, p.25752) on 10 May 2007 in French and Dutch and later in the Moniteur Belge in German on 20 December 2007, p. 63343. It came into force on 1 June 2008.

The transposition of the Directive into Belgian law was completed by two Royal Decrees. The first was the Royal Decree of 7 May 2008 amending the Royal Decree of 8 October 1981 on the entry to the territory, the residence, the settlement and the expulsion of foreigners. The second was the Royal Decree of 7 May 2008 laying down specific implementation modalities of the Act of 15 December 1980 on the entry to the territory, the residence and the expulsion of foreigners. The two Royal Decrees came into force on 1 June 2008. One Decree concerns the registered partnership and the criteria of a stable partnership <sup>(144)</sup> and the other concerns the adaptation of administrative formalities <sup>(145)</sup>.

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<sup>141</sup> Please see: << <http://www.ejustice.just.fgov.be/cgi/api2.pl?lg=fr&pd=2007-05-10&numac=2007000465>>>.

<sup>142</sup> Please see: << <http://www.ejustice.just.fgov.be/cgi/api2.pl?lg=fr&pd=2008-05-13&numac=2008000446> >>.

<sup>143</sup> Please see: << <http://www.ejustice.just.fgov.be/cgi/api2.pl?lg=fr&pd=2008-05-13&numac=2008000447> >>.

<sup>144</sup> Royal Decree 7 May 2008, 2008/00447, p. 25090-25091.

<sup>145</sup> Royal Decree 7 May 2008, 2008/00446, p.25092-25101.

Please note that the Acts and the two Royal Decrees are the same for Wallonia and Flanders, with different language versions for each; respectively French and Flemish.

Two reasons have been provided in order to explain the late transposition of the Directive into Belgian law. Firstly, the Federal administration has argued that Belgian law already conformed to the legal norms introduced by the Directive. Secondly, the absence of an effective government hindered the legislative process.

## **1.2 Right of entry and residence**

The relevant Articles applicable to the right of entry and residence are set out below:

<b>Directive 2004/38/EC</b>	<b>Articles 4 -15</b>
<b>Act 10-05-2007</b>	<b>Articles 19; 20; 22; 23 and 25-29</b>
<b>Royal Decree</b>	<b>Articles 44- 50 and 52- 54</b>

### **1.2.1. Right of entry**

The law applicable to the right of entry is set out below:

<b>Directive 2004/38/EC</b>	<b>Article 5</b>
<b>Act 10-05-2007</b>	<b>Article 22; 1° and 2°</b>
<b>Royal Decree 200800446</b>	<b>Article 46</b>

(no issues identified)

### **1.2.2. Right of residence**

The laws applicable to the right or residence are:

<b>Directive 2004/38/EC</b>	<b>Articles 6 and 7</b>
<b>Act 10-05-2007</b>	<b>Articles 19;20 and 26</b>

#### **1.2.2.1. Residence for less than three months**

<b>Directive 2004/38/EC</b>	<b>Articles 6</b>
<b>Act 10-05-2007</b>	<b>Articles 19 and 20</b>

For residence for less than three months, Union citizens and their families are required to report their presence on the Belgian territory within ten days unless they are staying in a hotel, are imprisoned or hospitalised. If this is not complied with, the Union citizen and their family members will be liable to a 200 Euro fine. This fine seems disproportionate as there is no similar fine for Belgian citizens who fail to register information.

### 1.2.2.2. Registration certificates

<b>Directive 2004/38/EC</b>	<b>Article 8 (2)</b>
<b>Act 10-05-2007</b>	<b>Article 25 (§ 2 et 4)</b>
<b>Royal Decree 200800446</b>	<b>Articles 50 and 51</b>

After having registered with the relevant authorities, Article 8(2) of the Directive provides that a registration certificate must be issued immediately, stating the name and address of the person registering on the date of registration. According to Articles 50 and 51 of Royal Decree 200800446, a “Union citizen can ask for a registration certificate.” Yet, in the Article that follows there is a clear obligation to produce all necessary documents within three months (an additional delay of one month may be granted if all documents were not provided before an expulsion order). The registration certificate will be issued immediately if all documents are provided according to Article 50, 1§, 5°.

### 1.2.2.3. Residence rights for citizens of the New Member States

In the section on residence rights contained in Guidelines prepared for local authorities (<sup>146</sup>), a point has been inserted that the start date for counting the period of residence in order to obtain permanent residence rights, begins with the date of accession of the country in question to the EU even though no such limitation is contained in the Directive or in the Accession Treaties. This is the case even if the Union citizen resided in Belgium prior to the date of accession.

### 1.2.2.4. Permanent residence

<b>Directive 2004/38/EC</b>	<b>Article 16 (1)</b>
<b>Act 10-05-2007</b>	<b>Article 42</b>

Belgian law with regard to the right of permanent residence is more favourable than the Directive as the duration of residence in order to be eligible for this right is three years instead of five as set out in Article 16 (1) of the Directive.

## 1.3 The definition of sufficient resources

The relevant Articles containing reference to ‘sufficient resources’ are:

<b>Directive 2004/38/EC</b>	<b>Articles 7 (1) (b)(c); 8 (4); 12 (2) and 13 (2)</b>
<b>Act 10-05-2007</b>	<b>Article 19, §4, and Article 20, §4</b>
<b>Royal Decree 200800446</b>	<b>Article 50, §2</b>

It is necessary to consider the judgment of the ECJ in the *Commission v Belgium* (<sup>147</sup>). According to the report of the case, the Commission took action after having received various complaints about Belgian legislation and administrative practices concerning both the conditions for

<sup>146</sup> Guidelines written by the Office des Étrangers for the competent local authorities. p.17, point 5.

<sup>147</sup> Case C-408/03 *Commission v Belgium* [2006] ECR I-2647.

granting residence permits under Directive 90/364/EEC (<sup>148</sup>) and orders to leave Belgian territory issued to citizens of the Union (<sup>149</sup>). The relevant facts of the case were that the Belgian authorities took the view that a Portuguese national did not satisfy the sufficient resources test on the grounds that the undertaking given by her partner that he would support her did not constitute evidence that she had sufficient resources. Belgian authorities argued that the income of a third party could also be taken into account, provided that it belonged to the spouse and/or children of the Union citizen relying on Directive 90/364/EEC. The connection between that citizen and the person he/she claims to be the source, even if only in part of his income, must be one regulated by law so that the host Member State can be sure that that person is bound by a legal obligation to support that citizen financially. The ECJ held that Belgium had failed to fulfil its obligations under, *inter alia*, Article 18 ECT and Directive 90/364/EEC by excluding the income of partners residing in the host Member State in the absence of an agreement concluded before a notary and containing an assistance clause.

Consequently, in light of this judgment given by the ECJ, on 28 November 2008 the Belgian legislator amended Royal Decree (<sup>150</sup>) on specific points before modifying the rest of its legislation later on May 2008.

#### **1.4 The situation of (registered) partners**

The relevant Articles applicable to the situation of (registered) partners are:

<b>Directive 2004/38/EC</b>	<b>Articles 2 (2) (b) ; 8 (5) (b) ; 10 (2) (b) and 13 (1) ; 13 (2) (a)(c) (<sup>151</sup>)</b>
<b>Act 10-05-2007</b>	<b>Articles 20; 27 and 28</b>
<b>Royal Decree 200800447</b>	<b>Articles 4 and 50- 6°</b>

In light of the current state of the law, the recognition given to partnerships in certain Member States does not exist in Belgium. In particular, the Belgian authorities have not updated the list of Member States that have introduced legal partnerships in their legislation. At present, recognition is given to legal partnerships granted in 7 Member States of the EU (Denmark, Germany, Finland, Iceland, Norway, United Kingdom and Sweden) (<sup>152</sup>).

##### **1.4.1. Divorce, annulment of marriage or termination of the registered partnership**

According to Article 27 of the Act of 25 April 2007, partners have the possibility of retaining the right of residence if they no longer live together after a period of residence for two years.

In the event of divorce, annulment of marriage or termination of registered partnership, the right of residence can be terminated during a period of 2 years. During the 3<sup>rd</sup> year, it can only be terminated in the event of fraud (element of complaisance). This has to be read in conjunction

<sup>148</sup> Council Directive 90/364/EEC of 28 June 1990 on the right of residence OJ 1990 L180/26.

<sup>149</sup> Case C-408/03 *Commission v Belgium* [2006] ECR I-2647, paragraph 18.

<sup>150</sup> Royal Decree of 28 November 2007, n° 2007/01036 modifying the Royal Decree of 8 October 1981 on the entry to the territory, the residence, the settlement and the expulsion of foreigners.

<sup>151</sup> Please see Recital 5 of the Directive.

<sup>152</sup> Article 4, Royal Decree 7 May 2008, 2008/00447, p. 25090-25091.

with the fact that the duration for acquiring a permanent residence right has been shortened in Belgium to 3 years instead of 5.

**1.5. Problems encountered by third country national family members**

**1.5.1. Permanent Residence card for family members who are not nationals of a Member State.**

<b>Directive 2004/38/EC</b>	<b>Article 20 (1)</b>
<b>Act 10-05-2007</b>	<b>Article 42 (3)</b>

Article 20 (1) of the Directive provides that third country national family members entitled to permanent residence must be issued with a residence card that is to be renewable automatically every 10 years. In Belgium, the permanent residence card is only valid for five years. According to the Belgian legislation on identity cards for technical reasons as specified in the Table of Correspondence (<sup>153</sup>), there is no provision for automatic renewal. Therefore, this clearly infringes this Article of the Directive.

**1.6. Equal treatment**

The relevant Articles applicable to equal treatment are:

<b>Directive 2004/38/EC</b>	<b>Article 24 (1)</b>
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There is no reference in the new legislation that has been adopted.

In the Table of Correspondence a full list of national legislation implementing this general provision is given (starting with constitutional provisions). This legislation ensures that the principle is respected.

**1.7 Grounds for expulsion and procedural safeguards**

**1.7.1. Grounds for expulsion**

The relevant Articles applicable to expulsion are set out below:

<b>Directive 2004/38/EC</b>	<b>Articles 14 (3); 14 (4); 15 (2) and Articles 27-29</b>
<b>Act 10-05-2007</b>	<b>Articles 19; 24-27 and 28</b>
<b>Royal Decree 200800446</b>	<b>Article 50§ 2 and 54</b>

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<sup>153</sup> Please see Annex 6

### 1.7.1.1. Expulsion measures

It is necessary to consider the judgment of the ECJ in the *Commission v Belgium* (<sup>154</sup>). In addition to the view of the Belgian authorities concerning evidence of sufficient resources, the *automatic nature* of the order to leave the Belgian territory in the event of a failure to produce the necessary documents to obtain a residence permit was contested. The ECJ held that Belgium had failed to fulfil its obligations by making provision *automatically* for an order to leave Belgian territory for Union citizens who do not produce the documents required to obtain a residence permit within the prescribed period.

Consequently, in light of this judgment given by the ECJ, on 28 November 2008 the Belgian legislator amended Royal Decree (<sup>155</sup>) on specific points before modifying the rest of its legislation later on May 2008.

### 1.7.2. Procedural safeguards

The relevant Articles setting out procedural safeguards are set out below:

<b>Directive 2004/38/EC</b>	<b>Articles 30-33</b>
<b>Act 10-05-2007</b>	<b>Articles 33, 36 and 37</b>

(no issues identified)

## 1.8 Miscellaneous

### 1.8.1. Family members

<b>Directive 2004/38/EC</b>	<b>Article 2 (2)</b>
<b>Act 10-05-2007</b>	<b>Article 40</b>

With regard to the definition of family members, Belgian law is more favourable than the Directive as the definition is not limited to the *direct* descendants or ascendants but to descendants and ascendants less than 21 years old or financially dependant.

## 1.9 Administrative services

The investigation of administrative services was carried out in the three regions of Belgium (Flanders, Wallonia and Bruxelles-Capitale (<sup>156</sup>)). The competent authorities for issuing the entry and residence documents and their renewal can either be the local authorities (Commune) or the Aliens Service (Office des Étrangers).

<sup>154</sup> Case C-408/03 *Commission v Belgium* [2006] ECR I-2647.

<sup>155</sup> Royal Decree of 28 November 2007, n° 2007/01036 modifying the Royal Decree of 8 October 1981 on the entry to the territory, the residence, the settlement and the expulsion of foreigners.

<sup>156</sup> Experience of Citizens Signpost Service expert, verification of the websites of the competent authorities and of NGOs responsible for helping non-nationals to settle in Belgium.

Concerning Flanders, the access to administrative services is poor and documents are not user-friendly. Citizens have to wait in line and the service is not always available for the whole day, making it difficult for people who are working to have access to this service. Moreover, the information contained on-line does not have a clear section applicable to Union citizens and the presentation of information is mixed with the legislation for non-Union citizens. There is also no summary of the legislation, rights and obligations of citizens. Therefore, if citizens wish to know their rights, they have to read the whole legislative package. Recently, some improvements on the quality and user-friendliness of the information have been made and that the situation may vary from one municipality to another depending on the amount of inhabitants. In general, the competence of the personnel is satisfactory.

Concerning Wallonia, the information relating to the implementation of the Directive has not been broadly disseminated. Generally, the administrative service provided to Union citizens is poor. The website does not provide much information and it is not user-friendly. Moreover, an English version has not been set up. The information provided by the Aliens Service (Office des Étrangers) generally relates to third country nationals and not to Union citizens residing in Belgium.

However, it must be noted that as the transposition of the Directive into national law is relatively recent, it is difficult to evaluate what efforts are required in order to inform the Union citizens of their rights (for example, the introduction of a registration certificate which replaces the resident card). So far, the federal administration has focused its efforts on informing the local authorities (with a manual and training) but it has not sought to introduce the changes in the administration web pages.

**1.10 National legislation that interferes or could interfere with the Directive**

**1.10.1. The Flemish Settlement Decree 2006**

<b>Directive 2004/38/EC</b>	<b>Articles 2 (2) and 3 (2)</b>
<b>Flemish Settlement Decree 2006</b>	<b>Article 5 (2) (2) (a)</b>

According to Article 5(2) (2) (a) of the Flemish Settlement Decree, family members who fall within the definition provided in Article 2 (2) of the Directive are exempt from the obligation to follow Flemish settlement courses. The purpose of the primary level of the settlement course is to allow non-nationals to be more economically independent through competence in Flemish and to be familiar with civil society to assist with employment and possibilities of education. Successful completion of this level of the course will result in progress to a secondary level of courses aimed at encouraging a more active role and integration into society in Flanders. Failure to regularly attend these courses will result in a fine of 50 to 150 Euros per absence. However, the entry and residence of *other family members* not falling under the definition in Article 2(2) of the Directive are not facilitated under the Flemish Settlement Decree infringing Article 3 (2) (a) of the Directive which provides that the host Member State must facilitate the entry and residence of ‘any other family members, irrespective of their nationality, not falling under the definition in Article 2 (2) who, in the country from which they have come, are dependents or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family Member by the Union citizen.’



## 1.11 Conclusions

The transposition level of the Directive can be considered satisfactory in both quantitative and qualitative terms. However, some relevant provisions have been implemented in Belgian law by making reference to the existing practices of the administration which is not an appropriate implementation of the Directive *per se*. The Table of Correspondence clearly mentions that some measures do not need legislative transposition and reference is made to the practical aspects of the issue. It should also be noted that in some respects Belgian law has been more expansive or sets out more favourable provisions than the Directive.

As it has been noted throughout this report, due to the very late transposition of the Directive and the timing of the study, it is very difficult to appraise how the competent authorities will apply the changes and respect the rules established at federal level. From the enquiries received by the Citizens Signpost Service about Belgium, it is commonly acknowledged that some communes might follow procedures more rigorously than required or less rigorously. This lack of uniform application raises obvious concerns about consistency.

## 2. ESTONIA

### 2.1. Transposing measure(s)

<b>Citizen of European Union Act (<sup>157</sup>)</b>
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The Directive was transposed by the Citizen of European Union Act (<sup>158</sup>) which was amended in 2006. This Act came into force on the 1 August 2006.

There are other measures such as the Obligation to Leave and Prohibition to Enter Act (<sup>159</sup>), the State Borders Act (<sup>160</sup>), the State Fees Act (<sup>161</sup>), the Administrative Procedure Act (<sup>162</sup>), the Administrative Court Procedure Act (<sup>163</sup>) and the Constitution of Estonia (<sup>164</sup>) that also influence the implementation of the Directive.

### 2.2. Right of entry and residence

The relevant Articles applicable to the right of entry and residence are set out below:

Directive 2004/38/EC	Articles 4 -15
Citizen of European Union Act	Articles 7; 10(1); 10(2); 13; 20 (1); 19(1); 21; 22; 24(3); 25; 25(1);27; 30; 36; 37; 38; 40; 45; 45(3); 53(2) and 54(2)
State Borders Act	Article 11 <sup>1</sup>
Obligation to Leave and Prohibition to Enter Act	Articles 3 <sup>1</sup> ; 3 <sup>2</sup> ;11

It is Articles 17 and 18 ECT that confer citizenship of the Union and the right to move and reside freely within the territory of the Member States upon every national of a Member State. However, Article 13 of the CEUA refers to an 'acquisition' (*omandama*) of the right of residence.

Estonia cannot confer rights to move or reside in Estonia, as these rights exist according to the EU primary legislation *per se*. In other words, the use of the word *omandama* (acquiring) is clearly contrary to these Articles of the EC Treaty as the documents and procedures necessary for enjoying the 'right of residence' should not give the right, but should simply *attest* this right.

<sup>157</sup> Please see: <<<https://www.riigiteataja.ee/ert/act.jsp?id=1034665>>>.

<sup>158</sup> 'CEUA'.

<sup>159</sup> Hereinafter 'OLPE', please see: <<<https://www.riigiteataja.ee/ert/act.jsp?id=76376>>>.

<sup>160</sup> Hereinafter 'SBA', please see:

<<<https://www.riigiteataja.ee/ert/act.jsp?id=31960&replstring=33>>>.

<sup>161</sup> Hereinafter 'SFA', please see: <<<https://www.riigiteataja.ee/ert/act.jsp?id=12765603>>>.

<sup>162</sup> Hereinafter 'APA'.

<sup>163</sup> Hereinafter 'ACPA'.

<sup>164</sup> Hereinafter 'CE'.

### 2.2.1. Right of entry

The relevant Articles applicable to the right of entry are set out below:

<b>Directive 2004/38/EC</b>	<b>Article 5</b>
<b>Citizen of European Union Act</b>	<b>Article 10(2)</b>
<b>State Borders Act</b>	<b>Articles 11<sup>1</sup> (4) and (5)</b>

Because of the poor transposition of Article 5 (4) of the Directive, border guards have discretionary power not to allow a Union citizen or his/her family member to enter Estonia when the individuals concerned do not hold the documentation specified in Estonian legislation.

### 2.2.2. Right of residence

<b>Directive 2004/38/EC</b>	<b>Articles 6 and 7</b>
<b>Citizen of European Union Act</b>	<b>Articles 7; 10(1); 7; 13; 20(1) and 21</b>

Union citizens have to register in the Population Register for the right to live in Estonia to be recognised (equivalent Article 7 of the Directive) and can apply for an ID card that can be evidence for the residence. For the Union citizen there is no obligation to apply for the ID card; however it is helpful to prove the residence in Estonia.

Estonia distinguishes between two types of rights; the right to stay (*viibimisõigus*) and the right of residence (*elamisõigus*). In accordance with Article 6 of the Directive, Union citizens can enter Estonia with a valid ID card or a passport (<sup>165</sup>) and reside in Estonia for up to 3 months (<sup>166</sup>). This amounts to a ‘right to stay’ (*viibimisõigus*) (<sup>167</sup>). If the Union citizen wishes to reside longer than 3 months their address must be registered in the Population Registry. This amounts to a ‘right to live’ (*elamisõigus*) (<sup>168</sup>).

Article 11 of the SBA refers to a ‘residence card’ and a ‘residence permit.’ This Act itself does not regulate the issue of residence cards or permits (it refers to the residence cards and permits issued by other Member States), but it provides that the residence card or residence permit issued by another Member State will give a right to access Estonia. This is contrary to Articles 6 and 7 of the Directive as residence cards should be repealed.

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<sup>165</sup> State Borders Act Articles 11<sup>1</sup> (4) and (5)).

<sup>166</sup> CEUA Article 7(1).

<sup>167</sup> CEUA Article 7(1).

<sup>168</sup> CEUA Article 13.

### 2.2.2.1. Registration of the right of residence and stay

<b>Directive 2004/38/EC</b>	<b>Article 6</b>
<b>Citizen of European Union Act</b>	<b>Articles 7 and 10(1)</b>

According to Article 7(1) of the CEUA, a Union citizen can stay in Estonia with a valid travel document or ID card.

Article 7 (2) of the CEUA which concerns the registration of the right to stay (less than 3 months) is poorly formulated. It provides that no later than three months after the date of entry into Estonia, a Union citizen must register his or her residence pursuant to the procedure provided by the Population Register Act. There is a problem of clarity with regard to the right of stay for less than three months as it is not clear that in order to enjoy the right of residence, the person has to register his/her 'living place' before the three months or after; in fact, the wording of the Article gives the impression that the registration can also be done after 3 months. If it is before, then it is contrary to the Article 6 (1) of the Directive because Union citizens have a right to stay up to three months in a Member State without any extra requirements. Further, the information from the website of Citizenship and Migration Board says that in order to recognise the right of temporary residence a Union citizen must contact the local government authority nearest to his/her place of residence and register his/her residence within three months from the date of entering Estonia. This also seems to be the case from practice.

There are no sanctions that can be imposed for failing to register, except for when a Union citizen wants to be joined by a family member who is a third country national. In this case, the address of a 'living place' must be registered and the Union citizen should already enjoy the right to live in Estonia (*elamisõigus*) according to Article 22 (1) (2) CEUA, otherwise the family member cannot enjoy the right of temporary residence. The meaning of the Article is that the third country national family members' right of temporary residence is connected to the status of the Union citizen.

### 2.2.2.2. Right of permanent residence

<b>Directive 2004/38/EC</b>	<b>Articles 16-21</b>
<b>Citizen of European Union Act</b>	<b>Article 40 and 41</b>

Article 41 of the CEUA concerns the registration and documents issued to prove the right of permanent residence. According to this Article, a Union citizen who has lived in Estonia for five consecutive years must submit an application for the registration of the right of permanent residence to the Citizenship and Migration Board (<sup>169</sup>).

Article 40 of the CEUA also provides for a right of permanent residence if the Union citizen has resided in Estonia for 5 consecutive years. However, in some cases there is a right of permanent residence even before the five years have elapsed.

The non-cumulative conditions that must be fulfilled in order to benefit from the right of permanent residence before 5 years is laid down in Article 40 (2) and are the following:

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<sup>169</sup> Hereinafter 'CMB'.

- Their employment or the operation where he or she has been the sole proprietor for the last twelve months must have come to an end; he/she has reached the age of retirement and has resided in Estonia on the basis of the temporary right of residence at least for the last three consecutive years.
- He/she has resided in Estonia for at least the last two consecutive years exercising the right of residence and due to incapacity to work is no longer employed or active in the operation in which he/she is the sole proprietor.
- He/she resides in Estonia on the basis of the right of residence and can no longer be employed due to permanent incapacity for work arising from a work injury or occupational disease.
- He/she resides in Estonia exercising the right of residence and has been employed or has operated as a sole proprietor in Estonia for at least three consecutive years and has commenced employment in another Member State of the European Union, but resides in Estonia and returns to Estonia at least once a week.

This is a “more favourable national provision” (as referred to in recital 29 of the preamble of the Directive) and complies with Article 17 (1) of the Directive.

### **2.3. The definition of sufficient resources**

The relevant Articles containing reference to ‘sufficient resources’ are:

<b>Directive 2004/38/EC</b>	<b>Articles 7 (1) (b)(c); 8 (4); 12 (2) and 13 (2)</b>
<b>Citizen of European Union Act</b>	<b>Articles 7; 13; 20; 36(1); 38(1) and (2)</b>

The amount of sufficient resources is not regulated by the legislation, nor is there is any definition of what can be considered sufficient resources. This determination is at the discretion of the Citizenship and Migration Board official. According to Article 8 (4) of the Directive, Member States may not lay down a fixed amount that can be regarded as sufficient resources, but at the same time it should not be higher than the minimum social security pension paid by the state.

In the application for registration of the right of the permanent residence, the Union citizen simply has to declare that he/she has sufficient resources to live in Estonia; no extra document is asked or required to prove it. This is common practice used to in the process of recognizing the residence rights.

In practice, it is only in the case of doubt or on the basis of complaints from the Ministry of Social Affairs that an investigation as to whether the Union citizen has become an unreasonable burden on the social security system will be initiated. The procedure on how this should be done is not regulated.

The approach in the case of the family reunification of a third country national differs from the approach taken towards a Union citizen. If the Union citizen wants to be joined by his third country national family member, he has to have sufficient resources in accordance with Article 20 of the CEUA.

## **2.4. The situation of (registered) partners**

The relevant Articles applicable to the situation of (registered) partners are:

<b>Directive 2004/38/EC</b>	<b>Articles 2 (2) (b) ; 8 (5) (b) ; 10 (2) (b) and 13 (1) ; 13 (2) (a)(c) <sup>(170)</sup></b>
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Estonia does not recognise registered or unregistered partnerships under Article 2 (2) (b) of the Directive.

The status and rights of partners of Union citizens are not set out in the legislation, however, it could be argued that he/she belongs to the household of the Union citizen as set out in Article 3 (3) of CEUA and, therefore, has a right to join the Union citizen, which is a positive approach. The transposition of Article 3 (2) (b) of the Directive into Estonian legislation is insufficient and unclear because the partners of Union citizens are not recognised as they should be.

## **2.5. Problems encountered by third country national family members**

### **2.5.1. Entry and visas requirements**

<b>Directive 2004/38/EC</b>	<b>Articles 5 (2)-5(4)</b>
<b>Citizen of European Union Act</b>	<b>Article 10(2)</b>
<b>State Fees Act</b>	<b>Article 39 (3) and (4)</b>

There are several incompatibilities or inconsistencies with Estonian law and Article 5 of the Directive. Firstly, there is no accelerated procedure for visas as required by Article 5 (2) of the Directive. Secondly, third country national family members are asked to produce all documents that would normally be required from third country national who are not beneficiaries under the Directive. Thirdly, there is no special provision (as set out in Article 5 (2) of the Directive) that every facility necessary to obtain this visa should be granted. Again, the same rules applicable to all third country nationals are applicable to third country national family members. Fourthly, it is not clear from the CEUA that the visa is free of charge; even the webpage of the Citizenship and Migration Board <sup>(171)</sup> require third country nationals to submit the document that certifies the payment of the state fee. Articles 39 (3) and 39 (4) of the SFA states that family members of Union citizens are exempted from the visa fee. In practice there have been cases when family members of Union citizens have also been asked to submit the proof of payment of the state fee for issuing a visa. The current law (amendments made to the State Fees Act) has transposed the Directive regarding the visa fee, but the practice can be different and even in breach of Estonian law.

<sup>170</sup> Please see Recital 5 of the Directive.

<sup>171</sup> 'CMB'.

### 2.5.1.1. Procedure and documents for residence

#### 2.5.1.1.1. Entry

<b>Directive 2004/38/EC</b>	<b>Article 5 (4)</b>
<b>State Borders Act</b>	<b>Article 11; 11<sup>1</sup> and 11<sup>2</sup></b>

Article 5 (4) of the Directive sets out alternative options for a Union citizen or family members to prove that they have the right to move and reside within the EU. It provides that they can *'prove by any other means that they are covered by the right of free movement and residence.'* In Estonian law transposing the Directive, there are no alternatives to valid travel documents or an ID card. Therefore, this is in breach of the Directive. In the event that valid travel documents or an ID card cannot be provided, entry will be refused at the border as only documents and other requirements stated in Articles 11 -14 of the SBA are acceptable for a right to enter. Anyone who does not have a right to enter will be rejected at the border in accordance with Article 9 (2) of the SBA. As officials at the border apply the Estonian legislation there can be cases of violations or misapplication of Article 5 (4) of the Directive.

#### 2.5.1.1.2. Entry or exit stamps

<b>Directive 2004/38/EC</b>	<b>Article 5 (3)</b>
<b>State Border Act</b>	<b>Articles 11 (7) and 11 (8)</b>

Article 5 (3) of the Directive provides that 'the host Member State shall not place an entry or exit stamp in the passport of family members who are not nationals of a Member State provided that they present the residence card.' In breach of this Article, Estonian law did not explicitly prohibit putting a stamp in the passports of third country national family members. In December new rules were applied at the borders and from March the rules apply also at the airport. The new provisions for not stamping the passports in Article 11 of the SBA entered into force on 21 December 2007 and 30 March 2008. In both cases the change of rules is related to accession of Estonia to Schengen Area.

The law provides that the documents of a family member of the Union citizen who is a third country national are not stamped if the family member shows the residence card or residence permit that is issued by any EU Member State (SBA Art 11 (8)). In other cases the passports of the third country national are stamped according to Schengen Rules (SBA art 11 (7)). The transposition of Article 5 (3) of the Directive is late.

### 2.5.2 Right of residence of family members for more than 3 months

<b>Directive 2004/38/EC</b>	<b>Article 7 (1)</b>
<b>European Union Citizen Act</b>	<b>Articles 7; 13; 20(1) and 21</b>

Article 7 (1) of the Directive has not been transposed as it is set out in the Directive as there are more favourable rules for Union citizens who go to Estonia without third country national family members (<sup>172</sup>).

In particular, Estonia does not require any proof of the status or reason for the stay from the Union citizen if they come without third country national family members. The requirements set in Article 7 (1) of the Directive are not transposed. Estonian legislation gives more favourable treatment to Union citizens than laid down in the Directive. In this case the Union citizen does not need be a student, worker, self-employed person etc. if he comes alone. There are simply no requirements for the Union citizens in the Estonian legislation to fulfil the criteria stated in Article 7 (1) of the Directive in order to enjoy the right to stay or residence in Estonia.

If the Union citizen wishes to be accompanied by his/her third country national family member, the Union citizen has to prove their social status, proof of sufficient resources, and health insurance according to the Health Insurance Act (<sup>173</sup>). The third country national family member must also register their residence within one month from the date of the grant of the right of temporary residence in accordance with Article 23 of the CEUA. In accordance with this Article, it is also necessary to contact the local government authority nearest to their place of residence. The application for a right of temporary residence must be personally submitted by a family member or his/her legal representative to a representation of the Republic of Estonia or to the customer service centre of the CMB (see Articles 24 (1) and 24 (2) CEUA). Also, in addition to the application form, there is a list of data that the third country national family member must present in addition to the ID card or passport, photograph, documents proving the family relationship, evidence of payment of the state fee and confirmation from the Union citizen that they want the family member to join them (these rules are laid down in appendix 3 of the Regulation of Ministry of Interior no 49 from 2006 (<sup>174</sup>)). This situation creates unequal treatment between Union citizens who wish to reside in Estonia.

In general the requirements of the Directive are met, however the breach in the transposition of the Directive lies only in the requirement to pay the visa fee which is also contrary to the relevant Estonian legislation (see point 2.5.1).

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<sup>172</sup> More information can be obtained at:

<<[http://www.mig.ee/index.php/mg/eng/residence\\_permits/european\\_union\\_citizen\\_s\\_right\\_of\\_residence](http://www.mig.ee/index.php/mg/eng/residence_permits/european_union_citizen_s_right_of_residence)>>

<sup>173</sup> RT I 2002, 62, 377.

More information can be obtained at:

<<[http://www.mig.ee/index.php/mg/eng/residence\\_permits/european\\_union\\_citizen\\_s\\_right\\_of\\_residence/the\\_right\\_of\\_residence\\_in\\_estonia\\_of\\_family\\_members\\_of\\_citizens\\_of\\_the\\_eu](http://www.mig.ee/index.php/mg/eng/residence_permits/european_union_citizen_s_right_of_residence/the_right_of_residence_in_estonia_of_family_members_of_citizens_of_the_eu)>>.

<sup>174</sup> Please see: << <https://www.riigiteataja.ee/ert/get-attachment.jsp?id=12770327> >>.



### 2.5.3. Denial of residence or visa

<b>Directive 2004/38/EC</b>	<b>Article 31</b>
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In accordance with Articles 55 and 56 of the Administrative Procedure Act <sup>(175)</sup>, the administrative act and the denial of residence must be justified and presented in writing in order to enable the decision to be reviewed by the Administrative Court. These requirements are not applicable in the case of decisions that are made to reject visa applications. Visa rejections cannot be contested through the courts or in any other procedure as there is no legislation available for this kind of procedure. Negative decisions that have an influence on restricting the right of free movement should be reviewable by some other institution as Article 31 (1) of the Directive also states that ‘the persons concerned shall have access to judicial and, where appropriate, administrative redress procedures in the host Member State to appeal against or seek review of any decision taken against them on the grounds of public policy, public security or public health’.

### 2.5.4. Rights of third country national family members to retain residence

<b>Directive 2004/38/EC</b>	<b>Article 14</b>
<b>Citizen of European Union Act</b>	<b>Articles 20(1); 21; 36-38 and 54(2)</b>
<b>Obligation to Leave and Prohibition to Enter Act</b>	<b>Article 21</b>

According to Article 36 of the CEUA, in the event of the death of the Union citizen the family member will maintain the right to stay in Estonia when he or she has resided in Estonia for at least one year.

In the event of divorce the marriage must have lasted for at least three years in order to maintain the right of residence; however he/she must have sufficient resources or be employed or engaged as a sole proprietor in accordance with Article 38 of the CEUA. The person must declare in the temporary residence application that he/she has sufficient resources.

According to Article 37 of the CEUA, parents can retain their residence rights until the child completes their studies. This is in conformity with the Directive.

### 2.5.5. Sufficient resources in case of the family reunification

<b>Directive 2004/38/EC</b>	<b>Articles 7 (1) (b)(c); 8 (4); 12 (2) and 13 (2)</b>
<b>Citizen of European Union Act</b>	<b>Articles 7; 13; 20; 36(1); 38(1) and (2)</b>

Article 20 of the CEUA provides that a Union citizen may be joined by the family member as long as he/she has sufficient resources. As mentioned above there is no figure provided in

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<sup>175</sup> RT I 2001, 58, 354.

Estonian law in order to make this determination. There is also no different treatment between those who accompany or join the Union citizen.

There is no provision for a list of documents to prove sufficient resources in the case of divorce, annulment of marriage etc. for the third country national family member. Much discretion is left to officials as what evidence is necessary. Article 8 (4) of the Directive does not allow the Member States to lay down a fixed amount which they regard as "sufficient resources", but they must take into account the personal situation of the person concerned. In all cases this amount shall not be higher than the threshold below which nationals of the host Member State become eligible for social assistance, or, where this criterion is not applicable, higher than the minimum social security pension paid by the host Member State. In the case of Estonia, it is unclear which parameters are taken into account in order to assess the sufficient resources clause for the Union citizens and his family members.

### 2.5.6. Access to employment

<b>Directive 2004/38/EC</b>	<b>Article 23</b>
<b>Citizen of European Union Act</b>	<b>Article 2 (4) and 10 (6)</b>

According to Article 10 (6) of the CEUA, third country national family members cannot be employed or self-employed during the initial three month period of stay (*viibimisõigus*). After obtaining the right of residence (after 3 months of stay), the family member can work but has to apply for a work permit. He/she can only be employed or self-employed with a work permit that has to be applied for. Article 23 of the Directive provides that the family members who have a right of residence or a permanent residence shall be entitled to take up employment or self-employment. All those who enjoy the right of residence should have a right to work without any time limits. In other words, the Directive does not link working rights to the duration of stay. As Estonia has introduced three types of residence possibilities 1) right to stay (residence up to 3 months) 2) residence right (more than three months) 3) permanent residence (after 5 years) there is confusion about the rights to work for those staying less than 3 months.

### 2.6. Equal treatment

<b>Directive 2004/38/EC</b>	<b>Article 24</b>
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No equal treatment provision is provided in the CEUA.

Certain provisions of the Directive relating to, for example, equal treatment in healthcare or state allowances are set out in more specific Estonian legislation such as the Health Insurance Act (*Ravikindlustuse seadus*)<sup>176</sup> or State Family Allowance Act (*Riiklike peretoetuste seadus*)<sup>177</sup> etc. In this regard, there is discrimination between Union citizens as those who are not joined by third country national family members have more favourable rules. Union citizens going alone to Estonia do not need to present any proof of health insurance or income, nor in practice need to register their address as there are no sanctions for not doing so.

<sup>176</sup> State Gazette RT I 2002, 62, 377, last amendment made into the legislation in 11.12.2008.

<sup>177</sup> Sate Gazette RT I 2001, 95, 587, last amendment made into the legislation in 09.12.2008.

It is necessary to note that the Constitution of Estonia provides a clause of equal treatment, but this is not sufficient to guarantee the rights of Union citizens or their family members, therefore, it can be argued that Estonia is in breach of Article 24 of the Directive.

On 1 January 2009, the Equality Act (*Võrdse kohtlemise seadus*)<sup>(178)</sup> came into force. As this study was conducted in 2008, the implications of this Equality Act which mainly transposes the Directives 2000/43/EC<sup>(179)</sup> and 2000/78/EC<sup>(180)</sup> on equal treatment have not been examined

## **2.7. Grounds for expulsion and procedural safeguards**

### **2.7.1. Safeguards against expulsion and public health**

<b>Directive 2004/38/EC</b>	<b>Articles 28 and 29</b>
<b>Citizen of European Union Act</b>	<b>Articles 8(1); 16(1); 16(1) and 54(3)</b>
<b>Obligation to Leave and Prohibition to Enter Act</b>	<b>Articles 11(3); 31(3); 1(1) and 29<sup>1</sup> (1)</b>

It is not clear which rules are applicable if the public health restriction is utilised against a Union citizen or his/her family member. The CMB has a large amount of discretion to decide whether to take a decision to expel a person on the grounds of public health or security<sup>(181)</sup>. There is a list of diseases laid down by the WHO in the Obligation to Leave and Prohibition to Enter Act Article 29<sup>1</sup> (OLPE) that can form a basis for restricting entry on the grounds of public health. When the case comes before the CMB, it will work with doctors and experts from the Ministry of Social Affairs to determine if the person is or might be a threat to public health.

At present, there have been no such cases before the CMB so it is not clear how Article 29 of the Directive will be implemented in practice in Estonia. It is likely that the first case of expulsion of a Union citizen will be on the grounds of public security after the person is no longer imprisoned<sup>(182)</sup>. The same piece of legislation regulates the expulsion on the grounds of health or security.

## **2.8. Miscellaneous**

### **2.8.1. Right of exit**

<b>Directive 2004/38/EC</b>	<b>Article 4 (1)</b>
<b>Constitution of Estonia</b>	<b>Article 35</b>

The right of exit is one of the constitutional rights set out in Article 35 of the Constitution of Estonia.

<sup>178</sup> State Gazette RT I, 23,12,2008

<sup>179</sup> OJ L 180, 19.7.2000.

<sup>180</sup> OJ L 303, 2.12.2000.

<sup>181</sup> Information based on the interview conducted in CMB with the official on 07.08.2008.

<sup>182</sup> Information based on the interview conducted in CMB with the official on 07.08.2008.

## 2.9. Administrative services

The Ministry of the Interior and the Ministry of Foreign Affairs have been responsible for the transposition of the Directive into Estonian law. The Ministry of Foreign Affairs and the Embassies are responsible for issuing visas to third country national family members of Union citizens. The CMB has decision-making powers in relation to residence rights, expulsion and the supply of ID cards. The CMB has a large margin of discretion in relation to the provision of residence right and expulsion orders. In fact, no specific rules have been enacted on how to react in the case of a suspected case of threat to public health or security (<sup>183</sup>).

The administrative service for Union citizens exercising their free movement rights can be considered, depending on the service in question, good or satisfactory. Application forms are available in Estonian, English or Russian. Applicants can also obtain assistance from officials in order to fill in the applications. If some of the documents that must be provided are missing, the CMB will notify the applicant and allow time for the documents to be submitted. Applications for a visa are available online (<sup>184</sup>) and the application for the residence and work permit can be submitted by post, there is web page <<[www.mig.ee](http://www.mig.ee)>> where some information can be obtained about the rules and also application forms can be downloaded and printed out. Most of the offices for Union citizens are opened Mon-Fri 9.00-18.00 and is closed every 4<sup>th</sup> Thursday.

There is no NGO or other alternative office to go to ask for the information. One organisation called the Legal Information Centre for Human Rights that gives consultation to third country nationals is sometimes contacted; however EU nationals and their family members are not on their priority list. They provide services for third country nationals and the Estonian Russian speaking community.

The competence of the officials at the desk of the CMB depends on the particular branch office of CMB. Some contradictory information might be given concerning EU Law and the CEUA. They are only able to answer very general questions that are also available in the web page of the CMB or on leaflets that are available in English at the CMB office.

## 2.10. Conclusions

In many respects Estonia complies with the Directive. Some inconsistencies have been identified in the transposition of the Directive. In general, these concern unequal treatment between Union citizens, registration requirements and ID cards. Access to employment for third country national family members seems to be a problem that needs to be addressed. The treatment of third country nationals in the Embassies and at the borders should receive more attention and maybe supervision. As identified concerning expulsion on the ground of public health or security, the practice on how these issues will be implemented is not clear. Also there are no concrete definitions as to what is public health or security. This results in much discretion for officials to issue expulsion orders on these grounds. As the determination process of sufficient resources is not in place it can lead to rejections of the applications of third country national family members to settle with the Union citizen in Estonia.

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<sup>183</sup> Information based on the interview conducted with the official in CMB on 7 August 2008.

<sup>184</sup> Please see:

<<<https://eelviisataotlus.vm.ee/est/page/0/158s6suepuoqa0yggrqmiy9kq2ehw6d43bn0u849sjptaehwgt54sflks7gw2ayflidwiw6yf635dpbxk6fqhr00p6mh7bnykr>>>.

### 3. FRANCE

#### 3.1. Transposing measure(s)

1	<b>Law nr 2006-911 of 24 July 2006 on immigration and integration</b> <sup>(185)</sup>
2	<b>Ministerial Decree nr 2007-371 of 21 March 2007 on the right to residence in France of citizens of the European Union, of nationals of other European Economic Area member states and of the Swiss Confederation and the members of their family</b> <sup>(186)</sup>

The Directive was transposed into French law by Law nr 2006-911 of 24 July 2006 on immigration and integration <sup>(187)</sup> and Ministerial Decree nr 2007-371 of 21 March 2007 on the right of residence in France of citizens of the European Union, of nationals of other European Economic Area Member States and of the Swiss Confederation and the members of their family <sup>(188)</sup>. Both of these Acts amended the Code on the entry and the stay of foreigners and the right of asylum <sup>(189)</sup> – specifically the parts of the Code which concern EU/EEA nationals and members of their family.

Law nr 2006-911 is of a legislative nature and provides only the general framework and principles. It amended the Legislative Part of the Code, Book I, Title II (i.e. Articles L121-1 to L122-3). The Ministerial Decree nr 2007-371 has a regulatory purpose and provides more detailed implementation. It amended Regulatory Part, Book I, Title II (i.e. Articles R121-1 to R122-5).

In addition, Law nr 2007-1631 of 20 November 2007 on the control of immigration, integration and asylum <sup>(190)</sup> brings some further but only marginal amendments.

It is necessary to draw attention to the missing ministerial ‘arrêté’ <sup>(191)</sup>. In fact, Decree nr 2007-371 and Article R 121-5 of the Code which relate to the certificate of registration, provide that an ‘arrêté’ will define the mode of certificate of registration. This ‘arrêté’ has still not been published, which has caused some significant difficulties in practice – please see section 3.10.1 therefore, it could be considered that the transposition of the Directive is not yet complete.

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<sup>185</sup> Please see:

<<[http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=6B901AE4A834D57228CECF64734A0E.tpdjo15v\\_3?cidTexte=JORFTEXT000000266495&dateTexte=20060726](http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=6B901AE4A834D57228CECF64734A0E.tpdjo15v_3?cidTexte=JORFTEXT000000266495&dateTexte=20060726)>>.

<sup>186</sup> Please see:

<<[http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=39BC7EE9D426A01A200745DAF6A6BF89.tpdjo10v\\_1?cidTexte=JORFTEXT000000822461&idArticle=&dateTexte=20070323](http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=39BC7EE9D426A01A200745DAF6A6BF89.tpdjo10v_1?cidTexte=JORFTEXT000000822461&idArticle=&dateTexte=20070323)>>.

<sup>187</sup> Published in the Official Journal of the French Republic (JORF) of 25 July 2006, with rectification in the JORF of 16 September 2006.

<sup>188</sup> Published in the JORF of 22 March 2007.

<sup>189</sup> The *Code de l'entrée et du séjour des étrangers et du droit d'asile* entered in force on 1 March 2005 – see latest consolidated version of 5 January 2009. Hereinafter ‘the Code.’

<<[http://www.legifrance.gouv.fr/affichCode.do;jsessionid=D55F1C486DC4142913F6593764776E0D.tpdjo04v\\_3?cidTexte=LEGITEXT000006070158&dateTexte=20090128](http://www.legifrance.gouv.fr/affichCode.do;jsessionid=D55F1C486DC4142913F6593764776E0D.tpdjo04v_3?cidTexte=LEGITEXT000006070158&dateTexte=20090128)>>.

<sup>190</sup> Published in the JORF 270 of 21 November 2007.

<sup>191</sup> An *arrêté* is lower in the hierarchy of ministerial acts and would not amend the Code. It is merely intended to instruct the administration for the practical implementation of specific articles.

### 3.2. Right of entry and residence

The relevant Articles applicable to the right of entry and residence are set out below:

<b>Directive 2004/38/EC</b>	<b>Articles 4 -15</b>
<b>Code on the entry and the stay of aliens and the right of asylum</b>	<b>Articles L121-1 to L121-3; L511-1 to L513-4 and R121-1 to R121-16</b>

#### 3.2.1. Right of entry

The relevant Articles applicable to the right of entry are set out below:

<b>Directive 2004/38/EC</b>	<b>Articles 5</b>
<b>Code on the entry and the stay of aliens and the right of asylum</b>	<b>Articles R121-1 and R121-2</b>

(no issues identified)

#### 3.2.2. Right of residence

The relevant Articles applicable to the right of residence are set out below:

<b>Directive 2004/38/EC</b>	<b>Articles 6 and 7</b>
<b>Code on the entry and the stay of aliens and the right of asylum</b>	<b>Articles R121-3; L121-1 and L121-3; R121-4 and R121-6</b>

##### 3.2.2.1. Registration with the relevant authorities

<b>Directive 2004/38/EC</b>	<b>Article 8</b>
<b>Code on the entry and the stay of aliens and the right of asylum</b>	<b>Articles L121-2 par. 1</b>

France has taken advantage of the option for Member States set out in Article 8(1) of the Directive to require registration with the relevant authorities for residence for over three months. In France, this would be with the '*mairies*' (local town halls in France). However, the requirement that registration takes place 'within three months of entry' (<sup>192</sup>) is in breach of Article 8(2) of the Directive which provides that registration is not required before three months.

Union citizens and their third country national family members who fail to register at the local town hall are subject to fines ranging from 450€ to 750€ (see further below) and are presumed to have been in France for less than three months (<sup>193</sup>). This presumption could have the effect of depriving the persons concerned of their rights which are residence-based (such as welfare benefits) and could lead to a breach of the equal treatment principle. The conformity of the

<sup>192</sup> Article L121-2, par. 1.

<sup>193</sup> Please see previous note.

presumption with the principle of proportionality of sanctions set out in Article 8 (2) of the Directive can also be questioned.

In fact, in a debate in the Senate, the rapporteur acknowledged that the presumption borders on an infringement of Community law (<sup>194</sup>), but supported it as the solution to the problem that it is ‘in practice impossible to determine the date of entry in France’ and that expulsion would be clearly disproportionate if the conditions for the right of residence are met. It is submitted that this argument is not convincing because French nationals returning to France from abroad would be allowed to prove their date of arrival by any means at their disposal, if necessary. Hence, these sanctions are also incompatible with the obligation to impose *non-discriminatory sanctions* as set out in Article 8 (2) of the Directive.

### 3.2.2.2. The registration certificate

<b>Directive 2004/38/EC</b>	<b>Article 8</b>
<b>Code on the entry and the stay of aliens and the right of asylum</b>	<b>Article R121-5</b>

Article R121-5 of the Code expressly provides that possession of a registration certificate cannot be a pre-condition for the exercise of a right or the accomplishment of another administrative formality; however it also states that the certificate ‘*does not establish* the right of residence.’ This means that the certificate cannot be used by its holder as formal evidence of their right. In the latter case, this restriction is nowhere to be found in the Directive. On the contrary, one may argue that, given that before delivering the certificate local authorities may request proof that the conditions of the right of residence are met, it was the authors of Directive’s intention that the registration certificate proves that these conditions are met. In any event, the fact that the registration certificate issued by the town hall does not certify anything more than the fact that one has registered creates a legal vacuum because prefectures (the local representation of the central government – the Ministry of Interior) normally do not deliver residence cards (see below).

### 3.2.2.3. The ‘residence title’

<b>Directive 2004/38/EC</b>	<b>Articles 8</b>
<b>Code on the entry and the stay of aliens and the right of asylum</b>	<b>Articles L121-2, par. 2, and R121-10 to R121-13</b>

The Directive abolishes residence cards for Union citizens except in the case of a permanent right of residence as set out in Article 19. However, Article L121-2, par. 2 of the Code mentions the ‘residence title,’ a document which Union citizens may choose to ask for *on a voluntary basis*, even for periods of residence that do not exceed five years. Although there is no evidence that a failure to request such a document will have an affect on residence rights, it is clear that the voluntary nature of this law causes confusion, with many services unaware that residence ‘permits’ or ‘cards’ (the two wordings had been used interchangeably) are no longer required for Union citizens. This confusion is exacerbated by the retention of ‘residence cards’ for Union citizens subject to post-enlargement transitional measures under certain conditions.

<sup>194</sup> Report nr 470 (2006-2007) by Mr François-Noël Buffet for the Committee of Laws, tabled on 26 September 2007 - ‘*Ce dispositif est sans doute à la limite de ce que le droit communautaire permet.*’

It is interesting to observe that the conditions for issuing the voluntary ‘residence title’ are exactly the same as those foreseen in the Directive for issuing a registration certificate (<sup>195</sup>). This should be combined with the observation that the Code specifies that the registration certificate does not establish the right of residence. There is a risk that, under the guise of voluntary ‘residence titles’, the French legislator has simply kept the system of residence cards which, before 2004, was systematically required to establish legal residence in France.

This shift from registration certificate to ‘residence title’ results in the concern that contrary to what is set out in Article 8 (2) of the Directive on the immediate issue of registration certificates, the Code does not provide for the immediate issue of registration certificates (<sup>196</sup>). The national expert’s impression is that France wants to continue to entrust the responsibility of checking that the conditions of the right of residence are met to the prefectures as opposed to the local town halls, probably because the latter are not trained to deal with immigrants.

#### 3.2.2.4. General provisions concerning residence documents

Directive 2004/38/EC	Article 25
Code on the entry and the stay of aliens and the right of asylum	-

Article 25 (2) of the Directive provides that residence documents must be issued free of charge or at a cost not exceeding that imposed on nationals for the issuing of similar documents. This is not contained in the Code, although the information portal [service-public.fr](http://service-public.fr) indicates that the documents are free of charge (<sup>197</sup>). Clarification is necessary.

#### 3.2.2.5. Sanctions for failure to follow procedures

Directive 2004/38/EC	Article 36
Penal Code	Articles R621-1 and R621-2

The fines as defined by the Penal Code range from €450 to €750 for Union citizens who fail to register (‘amende de classe 4’) to 750€ to 1500€ for third country nationals who fail to request or renew a residence card or permanent residence card (‘amende de classe 5’) (<sup>198</sup>).

Class 5 fines are the most serious category of fines for contraventions (the lowest level of offences below ‘délits’ and ‘crimes’). The Penal Code leaves authorities a margin of discretion to determine the amount of the fine within these limits. It is not possible to make a comparison between fines imposed on French nationals for similar offences because they are not subject to an obligation to request or renew an ID card or a registration document (although, it would be in their best interest to do so for administrative reasons!). However, it is clear that these fines are excessive since these procedures are not in themselves pre-conditions of the existence of residence rights. Nevertheless, it is interesting that the same level of fines are applied under the

<sup>195</sup> Article R121-10 to 13.

<sup>196</sup> See previous note.

<sup>197</sup> Please see <<[www.service-public.fr](http://www.service-public.fr)>> then choose > *Accueil particuliers* > *Europe* > *Citoyens européens en France* > *Citoyens européens : résider en France* >.

<sup>198</sup> Articles R621-1 and R621-2.



‘infractions à la police des étrangers’ without establishing whether the third country national may be a beneficiary under the Directive.

### 3.2.2.6. Permanent residence

Directive 2004/38/EC	Articles 16-21
Code on the entry and the stay of aliens and the right of asylum	Articles L121-1 and L121-2; R122-1 to R122-5 and R121-8

Concerning the permanent right of residence, Article 17 of the Directive lists cases where the condition on the length of residence is lifted for the worker who has ceased their activity in France, if their spouse is French or has lost French nationality with marriage. One of these cases has not been included in the Code (<sup>199</sup>), i.e. where the professional activity ceases due to permanent work incapacity.

In defining the right of permanent residence, Article L122-1 to 3 of the Code does not expressly provide that the conditions for the right of residence for more than three months no longer apply, although this may be deduced from the indication in Article L122-1 that the right of residence is acquired ‘unless their presence represents a threat to public order’. Further on the information portal service-public it is stated that they no longer apply (<sup>200</sup>). Clarification is needed.

Article 19 (2) of the Directive provides that the document certifying permanent residence must be issued ‘as soon as possible.’ This phrase is not contained in French law implementing the Directive (<sup>201</sup>).

Under the Code, the document that must be issued to attest the right of residence is a ‘residence card.’ For both Union citizens and third country national family members, the phrase ‘EC – permanent stay’ will be inserted onto the card (<sup>202</sup>) whereas according to Article 19 of the Directive a ‘document certifying permanent residence’ must be issued to Union citizens and according to Article 20, a ‘permanent residence card’ must be issued to third country nationals. By giving the document a different name than that foreseen in the Directive, the Code fails to ensure that it will be recognised as *certifying* the permanent residence.

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<sup>199</sup> Article R122-4, section I, last paragraph.

<sup>200</sup> Please see <<[www.service-public.fr](http://www.service-public.fr)>> then choose > Accueil particuliers > Europe > Citoyens européens en France > Citoyens européens : résider en France > Citoyens européens : droit au séjour des "actifs" > Séjour des actifs : citoyens de l'UE (hors Bulgarie et Roumanie), de l'EEE et suisses > Droit au séjour permanent : « A l'issue de cette période, il n'a plus besoin de justifier les conditions de son séjour (statut de travailleur ou non). »

<sup>201</sup> Article R122-1.

<sup>202</sup> Article R122-1 and 2.

### 3.3. The definition of sufficient resources

The relevant Articles containing reference to ‘sufficient resources’ are:

<b>Directive 2004/38/EC</b>	<b>Articles 7 (1) (b); (c); 8 (4); 12 (2) and 13 (2)</b>
<b>Code on the entry and the stay of aliens and the right of asylum</b>	<b>Articles L121-1, 2°; L121-1, 3°; R121-4 (first four paragraphs) and R121-8</b>

#### 3.3.1. Students

<b>Directive 2004/38/EC</b>	<b>Article 7 (1) (c)</b>
<b>Code on the entry and the stay of aliens and the right of asylum</b>	<b>Articles L121-1, 3°</b>

Article 7 (1) (c) of the Directive provides that students may establish that they have sufficient resources through a declaration or by such equivalent means as they may choose. This has not been fully transposed in the Code. This is only reflected in the Article concerning the voluntary application as student for a residence title, but not in the Article laying down the conditions for having the right of residence as a student over three months<sup>(203)</sup> and therefore to register under these circumstances with the local authorities – see the consequences in administrative practice in 3.10.2. this number may have changed.

### 3.4. The situation of (registered) partners

The relevant Articles applicable to the situation of (registered) partners are:

<b>Directive 2004/38/EC</b>	<b>Article 2 (2) (b) ; 8 (5)(b);10 (2)(b);13 (1) and 13 (2)(a)(c)<sup>(204)</sup></b>
<b>Code on the entry and the stay of aliens and the right of asylum</b>	<b>-</b>

The Directive contains reference in Article 2 (2) (b) to registered partners as ‘family members’ of the Union citizen who can benefit from the rights contained in the Directive and Article 3 (2) (b) contains reference to non-registered partners who are entitled to have their entry and residence rights facilitated even if they do not qualify as ‘family members.’ These two provisions are not contained in the Code<sup>(205)</sup>.

This is surprising since French law acknowledges registered partnership in the form of the ‘partenariat civil de solidarité’ (PACS) which produces rights and obligations similar to marriage in many respects, and non-registered partnerships through a ‘certificat de vie commune ou de concubinage’ issued by certain town halls (setting out that the partners live together), irrespective of whether the couples are of the opposite or same-sex.

<sup>203</sup> Article L121-1, 3°.

<sup>204</sup> Please see Recital 5 of Directive 2004/38/EC.

<sup>205</sup> Article L121-1 of the Code on the entry and the stay of aliens and the right of asylum.

Further, the information portal [service-public.fr](http://service-public.fr) only mentions ‘spouse’ and not ‘partner’ (whether in registered partnership or not, same sex or not) in relation to family rights for Union citizens (<sup>206</sup>), whereas it does mention the PACS and the ‘*certificat de vie commune ou de concubinage*’ in other sections.

### **3.5. Problems encountered by third country national family members**

#### **3.5.1. Residence cards**

The relevant Articles applicable to Residence cards are:

<b>Directive 2004/38/EC</b>	<b>Articles 9-11</b>
<b>Code on the entry and the stay of aliens and the right of asylum</b>	<b>Article L121-3; R121-14 to R121-16</b>

Family members who are third country nationals are requested to apply for a residence card if they are more than 18 years of age (or 16 years of age for those intending to work). According to Article R121-14, par. 1 of the Code, the application must take place ‘within two months’. This is in breach of Article 6 of the Directive which provides that Union citizens and their family members (including third country nationals) have a right of residence for up to three months with no formalities other than a valid passport or identity card (for Union citizens). This is confirmed by Article 9 (2) of the Directive which provides that the deadline for submitting an application for a residence card (for a stay of more than three months) may not be less than three months from the date of arrival.

On 19 May 2008 on referral from an NGO SOS Racisme, the Conseil d’Etat repealed Article R121-14, par. 1 on the grounds that it is in breach of Article 9 of the Directive. To date however, Article R121-14, par. 1 has not been revised accordingly. Even if this Article ceases to be applicable (the latest version of the Code indicates in a footnote that it has been invalidated by the Conseil d’Etat), it is a matter of legal certainty that this revision takes place.

#### **3.5.2. Issue and renewal of residence card**

<b>Directive 2004/38/EC</b>	<b>Article 9-11</b>
<b>Code on the entry and the stay of aliens and the right of asylum</b>	<b>Articles R121-14 to R121-16</b>

Article 10 (1) of the Directive provides that a certificate of application for a residence card for third country national family members must be issued ‘immediately.’ Article R121-15, par. 1 of the Code simply says that it must be issued.

According to Article R121-14, par. 5 of the Code, for renewal of their residence card, family members who are third country nationals are required to apply ‘two months at least before expiry’ of the previous card (and not just ‘before expiry’ as set out in the Directive). The same rule applies, when if they eventually acquire a permanent right of residence; according to Article R122-2, par. 1, of the Code, they must request their first permanent residence card two months

<sup>206</sup> Please see <<[www.service-public.fr](http://www.service-public.fr)>>, then choose > Accueil particuliers > Europe > Citoyens européens en France > Citoyens européens : résider en France > Citoyens européens : installer sa famille.

before expiry of the five year continuous residence (and not just ‘before the expiry of the previous residence card’ like foreseen in the Directive).

The breach of the Directive extends to the renewal of the permanent residence card. According to Article R122-2, par. 2 of the Code, it must be requested two months before expiry (whereas the Directive provides that it is automatically renewable every ten years). It can be presumed that the intention is once again to verify whether the conditions for the right of (permanent) residence are met, given that the renewal is not ‘automatic’ (as provided by the Directive).

The general rule contained in the Directive, that possession of residence documents (in general) cannot be made a condition to the exercise of rights or the accomplishment of administrative formalities, is repeated separately in all relevant articles of the Code, but *not* in those concerning family members who are third country nationals<sup>(207)</sup>. The Directive makes no such distinction.

In the conditions for delivering a residence title (for a Union citizen) or card (for third country national family members), a justification (*justificatif*) of the right of residence of the Union citizen joined or accompanied is requested<sup>(208)</sup> (instead of just that person’s registration certificate as in the Directive). It is not clear from the text what is meant by this. For instance, does it have to be the residence title, and if so, this would contradict its optional character. The information available suggests that it can be any factual evidence of the right to stay of the citizen joined or accompanied (e.g. an employment contract). Therefore, given the circumstances surrounding the implementation of the certificate of registration (see section above) the vague language is to be seen rather as facilitating things. Still, it does not offer legal certainty and could as well service more restrictive interpretation by the authorities.

### 3.6. Equal treatment

The relevant Articles applicable to equal treatment are:

<b>Directive 2004/38/EC</b>	<b>Article 24</b>
<b>Code on the entry and the stay of aliens and the right of asylum</b>	<b>(Not within the scope of the Code)</b>

(no issues identified, but see 3.9)

### 3.7. Grounds for expulsion and procedural safeguards

#### 3.7.1. Safeguards against expulsion

<b>Directive 2004/38/EC</b>	<b>Articles 14 (3), 14 (4) and 15</b>
<b>Code on the entry and the stay of aliens and the right of asylum</b>	<b>Article R121-4, last paragraph and L.511-1 to L513-4</b>

<sup>207</sup> Article R121-14 and R122-2.

<sup>208</sup> Article R121-13 and 14.

The Directive states that the right of residence can be retained as long as the conditions remain fulfilled. This has been transposed through wording that is somewhat ambiguous in Article L511, I, par. 2 of the Code. This Article provides that non-nationals (including Union citizens and their family members) can be expelled, when ‘not able to justify meeting the conditions of the right of residence’. Under the Directive, Union citizens and their family members should be able to establish their right of residence even without a residence document – which is just evidence but not a condition of that right – through concrete examination of the personal circumstances. In light of the current situation in France, where registration certificates are not yet in place and residence titles are maintained on an optional basis with various actors nevertheless still requiring them, in the interests of legal certainty this should be specified.

Also, the Code does not contain the explicit provision of Article 14 (3) of the Directive that recourse to social assistance does not automatically lead to expulsion. Once again, this rule is found in unofficial information on the public on service-public.fr; however this is not sufficient to guarantee legal certainty. Moreover, the Code provides that third country nationals may be expelled because they have worked in France without authorisation during the first three months of presence in the country. Apparently this is considered a matter of public order. Likewise, for the application of fines no distinction is made for family members of a Union citizen covered by the Directive <sup>(209)</sup>.

**3.7.2. Procedural safeguards**

The relevant Articles setting out procedural safeguards are set out below:

Directive 2004/38/EC	Articles 30-33
Code on the entry and the stay of aliens and the right of asylum	Articles L121-4, L512-1 to L513-4; L522-1 to L523-5, and L541-1 to 4

Regarding limitations, reference is made in the Code only to ‘public order’ <sup>(210)</sup>; there is no indication of restrictions based on public security or (more surprising) on public health. ‘Public order’ seems to be all-inclusive within the meaning of the Code.

There are three different expulsion procedures; an order to leave the country; escort to the border and expulsion (*stricto sensu*) with varying procedural safeguards. Concerning procedural safeguards, we spotted for the public policy exceptions in the Code, that the motivation of the decision to expel could be contrary to the Directive i.e. in the event of an order to leave the territory (unless an imperious reason of public order is invoked, this is the most commonly used) the wording of the relevant Article seems to create an obligation of motivation only for Union citizens, and not for third country nationals, including family members of a migrant Union citizen <sup>(211)</sup>. The information portal service-public.fr confirms this by explicitly stating: ‘the obligation to leave the territory (for third country nationals) needs not be motivated’ (whereas the motivation is clearly required in the description of the other two procedures).

The possibility of expulsion as a complementary penalty or measure to detention is contemplated in Article L521-2 of the Code and, here too, it applies regardless of nationality, to all foreigners

<sup>209</sup> Article L511-1, II, 8° (the article of the *Code du travail* referred to there is about the work permit requirement) and L511-4, last par.

<sup>210</sup> Article L121-4. Note: the restriction based on public order is reflected in each Article defining the right of residence, as exception to this right, and detailed in other specific Articles.

<sup>211</sup> Please see note 31.

residing on the French territory, without consideration of the special rules for Union citizens and members of their family under the Directive.

Contrary to Article 32 (1) of the Directive, there is no sign in the French legislation of the rules for the beneficiaries of the Directive that, in case of expulsion, a return to France is possible after three years, nor that the expulsion order is not to be implemented if two years have elapsed after the order was taken, as set out in Article 33 (2) of the Directive.

### **3.8. Miscellaneous**

#### **3.8.1. The situation of Romanian and Bulgarian citizens**

France had opted for the application of transitional measures (please see Chapter IV.7.) with regard to the so called A8 countries of 2004 and eventually it extended the same measures for Bulgaria and Romania in 2007. In the meantime, it had introduced flexibility (an accelerated procedure) in the system of the delivery of work permits for jobs in a list <sup>(212)</sup> of sectors where the migrant workforce was welcome. In spring 2008, France announced that it would no longer apply transitional measures on access to employment from 1 July 2008 for nationals of EU 10 enlargement countries, but maintained them for Bulgarian and Romanian workers. Therefore the following observations are applicable only to them.

Residence cards have been maintained in France for Bulgarian and Romanian citizens if they wish to exercise a professional activity, even on a self-employed basis or as service providers established in these countries who wish to temporarily offer services in France (even for a stay not exceeding three months). Bulgarian and Romanian citizens are obliged to request a residence card at the same time that they request a work permit for employed work or apply to register as self-employed workers. The card is issued to employed workers only after they have obtained the work permit. The residence card indicates access to ‘all professional activities’ (if a work permit is granted) or to ‘all professional activities except employed’ <sup>(213)</sup>. It is worth noting, moreover, that according to Article R122-1, par.2 and R122-2, par. 3 of the Code, even when they eventually acquire a right of permanent residence, Bulgarians and Romanians will still be required to request a (in this case ‘permanent’) residence card if they wish to exercise or continue exercising a professional activity, with the same sanctions if they fail to make that request.

This is clearly not in conformity with the transposition of Community acquis under the Accession Treaties. The transitional arrangements do not provide a basis for the exceptional treatment, since they concern access to employed work alone (and not self-employed work, and even less the right of residence).

This situation, combined with the negative symbolic dimension of calling the document a ‘residence card’ – like for family members who are third country nationals, under the Directive – is not a good sign for Bulgarian and Romanian citizens who could understandably complain that they are treated like ‘second class Union citizens’.

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<sup>212</sup> The list was established by the Ministry of Economy, Industry and Employment.

<sup>213</sup> Article L121-2, par. 3 to 5 and R121-16.

In this regard, it is useful to flag the following judicial decision (<sup>214</sup>), which shows that as far as the implementation of the Directive is concerned, discrimination against Union citizens from New Member States, is not marginal in the French legislator's approach. On 19 May 2008 on referral from a platform of NGOs active in the protection of migrants rights, the Conseil d'Etat (<sup>215</sup>) partly repealed the *circulaire* NOR/INT/D/06/00115/C of 22 December 2006 'on the conditions of admission to stay and expulsion of Romanian and Bulgarian national as of 1st January 2007'. Cancelled were the parts which created special conditions for the right to stay of Bulgarians and Romanians (whether for less or more than three months) and for their obligation to leave the territory which were not foreseen in the French law, and which were not compatible with their rights under the Directive.

### **3.9. National legislation that interferes or could interfere with the Directive**

#### **3.9.1. The Law nr 2007-290 of 5 March 2007 on the enforceable right to housing and different measures to enhance social cohesion (<sup>216</sup>)**

This law touches upon the situation of people coming to France and remaining as job-seekers. In particular, Article 63 clarifies the sufficient resources condition with regard to inactive citizens. It provides that a Union citizen who goes to France to look for work and remains in France for that purpose, and his family members, are not entitled to minimum revenue (*revenue minimum d'insertion*), are excluded from the system of universal health cover (*couverture maladie universelle*) and cannot claim non-contributory family benefits (<sup>217</sup>). These changes are officially presented as a response to social rights forum-shopping for migrant job-seekers and as mere implementation of the Directive.

Indeed they appear to be in conformity with Article 24 (2) of the Directive, which says: 'the host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence or, where appropriate, the longer period provided for in Article 14(4)(b)' i.e. for Union citizens who enter the territory of the host Member State in order to seek employment, and their family members, who may not be expelled for as long as the Union citizens can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged. Nevertheless, one may wonder if Article 37 of the Directive on 'more favourable national provisions' is not being infringed. This Article provides that Member States may not, in implementing the Directive, lower their existing standards of protection for the beneficiaries to possibly less protective rules in the Directive. It seems that this is precisely what France is doing – judging by the official motivation of the changes – concerning inactive foreign Union citizens who have not yet acquired permanent resident status.

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<sup>214</sup> Case 301813. The jurisprudence of the Conseil d'Etat can be found in <<[www.legifrance.gouv.fr](http://www.legifrance.gouv.fr)>>, under '*jurisprudence administrative*'.

<sup>215</sup> The highest French administrative tribunal.

<sup>216</sup> Published in JORF 1127 of 26 November 2003.

<sup>217</sup> Article 63 of the Law, reflected in Article L.262-9-1 of the *Code de l'action sociale et familiale* and Article L.380-3 and L.524-1 of the *Code de la sécurité sociale*.

### **3.9.2. The Social Security Directorate's circulaire nr DSS/DACI/2007/418 of 23 November 2007 <sup>(218)</sup>**

The circulaire goes a bit further than the law mentioned above to clarify certain aspects regarding access to CMU (universal sickness cover). The amendments to French legislation concerning access to CMU are presented as being necessary for the implementation of the Directive, since CMU is based on the condition of continuous (“stable”) legal residence in France. In substance, the Directive is invoked as the reason for denying (after a transition period) access to CMU to foreign inactive Union citizens going to France in the future or who have arrived recently, as well as to other categories of persons (students and inactive), unless they have acquired a permanent right of residence.

Taking into account the position of the European Commission on this matter (communicated to France so far only on Union citizens and members of their family who have acquired a right of permanent residence), France has dropped its initial intention to exclude from the CMU those who have acquired a permanent right of residence, which was flagrantly in violation of the Directive. However, to my knowledge, the Commission is still examining if the remaining restrictions are compatible with the equal treatment principle enshrined in the Directive in Article 24.

### **3.10. Administrative services**

#### **3.10.1. The vacuum created by the administration**

There is a combination of several difficulties that can be mentioned:

- Firstly the problem of the missing ministerial ‘arrêté’ – see section 3.1. In the absence of the ‘arrêté’, *mairies* have not been informed about the provisions in the Code concerning the registration certificate and therefore do not deliver this document <sup>(219)</sup>. It is arguable that it is not simply ignorance of the new legislation on their part, since the Code’s rules provide, concerning the issue of the registration certificate, that they will not apply until the ministerial decree brings the details.
- In parallel to the situation above, prefectures (the authority responsible for delivering residence titles for Union citizens at the local level) are apparently turning down these applications on the grounds that they are no longer contemplated for Union citizens (except for those from countries subject to transitional measures). This is correct, if standing to a faithful implementation of the Directive, instead it can be noted that the Code rules provide for residence titles that may be requested on a voluntary basis. For a reason the national expert cannot explain, the prefectures are ignoring the possibility of a voluntary request. A possible explanation could be that residence cards were already abolished in France since as early as 1 January 2004 <sup>(220)</sup>.

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<sup>218</sup> The information contained in this section was gathered through handling an important number complaints from users of the Citizens Signpost Service (see note 39) and liaising with the Commission for instructions about its position and information about its action.

<sup>219</sup> This observation is based on evidence of many enquiries or complaints handled by ECAS as provider of the Citizens Signpost Service on behalf of the Commission.

<sup>220</sup> By the Law 2003-1119 of 26 November 2003 on the control of immigration, on the stay of aliens and on nationality.



- It is still frequently the case that Union citizens are asked, as presumably are non-EU nationals, to show some sort of formal residence document for access to services where evidence of legal residence, rightly or wrongly, is considered necessary. The factual sort of evidence that is normally used by French citizens (latest electricity or phone bills) is apparently not accepted in such cases, or at least, apparently, the concerned persons are not explicitly informed of this ordinary means of showing residence. This misunderstanding is probably due to a failure to realise, in the public perception, that foreign Union citizens are no longer ‘foreigners’ in the conventional sense of the word; in the case of employers, another possible explanation is that they prefer to be ‘on the safe side’, as they may be confused with the different sets of rules likely to apply.

The cumulative effect of the three difficulties mentioned above results in a situation that Union citizens (other than those who have acquired a permanent right of residence) who need to provide a document attesting their residence right are going around in circles. At present, it appears impossible in practice, to be delivered a document attesting the legal start of the residence. Combined with the rule that, if a person fails to register, he/she will be deemed to have resided in France for less than three months, this could potentially lead to an indirect denial of the right of access to social welfare benefits which is guaranteed by Article 24 of the Directive.

It is unlikely that the delivery of registration certificates by *mairies* would eventually solve the problem, since it is specified in the implementing legislation that the certificate ‘does not establish the right of residence’.

### 3.10.2. Problems that were addressed

Concerning the application of the sufficient resources condition to students, a ministerial ‘circulaire’<sup>(221)</sup> had to remind prefectures of the rule in the Directive that it is sufficient to ‘declare’ sufficient resources, allegedly because prefectures were still implementing an old ‘circulaire’ of 2000 and requesting evidence of the nature and the amount of resources (i.e. sufficient resources appreciated with regard to the personal situation of the student and to the minimum revenue – ‘RMI’ – criterion). However, to date service-public.fr still contains old information based on the ‘circulaire’ of 2000, so it is arguable that the problem persists in practice, at least in the form of legal uncertainty.

Concerning conditions for issuing the residence title or card, here again, a ministerial ‘circulaire’<sup>(222)</sup> had to remind the *prefectures* that, under the Directive and the implementing rules, the deliverance of ‘the residence card, compulsory or not’, must not be subject to a ‘justification of domicile’<sup>(223)</sup>, whatever the reason of the stay. But the reminder is ambiguous because it refers to Union citizens only, and disregards third country national family members who are also concerned by the rule in the Directive. It is therefore possible that the problem persists for the latter.

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<sup>221</sup> Nr IMID0768184C of 12 October 2007.

<sup>222</sup> The same as the one mentioned in the previous note.

<sup>223</sup> A ‘*justification de domicile*’ is factual evidence of living at a given address, e.g. through phone or electricity bills – it is very commonly used in France.

### 3.10.3. General remarks about the quality of administrative services for migrant citizens

The information available on the French administration's web portal <<[www.service-public.fr](http://www.service-public.fr)>> is very user-friendly, well structured, easy to find, easy to understand and sufficiently detailed. It also provides legal references and links to the official texts, as well as useful contacts in the administration.

When it comes to face-to-face services, these are insufficiently accessible, especially at the *prefectures*: there are long waiting lines and opening hours are short. There is no realistic alternative to going on the spot, because the information available over the telephone or by e-mail is mostly standardised, not customised, although it is worth noting that there has been a small amount of progress as it is now possible to download official application forms from the Internet (in French only).

### 3.11. Conclusions

The exercise of comparing Articles of the Code with the requirements of the Directive was complicated because the Code has been largely re-written and structured quite differently. But in the end it appears that the transposition of the Directive in French law is imperfect and incomplete.

It is imperfect because there are quite a few discrepancies that cannot be considered as being always marginal in effect, compared to the requirements of the Directive. The main discrepancies are firstly, the re-introduction of a 'residence title' which Union citizens may require 'on a voluntary basis' whilst registration certificates 'do not establish the right to stay', is nowhere to be found in the Directive and is certainly not in conformity with its spirit. Secondly, maintaining residence cards for Union citizens subject to transitional measures (i.e. Bulgarians and Romanians) if they intend to work in France – and this even if it is as self-employed workers – is neither in conformity with the Directive, nor justified by the Accession Treaties or the transitional arrangements. Thirdly, the recent legal and administrative provisions in the area of social security, which are officially presented as intended to fight social rights forum-shopping for migrant job-seekers and as part of implementing of the Directive, whereas in fact the latter is used as an opportunity to withdraw existing social benefits to inactive foreign Union citizens who have come as such to France. This runs against the 'more favourable provision' rule (or 'standstill clause') in the Directive, and probably is not in conformity with the residence-based right to equal treatment afforded by the Directive to foreign Union citizens. Finally, it would seem that foreigners are more likely to fall under the 'public order' motivated expulsion measures compared to French nationals. Under international law, this would seem to be more logical; however it would be contrary to the Directive where the aliens in question are Union citizens, or even their family members who are third country nationals.

The transposition is also incomplete, given that administrative instructions are still missing for the effective implementation of the registration certificate at the level of local authorities (i.e. *mairies*), which is an important new feature of the Directive to simplify administrative formalities for citizens. Furthermore, the effective implementation of registration certificates, eventually, will not solve the problem since it is specified that they will 'not establish the right of residence'.

Moreover, the general spirit of the Directive, which is to facilitate things for migrant Union citizens and members of their family, is not respected in the administrative service.

Paradoxically, it has become more difficult for them to establish their right of residence in France under Community law than before the implementation of the Directive.

## 4. GREECE

### 4.1. Transposing measure (s)

<b>Presidential Decree 106/2006 on ‘Free movement – residence in Greece of EU citizens and the members of their families’ (224)</b>
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The Directive has been transposed into Greek Law by Presidential Decree 106/2006 entitled “Free movement – residence in Greece of Union citizens and the members of their families”(225). The date of the publication of the Directive into national law is 21 June 2007 in the Official Journal of the Greek Government.

This measure simplifies the procedure for Union citizens and their family members regardless of their nationality to circulate and reside in Greece.

Other laws on immigration policy that may also be applicable to Union citizens and their family members are Law 3386/2005 entitled “Entry, residence and social inclusion of third country citizens into the Greek territory” (226) and Law 3536/2007 entitled “Special Provisions on Matters of Immigrant Policy” (227).

### 4.2. Right of entry and residence

The relevant Articles applicable to the right of entry and residence are set out below:

<b>Directive 2004/38/EC</b>	<b>Articles 4 -15</b>
<b>Decree 106/2007</b>	<b>Articles 4; 5; 6; 7; 8; 9; 10; 11 and 12</b>

#### 4.2.1. Right of entry

The law applicable to the right of entry is set out below:

<b>Directive 2004/38/EC</b>	<b>Article 5</b>
<b>Decree 106/2007</b>	<b>Article 5</b>

Please see section 4.5.1 concerning third country nationals below.

<sup>224</sup> Please see: <<[http://www.ypes.gr/allodapoi/content/gr/proedrika/PD\\_OD\\_2004-38.doc](http://www.ypes.gr/allodapoi/content/gr/proedrika/PD_OD_2004-38.doc)>>.

<sup>225</sup> Published in the Official Journal of the Greek Government (FEK B 135/21.6.2007), furthermore: PD 106/2007 (Προεδρικό Διάταγμα 106/2007 « Ελεύθερη κυκλοφορία - διαμονή στην Ελλάδα των πολιτών της Ευρωπαϊκής Ένωσης και των μελών των οικογενειών τους» (ΦΕΚ Β΄ 135/21.6.2007). Also available at:

<<[http://www.ypes.gr/allodapoi/content/gr/proedrika/PD\\_OD\\_2004-38.doc](http://www.ypes.gr/allodapoi/content/gr/proedrika/PD_OD_2004-38.doc)>>.

Hereinafter ‘PD 106/2007’.

<sup>226</sup> FEK 212/A/ 23.8.2005.

<sup>227</sup> FEK 42/A/23.2.2007.

#### 4.2.2. Right of residence

The laws applicable to the right or residence are:

<b>Directive 2004/38/EC</b>	<b>Articles 6 and 7</b>
<b>Decree 106/2007</b>	<b>Article 6 and 7</b>

##### 4.2.2.1. Right of residence for up to three months

<b>Directive 2004/38/EC</b>	<b>Articles 6 and 7</b>
<b>PD 106/2007</b>	<b>Article 6 and 7</b>

According to Article 6 of PD106/2007, there are no conditions for residence for up to three months for Union citizens and their third country national family members apart from the obligation to hold a valid passport, residence card or visa and, where applicable, not to become an unreasonable burden for the social assistance system of Greece.

Although Article 6 of the Directive has been transposed together with Article 14 (1) of the Directive on the “Retention of the right of residence” which provides that Union citizens and their family members shall have the right of residence provided for in Article 6, as long as they do not become an unreasonable burden on the social assistance system of the host state, no problems have been caused since this is not linked to detailed evidence of economic resources. This would have the effect of rendering the right contained in Article 6 of the Directive conditional upon proof of economic status of the citizens.

##### 4.2.2.2. Right of residence for more than three months

<b>Directive 2004/38/EC</b>	<b>Article 7 (4)</b>
<b>Decree 106/2007</b>	<b>Article 7</b>

Both Union and third country national family members are entitled to residence rights for more than three months as long as the Union citizen has resided or plans to reside in Greece for longer than 3 months.

According to Article 10 (1) of PD 106/2007, residence cards issued for third country national family members of a Union citizen have a maximum duration of 5 years. This is in line with Article 11 (1) of the Directive.

##### 4.2.2.3. Administrative formalities for the right of residence for more than three months

<b>Directive 2004/38/EC</b>	<b>Articles 8 and 9 (3)</b>
<b>PD 106/2007</b>	<b>Articles 8 and 9 (5)</b>

According to Article 9 of PD 106/2007, third country national family members are required to have a residence card after the first three months of residence. In cases where the administrative formalities concerning registration for residence longer than three months are not complied with, a fine of 150 Euros can be imposed by the General Secretary of the Region according to Article 9

(5) of PD 106/2007. In cases where an application is made a year after the expiry of the first 3 months of residence, the residence card will be denied.

Article 8 of PD 106/2007 which transposes Article 8 of the Directive provides for a fine of 59 Euros for a Union citizen who does not comply with the three month time limit to apply for a ‘registration certificate’. Therefore this provision might be considered as a hidden extra restriction to the right of residence of third country national family members of a Union citizen.

#### 4.2.2.4. Permanent residence

<b>Directive 2004/38/EC</b>	<b>Article 19 (2)</b>
<b>Decree 106/2007</b>	<b>Article 16</b>

In Greece, the registration certificate is the document that attests residence for a 5 year period. This period of residence would lead to permanent residence according to Article 13 of PD 106/2007, which transposes Article 16 of the Directive. After verification of the duration of residence which is attested by the registration certificate, the Greek authorities will issue a ‘Certificate of Permanent residence’ for Union citizens according to the provisions of Article 16 of PD 106/2007.

Article 19 (2) of the Directive provides that the document certifying permanent residence shall be issued as soon as possible. This has not been transposed into Greek Law.

The failure to stipulate a deadline for issuing the document certifying permanent residence may cause difficulties in relation to the time needed by the Immigration Departments of the Police Station of their place of residence to issue the document, since the law does not foresee any time limits for the issue of the permanent residence certificate for Union citizens.

#### 4.2.2.5. Administrative procedures for the ‘residence certificate’

<b>Directive 2004/38/EC</b>	<b>Article 8</b>
<b>Decree 106/2007</b>	<b>Article 8</b>

Only a few administrative procedures remain applicable to holders of a ‘residence certificate.’ These are usually applicable for example, in order to have access to certain social benefits, to obtain a driving license from the host Member State, etc. Sometimes a residence certificate may also be a prerequisite in order to exercise certain professional activities especially in the public sector. Furthermore, in accordance with Article 8 of PD 106/2007, it is necessary for Union citizens to obtain this ‘certification of registration’ especially if they intend to apply for a permanent residence document in the future. Therefore, they have to register with the police department of their place of residence within 3 months time from their arrival in Greece and they will be provided with the ‘certification of registration’. Should a Union citizen fail to do so a fine of 59 Euros is imposed which is reasonable and proportionate to other administrative fines. Since the ‘certification of registration’ does not expire it constitutes solid proof of the duration of the citizens’ residence in Greece.

Several relevant problems concerning the completion of application forms with the relevant documents have been identified by the Greek Ombudsman <sup>(228)</sup>. These cases were identified before the adoption of PD 106/2007.

There is also the problem that the national authorities have not yet fully understood the provisions of the legislation and still may require residence permits from Union citizens. There are further complications for Union citizens from the new Member States particularly Bulgaria and Romania (several questions have been sent to the Greek Ombudsman <sup>(229)</sup>). Residence permits for Union citizens may still be required in order to have access to some positions in either the private or in the public sector (several complaints have been communicated to the Greek Ombudsman and the Citizens Signpost Service). As a general remark the expert would like to underline that most of the existing cases fall under the scope of Law 3386/2005 and not PD 106/2007.

**4.2.2.6 Retention of the right of residence by family members in the event of death or departure of the Union citizen or in the event of divorce, annulment of marriage or termination of registered partnership**

<b>Directive 2004/38/EC</b>	<b>Articles 12 and 13</b>
<b>Decree 106/2007</b>	<b>Article 11</b>

Residence rights based on Articles 12 and 13 of the Directive regarding the retention of residence by family members in case of death/departure or divorce/annulment of marriage are awarded to all family members and not only spouses on a individual basis. This right can only be maintained if the economic conditions set out in Article 8 (4) of the Directive are fulfilled.

Whereas the duration of the stay is not specified in advance, the residence card for third country national family members is issued for five years according to Article 10 (1) of PD 106/2007.

**4.3. The definition of sufficient resources**

The relevant Articles containing reference to ‘sufficient resources’ are:

<b>Directive 2004/38/EC</b>	<b>Articles 7 (1) (b)(c); 8 (4); 12 (2) and 13 (2)</b>
<b>Decree 106/2007</b>	<b>Articles 7(1) (b); 8 (3); 11 (2) and 12 (2)</b>

There is no definition contained in PD 106/2007 as to what constitutes ‘sufficient resources.’ However, there are other national laws that assist in establishing whether a person has sufficient resources.

Firstly, according to Article 36 (1) of Law 3386/2005 entitled «Entry, residence and social inclusion of third country citizens into Greek territory» <sup>(230)</sup> a person will be considered to have

<sup>228</sup> More details on cases dealt and solved by the Greek Ombudsman can be found at: [http://www.synigoros.gr/allodapoi/meta\\_diamoni.htm](http://www.synigoros.gr/allodapoi/meta_diamoni.htm).

<sup>229</sup> The relevant text can be found at: [http://www.synigoros.gr/allodapoi/pdfs/07\\_11\\_Roumania.pdf](http://www.synigoros.gr/allodapoi/pdfs/07_11_Roumania.pdf).

<sup>230</sup> FEK A 212.

sufficient resources if he/she has a ‘stable’ income that can cover his/her living expenses. Secondly, in the Common Ministerial Decision 4415/2006 <sup>(231)</sup> entitled “Defining the amounts of money and the proof of sufficient resources according to Law 3386/2005” categories of citizens are set out and a monthly amount of 2000 euros for economically independent individuals is stipulated.

A case was dealt with by the Greek Ombudsman <sup>(232)</sup> that considered not only the amount of money required to have sufficient resources, but also with the general economic status of the citizen. Although according to Greek law, decisions by the Ombudsman do not constitute a precedent, they have to be respected by the relevant national authorities <sup>(233)</sup>.

Moreover, according to Article 8 (4) of the Directive which provides that Member States *may not* lay down an a fixed amount which they regards as sufficient resources, Article 8 (3) of Presidential Decree 106/2007 provides that “for the calculation of sufficient resources of the interested parties the amount of the minimum pension received in Greece is taken into account”.

#### **4.4. The situation of (registered) partners**

The relevant Articles applicable to the situation of (registered) partners are:

<b>Directive 2004/38/EC</b>	<b>Articles 2 (2) (b) ; 8 (5) (b) ; 10 (2) (b) and 13 (1) ; 13 (2) (a)(c) <sup>(234)</sup></b>
<b>Decree 106/2007</b>	<b>Articles 8 and 13</b>

Greece has only recently recognised one other form of registered partnerships apart from marriage.

On the 26 November 2008, Law 3719/2008 was published entitled the “Contract of Cohabitation” <sup>(235)</sup>. It recognises the ‘Contract of free cohabitation’ as a form of registered partnership. It refers to a contract drafted by a notary, to be concluded between companions of the opposite sex that will regulate their financial relations, ensure the legitimacy of their children and will provide the parties with the advantages of a marriage in relation to working, insurance, pension and some of the hereditary rights foreseen under national law for marriage. In the text of the law there is no mention of the nationality of the companions.

<sup>231</sup> FEK 398/B/2006.

<sup>232</sup> no 4717/07.2.1/31-5-2007.

<sup>233</sup> For more information, please see :

<<<http://www.synigoros.gr/allodapoi/docs/OikonomikaAnexartitaAtoma.pdf>>>.

<sup>234</sup> Please see Recital 5 of the Directive.

<sup>235</sup> FEK 241A/26-11-2008.



#### **4.5. Problems encountered by third country national family members**

##### **4.5.1. Right of entry and residence**

The law applicable to the right of entry is set out below:

<b>Directive 2004/38/EC</b>	<b>Article 5</b>
<b>Decree 106/2007</b>	<b>Article 5</b>

Third country national family members of a Union citizen are subject to legal restrictions concerning both entry (i.e. visa) and residence (i.e. residence cards). They have to prove their legal status and go through the administrative procedures described in Greek legislation i.e. they must be holders of a valid entrance visa (where applicable according to Regulation (EC) 539/2000<sup>(236)</sup>) and of a valid passport or an equivalent international travel document proving their identity. Also, the last sentence of Article 5 (1) of PD 106/2007 provides that in this case and because they are members of the family of a Union citizen, the national authorities should examine their cases in priority so as to have their visas issued as soon as possible.

Article 5 (5) of the Directive provides that a Member State may require persons to report their presence within its territory within a reasonable and non-discriminatory period of time. It also provides that failure to comply with this requirement may make the person concerned liable to proportionate and non-discriminatory sanctions. This provision has not been transposed into Greek law.

According to Article 21 (1) and (2) of Law 3386/2005 which are in line with the obligation of Regulation (EC) 562/2007, Article 21 (d) provides that third country national family members of a Union citizen must declare their presence immediately after their entry into Greece. They must also report their presence to the people that provide them with a place to stay presenting their valid passport or any other travel document or an entry visa. The person providing them with a place to stay must then inform the police and the relevant immigration authority of their arrival and departure. Failure to inform the police and the competent immigration authority may result in a fine of 1,500 to 3,000 Euros.

##### **4.5.2. Registration for the right of residence for more than three months**

<b>Directive 2004/38/EC</b>	<b>Article 9 (3)</b>
<b>Decree 106/2007</b>	<b>Article 9</b>

Provisions on registration for residence longer than 3 months have not been complied with. After the expiry of the first 3 months of residence in Greece for third country national family members of a Union citizen, there is an obligation under Article 9 of PD 106/2007 to issue of a residence card. In cases where the administrative formalities concerning the registration for residence for longer than 3 months are not complied with, the applicable national provisions (sanctions and remedies) foresee in Article 9 (5) of PD 106/2007, transposing Article 9 (3) of the Directive, a fine of 150 Euros imposed by the General Secretary of the Region and in cases where an

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<sup>236</sup> Council Regulation 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement OJ L 81 1

application is made a year after the expiry of the first 3 months stay the issue of the residence card is denied.

### 4.5.3. Permanent residence card for third country national family members

#### 4.5.3.1. Date to apply for the permanent residence card

<b>Directive 2004/38/EC</b>	<b>Article 20 (1)</b>
<b>Decree 106/2007</b>	<b>Article 17 (3)</b>

Article 17 (2) of PD106/2007 mentions that the application for a permanent residence card should be made before the expiry of the previously issued ‘temporary residence card.’ Also, Article 17 (3) of PD 106/2007 provides that the Secretary General of the relevant Region of the Country can introduce a fine of 150 Euros for any delay in submitting an application. According to Article 17 (3) of PD 106/2007 if such an application is never made or is made after a year from the expiry of the temporary residence card’, the Departments of Immigration of the Regions of the Country, may refuse to issue the permanent residence card.

A refusal to issue the permanent residence card on the grounds of a delay in the application for one year is excessive, disproportionate and discriminatory in relation to similar cases involving Union citizens since Greek law does not foresee any penalty for delay in the application for a permanent residence permit for Union citizens. Therefore, this provision might be considered as a hidden extra restriction to the right of permanent residence of third country national family members of a Union citizen. It is not applied in all cases but it does not have the power to annul the right of permanent residence in some cases especially since this right is linked to the duration of the citizen’s previous residence and the family ties with the Union citizen which have already been attested at least once with the issue of the temporary ‘residence card’.

Moreover, it is not clear what the consequences are in cases where third country national citizens are denied the permanent residence card on the grounds of a delay in submitting their application. PD 106/2007 does not contain any provisions on this matter.

It may be added that according to Article 22 (7) of PD 106/2007, expulsion on the grounds set out in Article 33 (1) of the Directive i.e. as a penalty or legal consequence of a custodial penalty, unless they conform to the requirements of Articles 27, 28 and 29, is only applicable when the conditions of Articles 21 and 22 of PD 106/2007 are met (these Articles transpose Articles 27-29 of the Directive). Therefore, that means that there is a gap in Greek Law relating to the sanctions imposed under Article 17 (4) of Decree 106/2007 because if the authorities deny the permanent residence permit to the third country national family member of a Union citizen, and since nothing is stated in PD, expulsion might be considered as a solution!

#### 4.5.3.2. Date for a permanent residence card to be issued

<b>Directive 2004/38/EC</b>	<b>Articles 20</b>
<b>Decree 106/2007</b>	<b>Article 17</b>

Article 20 of the Directive regarding the issue of the Permanent Residence Card for third country national family members has not been duly respected.

In general, according to Article 16 (1) of the Directive, which has been transposed by Article 13 (1) of PD 106/2007, Union citizens and their family members who have legally resided in Greece for a continuous period of 5 years are entitled to ‘Permanent Residence.’ Article 20 (1) of the Directive provides that third country national family members are entitled to a permanent residence card from six months after the submission of the application. Article 17 of Decree 106/2007 considers that the six month period begins from the time that the Departments of Immigration of the Regions of the Country consider that the application is complete together with all the relevant and necessary documents. In practice this may result in a delay of the ‘Permanent Residence Card’ being issued, with the consequence of violating the 6 months time-limit foreseen by Article 20 (1) of the Directive.

#### **4.6. Equal treatment**

The relevant Articles applicable to equal treatment are:

<b>Directive 2004/38/EC</b>	<b>Article 24</b>
<b>Decree 106/2007</b>	<b>Article 20</b>

In general, the principle of ‘equal treatment’ is applied both in theory and in practice.

The field of application of PD 106/2007 does not fully cover third country nationals who are family members of Greek citizens. Even though it is mentioned in Circular no 10 of the Ministry of Interior that the provisions of Law 3386/2005 are in line with the provisions of PD106/2007, there might be some scope for ‘reverse discrimination’ but only in relation to purely internal situations. Therefore there is no breach of Community law. Guidelines have been provided by Circular no 10 of the Ministry of Interior to the national authorities in order to avoid any such cases.

In any case the principle of non-discrimination, as set out in Article 24 of the Directive, is fully respected by Article 20 (2) of PD106/2007 which includes both Union citizens and third country national family members of Union citizens. Moreover, according to Article 20 (7) of Decree 106/2007, third country national family members of Union citizens are awarded the rights of Articles 71 and 72 of Law 3386/2005 regarding access to employment and education for the minors.

#### **4.7. Grounds for expulsion and procedural safeguards**

##### **4.7.1. Grounds for expulsion**

The relevant Articles applicable to expulsion are set out below:

<b>Directive 2004/38/EC</b>	<b>Articles 14 (3); 14 (4); 15 (2) and Articles 27-29</b>
<b>PD 106/2007</b>	<b>Articles 22</b>

#### 4.7.1.1 Safeguards against expulsion

<b>Directive 2004/38/EC</b>	<b>Articles 14 (3); 14 (4); 15 (2); 27; 28; 29 and 33</b>
<b>PD 106/2007</b>	<b>Articles 21 and 22</b>

Expulsion is not considered an option for citizens or family members who do not have sufficient resources unless it is generally justified by reasons of the general and social good.

According to Article 22 (7) of PD106/2007, expulsion will only be carried out when the conditions of Articles 21 and 22 (transposing Articles 27, 28 and 29 of the Directive) are met. This means that there is a gap in the Greek Law relating to the sanctions imposed under Article 9 (5) of PD 106/2007.

There have been a number of cases of the Greek Council of State on the interpretation of the legislation applicable to immigrants (<sup>237</sup>). Greek Law does not provide different interpretation in the case of the provisions of PD106/2007.

There was a ruling of the Criminal Court of First Instance of Heraklion issued before the introduction of PD 106/2007 on the imprisonment and permanent deportation of a Bulgarian citizen before the accession of Bulgaria who was caught transporting goods illegally. After the accused was deported, the Minister of Justice issued a Decision that allowed him to re-enter the country for a period of 2 years. The Bulgarian citizen had already asked for the issue of new permit to re-enter Greece based on the fact that his family resides in a village (Mires) near Heraklion of Creta. A relevant decision has not yet been reached. He is now appealing against the enforcement of the above-mentioned decision regarding the deportation measure and has also filed a petition to the Municipality of Mires in Heraklion for a work permit, since Greece has opted for a transitional period of two years before the complete exercise of free movement of workers for Bulgarian and Romanian citizens after the accession of the relevant new Member States to the EU.

Regarding the deportation measure against Union citizens after the accession of Bulgaria to the EU, the court held that on the basis of Articles 27 to 33 of the Directive (that should have been transposed into national law by the 30 of April 2006) and, according to Article 40 of the Directive, its provisions have direct effect and therefore this particular deportation measure can only be applied to Union citizens for reasons of public order or public security and after having considered factors such as the time that he was residing in the Member State, his financial, professional and family situation and the ties that he has developed with the host Member State. In any case previous convictions do not constitute in themselves reasons for the application of aggravating measures against Union citizens, such as judicial deportation. Regarding its enforcement, the personal behaviour of the citizen should present a real, present and serious threat against the fundamental interest of the society according to the jurisprudence of the ECJ. Therefore, regarding the enforcement of the measure of judicial deportation against a person who after the first enforcement of the deportation measure has acquired the European citizenship (because of the accession of his country of origin (Bulgaria) to the EU), the direct effect of the provisions of the Directive are applicable over national law (i.e. Penal Code, Article 99 (3) on the 'suspensive result' of an imposed deportation measure only after a period of 5 years from its

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<sup>237</sup> A relevant list can be found at the following website by UNHCR:

<<<http://hosting01.vivodinet.gr/unhcr/protect/Grlaw/GreekJur/DEPORTATION%20OF%20ALIENS%20AND%20REFUGEES.pdf>>>.

imposition). Furthermore, national law should also be interpreted in light of the Directive. Therefore, the deportation measure should not be enforced on such persons, while the conditions of EU law are not applied. The present case does not prove that he was convicted for any other crime until today and that he has developed a financial and professional activity in Mires, where he lives with his family. On the other hand, no other reason of public order or public security is applicable in order to maintain the deportation measure, apart from the having transported goods illegally. Therefore, the Criminal Court decided that his objections should be accepted because these are legally justified and suspended the enforcement of the decision of the Court of First Instance of Heraklion regarding the deportation measure.

This decision does not create a precedent (in the sense that is widely use in a common law system) and can be overruled if a higher court decides otherwise. Moreover, it does not have to be followed by a different court since it will be decided on the basis of different facts. Nevertheless, it should be respected it in its principle when interpreting the law in a similar situation.

#### 4.7.2. Procedural safeguards

The relevant Articles setting out procedural safeguards are set out below:

<b>Directive 2004/38/EC</b>	<b>Articles 30-33</b>
<b>Decree 106/2007</b>	<b>Articles 21; 22; 23 and 24</b>

(no issues identified)

#### 4.8. Miscellaneous

##### 4.8.1. A ‘durable relationship’

<b>Directive 2004/38/EC</b>	<b>Articles 3 (2)(b); 8 (5) (f) and 10</b>
<b>PD 106/2007</b>	<b>Articles 3 and 8</b>

Concerning the transposition of Article 3 (2) (b) of the Directive defining the partner of a Union citizen with whom he has a duly attested ‘durable relationship,’ the relevant Greek provisions may cause some ambiguity and problems. More specifically, Article 8 (4) of PD 106/2007 transposing Article 8 (5) of the Directive refers to ‘*written* proof of the existence of a durable relationship with the Union citizen’ which might constitute a burden on the citizens whereas the Directive requires ‘proof’ of any kind. This means that the relationship can be duly attested by any means of proof accepted by the general principles of the Member State. Consequently, partners in Greece can consequently face problems with their residence rights<sup>(238)</sup>.

Moreover, Article 9 of PD 106/2007 transposing Article 10 of the Directive does not include case (f); in order for a residence card to be issued, *proof of the existence of a durable relationship with the Union citizen*. This is a gap in Greek legislation and may cause a problem to the residence

<sup>238</sup> More details on the matter can be found on the webpage of the Greek Parliament at: << <http://www.parliament.gr/ergasies/nomodetails.asp?lawid=626>>>.

rights of the partners of Union citizens, who are third country nationals, and with whom they have a durable relationship that can be duly certified.

Also, it is to be noted that Article 10 of the Directive sets out the documents necessary for a residence card to be issued. Article 10 (2) (f) provides that in cases of partnerships falling under Article 3 (2) (b), proof of the existence of a durable relationship with the Union citizen is to be provided. This has not been transposed into Greek law. Once again, this is a gap in the Greek legislation and may cause a problem for third country national partners with whom they have a durable relationship that can be duly attested.

#### **4.8.2. The case of Bulgarian and Romanian nationals**

Family members of Bulgarian and Romanian citizens who are legally residing in Greece with a residence permit (before the entry into force of PD 106/2007) for family reunification reasons and have Bulgarian and Romanian citizenship are covered by the same legal status as the citizen who is working in Greece. After PD 106/2007 entered into force, residence permits have been substituted with residence cards.

Under the previous regime before the adoption of PD 106/2007, family members of Union citizens who are third country nationals had to renew their residence permits upon the condition that the Union citizen (worker) receives a residence permit on the basis of Articles 61 and 64 of Law 3386/2005. The Ministry of Interior, which is the competent national supervisory authority, has issued Circular no 22 (administrative act) <sup>(239)</sup> with reference number 5515/07/13-3-2007 on ‘the accession to the EU of Bulgaria and Romania – Transitional provisions regarding the free movement of workers of Bulgarian and Romanian citizenship’ addressed to the national authorities responsible for the application of the relevant legislation.

Greece is one of the EU countries that have opted for the transitional arrangements regarding the free movement of workers for the New Member States (Bulgaria and Romania) after their accession to the EU on the 1<sup>st</sup> of January 2007. Greece has decided to apply after the 1 January 2007 and for a two years period its own national legislation regarding the entry and residence in Greece of Bulgarian and Romanian citizens, with the purpose of working in Greece. These citizens still require work permits and quotas may be applied as well.

On the other hand, Bulgarian and Romanian citizens who go to Greece in order to become self-employed or students or pensioners etc. or simply to reside there without any employment, are able to do so on the application of EU law regarding the free movement of persons as they have been transposed into Greek Law and applied to all Union citizens. Therefore, after the 1 January 2007 and until the entry into force of PD 106/2007, Bulgarian and Romanian citizens who were going to Greece and wished to reside for a period longer than 3 months, had to identify themselves to the relevant Greek authorities (i.e. Police Departments, Directorates for Immigrants) in order to have their residence permits issued. During that period of time, with regard to ‘residence cards’, Greece was in breach of EU law.

After the entry into force of PD106/2007 residence permits have been substituted with registration certificates. Workers from Bulgaria and Romania are still required to present a work

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<sup>239</sup> The text of the Circular can be found at:

<<[http://www.ypes.gr/allodapoi/content/GR/egiklio/egiklios22\\_07.doc](http://www.ypes.gr/allodapoi/content/GR/egiklio/egiklios22_07.doc)>>.

permit before taking up employment (and can also be subject to quotas) during the transitional period, if at the time of the entry of their country into the EU, they did not have an employment contract of 12 months in the host State. Family members fall under the same treatment until the 18<sup>th</sup> month after accession or until the completion of the 12 months legal residence, whichever date is earlier. Regarding Bulgarian and Romanian citizens whose residence permit expired after the 1 January 2007 and who had applied for its renewal after having paid an administrative fee, this fee will be returned by the relevant national authorities after they presented the residence permit issued from the Greek police.

#### **4.9. National legislation that interferes or could interfere with the Directive**

There are two laws, which, in combination, cover most fields of Immigration Policy in Greece: Law 3386/2005 entitled ‘Entry, residence and social inclusion of third country citizens into Greek territory’ (<sup>240</sup>), as amended by Law 3448/2006 (<sup>241</sup>), and Law 3536/2007 (<sup>242</sup>) entitled ‘Special Provisions on matters of Immigrant Policy’ as amended by Law 3613/2007 (<sup>243</sup>).

##### **4.9.1. Law 3386/2005- Entry, residence and social inclusion of third country citizens into Greek territory**

Law 3386/2005 is the basic piece of legislation on Immigration Policy in Greece, entry and residence rights. The provisions of Decree 106/2007 (<sup>244</sup>) complement Law 3386/2005 as amended and in force today.

Most of the provisions of Law 3386/2007, as amended, are already in line with the provisions of PD106/2007. Moreover, despite the differences between the two laws, the provisions of PD 106/2007 prevail according to the Greek Constitution over those of Law 3386/2005, since the former is the legal act incorporating the provisions of an EU Directive.

##### **4.9.2. Law 3068/2002 on the Administration’s obligation to comply with the judicial decisions and other provisions**

Article 15 of Law 3068/2002 (<sup>245</sup>) on the ‘Administration’s obligation to comply with the judicial decisions and other provisions’ is applicable to the judicial procedure (i.e. in appeal and administrative redress procedures) to be followed in cases of non-nationals who derive rights from EU law regarding entry, exit, movement, residence and employment in Greece.

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<sup>240</sup> FEK A 212.

<sup>241</sup> FEK A’ 57.

<sup>242</sup> FEK A’ 42.

<sup>243</sup> FEK/ A’ 263.

<sup>244</sup> Main Transposing Act.

<sup>245</sup> FEK A 274/2002.

#### **4.10. Administrative services**

There are several observations regarding the administrative service for Union citizens exercising their free movement rights.

The user-friendliness of documents can in some circumstances be considered satisfactory as documents are usually in Greek and English (according to information recently obtained from the relevant police department), although sometimes too much information required. The competence of the personnel can be considered satisfactory since most of them are either police officers or administrative employees of the regions not very familiar with the legislation that is being updated frequently. The accessibility of the services, especially by the police department is poor as there are often long queues, reduced opening hours, no 'serious' telephone or email information. Moreover, the lack of a central registry or portal containing all the information needed for Union citizens and their family members has also been identified.

Moreover, the fragmentation of powers and competences to two different authorities, Greek Police for Union citizens and the Regions of the Country, Immigration Office, for Union citizens' family members who are third country nationals, causes several problems in relation to the flow of information despite the fact that they both belong to and are supervised by the same Ministry, the Ministry of Interior.

#### **4.11. Conclusions**

The Directive is relatively well transposed into Greek Law. The structure of the provisions PD 106/2007 is logical and is in line with the text of the Directive. Even though the Greek legislation on Immigration policy is complex, the text of PD 106/2007 is clear most of the times and does not create any major confusion to the national authorities. Misinterpretation might arise because of the volume of the legislative measures, Ministerial Decisions and Circulars in force, with similar provisions that are applied to all procedures related to immigrants.

Several gaps and weaknesses have also been identified in relation to the rights of third country family members of Union citizens.

Even though Greek legislation on Immigration policy is complex, the text of PD 106/2007 is clear and does not create any major confusion to the national authorities. Misinterpretation might arise due to the fact that there are rather a lot legislative acts, Ministerial Decisions and Circulars in force, with similar provisions that are applied to all procedures related to immigrants and the employees are not very familiar with the relevant law provisions even though the Ministry of Interiors is organising seminars addressed to the relevant authorities on the application of the relevant legislation.

The number and complexity of the relevant legislative and administrative acts, although in line with the provisions of PD 106/2007, might be troublesome for the national authorities when applying the law.

The need to update the Ministerial decision on the required documents for third country nationals is imperative since it is the major source of any confusion caused. As already stated the Greek Ministry of Interiors is currently in the process of updating the Decision.



The lack of transposition of Article 10 (2) (f) might create problems for third country national partners of Union citizens with whom they have a durable relationship that can be duly attested and the lack of transposition of Article 19 (2) of the Directive, may cause a problem regarding the time needed by the competent national authorities for the issue of the relevant document attesting the permanent residence of Union citizens, since the law does not foresee any time limits for the issue of the permanent residence certificate for Union citizens, this might be considered as a violation of the Directive.

Moreover, more strict provisions in relation to third country nationals, family members of Union citizens, are being introduced regarding the penalties (denial of the issue of the card) envisaged in case they are late for more than a year in applying for a residence card or a permanent residence card. This penalty might actually constitute a violation of the Directive since they could be considered disproportionate and a hidden restriction to the right of residence.

The lack of a central registry portal was also identified including all the information needed for Union citizens and their family members, regardless of their nationality.

In general, the administrative approach on the implementation of the relevant provisions should nevertheless be improved in terms of efficiency and coherence of practices.

## 5. HUNGARY

### 5.1. Transposing measure (s)

1	<b>Law No I of 2007 on the Entry and Residence of Persons with the Right of Free Movement and Residence (<sup>246</sup>)</b>
2	<b>Government Decree 113/2007 of 24 May 2007 for implementing the Act No I of 2007 on the Entry and Residence of Persons with the Right of Free Movement and Residence</b>
3	<b>Decree No 25/2007 of 31 May 2007 of the Minister of Justice and Law Enforcement for implementing the Act No I of 2007 on the Entry and Residence of Persons with the Right of Free Movement and Residence</b>

There are three measures transposing the Directive into Hungarian law.

Firstly, Act No I of 2007 on the Entry and Residence of Persons with the Right of Free Movement and Residence. Secondly, Government Decree 113/2007 of 24 May 2007 for implementing the Act No I of 2007 on the Entry and Residence of Persons with the Right of Free Movement and Residence. Thirdly, Decree No 25/2007 of 31 May 2007 of the Minister of Justice and Law Enforcement for implementing the Act No I of 2007 on the Entry and Residence of Persons with the Right of Free Movement and Residence.

Act No I of 2007 has broadened the scope of the persons that fall under the Directive to include EEA citizens and their family members (irrespective of their nationality) and family members of Hungarian nationals who do not hold Hungarian citizenship. Such an interpretation is in line with the letter of the Directive; however, it may result in issues of transparency and comprehension for Union citizens. In addition, in certain situations, family members of Hungarian nationals are treated more favourably than other beneficiaries covered by the Directive. For example, concerning the definition of family members, for Hungarian citizens, all direct relatives in the ascending line and those of their spouse are treated as family members, whereas only dependent direct relatives in the ascending line of EEA nationals and those of their spouses are beneficiaries of free movement rights (<sup>247</sup>).

### 5.2. Right of entry and residence

The relevant Articles applicable to the right of entry and residence are set out below:

<b>Directive 2004/38/EC</b>	<b>Articles 4 -15</b>
<b>Act No I of 2007</b>	<b>Articles 3 (1) (2) (4) (5); 5; 6; 9; 10 (1) (3) (4); 11 (1)-(3); 12; 13; 14 (1); 21; 22; 23(1); 32 (2); 35 and 36 (4) (<sup>248</sup>)</b>
<b>Government Decree 113/2007</b>	<b>Articles 4-18; 20-24; 26-30 and 35-37</b>

<sup>246</sup> Please see: <<<http://www.bmbah.hu/jogszabalyok.php?id=38>>>.

<sup>247</sup> Please see Article 2 (be) and (bf) of Act No I of 2007.

<sup>248</sup> Article 4 of the Directive is not transposed, as the right of exit is a fundamental right, and it is regulated by a separate Act No XII of 1998 on travelling abroad.

### 5.2.1. Right of entry

The law applicable to the right of entry is set out below:

<b>Directive 2004/38/EC</b>	<b>Article 5</b>
<b>Act No I of 2007</b>	<b>Articles 3 (1) (2) (4) (5); 21 (1); 22 (1); 32 (2) and 36 (4)</b>
<b>Government Decree 113/2007</b>	<b>Articles 4-18</b>

(no issues identified)

### 5.2.2. Right of residence

The law applicable to the right of residence is set out below:

<b>Directive 2004/38/EC</b>	<b>Articles 6 and 7</b>
<b>Act No I of 2007</b>	<b>Articles 5; 6 and 9</b>
<b>Government Decree 113/2007</b>	<b>Articles 20-24; 26 and 28</b>

#### 5.2.2.1 Registration certificates and other documents

<b>Directive 2004/38/EC</b>	<b>Article 8</b>
<b>Act No I of 2007</b>	<b>Article 21</b>
<b>Government Decree 113/2007</b>	<b>Articles 20-24; 26-27 and 36</b>
<b>Decree No 25/2007 of the Minister of Justice and Law Enforcement</b>	<b>Annex 1</b>

Concerning periods of residence for longer than three months, Article 8 (1) of the Directive sets out an option for Member States to require citizens to register with the relevant authorities. Article 21 of Act No I of 2007 imposes such a requirement for EEA nationals who are required to register with the competent national authority no later than the ninety-third day from the date of entry.

Apart from the documents listed in Article 8 of the Directive, Hungarian authorities require additional evidence in relation to accommodation, e.g. if the EEA national is not the owner of the house or flat in which he/she resides, an approval from the owner must be attached to the application form for the registration certificate (See Annex 1 to Decree No 25/2007 of 31 May 2007 of the Minister of Justice and Law Enforcement for implementing the Act No I of 2007). This is a uniform requirement for both EEA nationals, third country national family members and even for Hungarian nationals when they register their residence.

The overlapping range of residence documents has given rise to a great degree of confusion for Union citizens and their non-EU family members. EEA citizens and their family members are also issued with a so-called 'address card,' a document commonly used by Hungarian Citizens to acquire a personal identification number. It also acts as an official proof of address. This card is valid together with the national passport/ID card and with the registration certificate or residence card for non-EU family members. Registration certificates and (permanent) residence cards contain a more limited amount of personal information than classic Hungarian ID cards;

therefore, the acceptance of the new residence documents by public and private services is particularly problematic.

### 5.2.2.2 Permanent residence

<b>Directive 2004/38/EC</b>	<b>Articles 16-21</b>
<b>Act No I of 2007</b>	<b>Articles 16 (1); 17 (2); 18; 19 (1) (a) and 24-26</b>
<b>Government Decree 113/2007</b>	<b>Articles 32; 34 and 38</b>

In Hungary the same document certifying long-term residence status is issued to both, Union citizens and third country national family members, as Articles 19 and 20 of the Directive are transposed together and their provisions are incorporated into one single section of Act No I of 2007.

As a result, national authorities have to follow uniform standards when dealing with applications for permanent residence cards, regardless of whether the applicant is a Union citizen or a third country national family member. Permanent residence cards for both, Union citizens and third country national family members are issued within three months of the submission of the application (not as soon as possible as it is provided for by Article 19 of the Directive) and permanent residence card (regardless of whether they are issued for a Union citizen or third country family members) are to be automatically renewed every ten years, although Article 20 (1) of the Directive imposes this obligation only for permanent residence card issued for non-EU national family members (See Article 24 of the Act No I of 2007 and Article 38 of the Government Decree 113/2007).

### 5.3. The definition of sufficient resources

The relevant Articles containing reference to ‘sufficient resources’ are:

<b>Directive 2004/38/EC</b>	<b>Articles 7 (1) (b)(c); 8 (4); 12 (2) and 13 (2)</b>
<b>Act No I of 2007</b>	<b>Articles 6 (1) (b) (c);</b>
<b>Government Decree 113/2007</b>	<b>Articles 20-23; 11 (1) (2) (3) and 29</b>

According to the Article 21 (1) of Government Decree 113/2007, a Union citizen is considered to have sufficient resources if the citizen’s household monthly income per capita reaches the prevailing minimum old-age pension. The amount of the minimum old-age pension is determined by the Government for every year. In 2009 the amount is HUF 28.500 (circa 100-120 Euros depending on the exchange rate).

If the applicant’s monthly income per capita does not reach the prevailing minimum old-age pension, the national authority should take into consideration the personal financial background when evaluating the sufficient resources of the applicant. In particular, the number of family members of the household with any income or assets, the number of dependants living in the household and whether the applicant is the owner, beneficial owner or the user of the property in which he/she and his/her family resides (see Articles 21 (2) and (4) of Government Decree 113/2007. Articles 21 (5) - (6) and (8) of the Government Decree 113/2007 lists the categories of

revenues that should be taken into consideration by the authorities when evaluating sufficient resources and also lists wealth that should not be taken into consideration).

Article 21 (1) of Government Decree 113/2007 provides that persons relying on the social assistance system (i.e. persons receiving certain social benefits defined in the Government Decree) for a period of more than three months are not considered as having sufficient resources and therefore constitute an ‘unreasonable burden’ according to Article 35 (1) of the Government Decree 113/2007. To this extent, the provisions for “having sufficient resources” and for “becoming an unreasonable burden” are transposed together and in consideration of each other.

It is the national experts’ opinion that the transposition of Article 8 (4) of the Directive is slightly ambiguous, since on the one hand Hungarian legislation sets out a threshold for sufficient resources which is linked to a fixed amount (the prevailing minimum old-age pension), but on the other hand it requires the national authority to take the applicant’s personal circumstances into account when evaluating his/her financial situation. The sole fact that the applicant’s income is below the threshold does not automatically mean that he/she will be considered as not having sufficient resources.

#### **5.4. The situation of (registered) partners**

The relevant Articles applicable to the situation of (registered) partners are:

<b>Directive 2004/38/EC</b>	<b>Articles 2 (2) (b) ; 8 (5) (b) ; 10 (2) (b) and 13 (1) ; 13 (2) (a)(c) <sup>(249)</sup></b>
<b>Act No I of 2007</b>	<b>Articles 10 (3) (4) and 11 (2) (3)</b>
<b>Government Decree 113/2007</b>	<b>Articles 24; 29 and 37 (2)</b>

At present Hungary does not recognise registered partnerships. Provisions related to such partnerships in the Directive have not been transposed.

In 2007 the Parliament adopted an Act on registered partnership which would have entered into force on 1 January 2009, however this was recently annulled by the Constitutional Court, therefore a new bill will have to be prepared in light of the Court's judgement in Decision 154/2008 <sup>(250)</sup>.

Although in Act No I of 2007 partners are not listed among family members, partners can exercise their entry and residence rights as a family member as defined in Article 3 (2) (a). Consequently a partner can be considered as a member of the household. In this regard, it is important to note that Hungary has not correctly transposed Article 3 (2) (a) of the Directive, as it has been transposed in the Hungarian Act in a very restrictive way, since, according to Article 8 (1) of Act No I of 2007, entry and residence rights may only be granted to partners who have been members of the household of an EEA national in the country from which they have come from *for a period of at least one year*.

<sup>249</sup> Please see Recital 5 of the Directive.

<sup>250</sup> Decision 154/2008 AB (XII. 17) publication ref.: Official Gazette 2008/180.

## **5.5. Problems encountered by third country national family members**

### **5.5.1 Entry, residence and visa requirements**

<b>Directive 2004/38/EC</b>	<b>Articles 5 and 9-11</b>
<b>Act No I of 2007</b>	<b>Articles 3; 4; 13; 20; 22; 23 and 36</b>
<b>Government Decree 113/2007</b>	<b>Articles 4-18 and 37</b>

Article 20 (3) of Act No I of 2007 clearly states that third country national family members are exempt from visa fees and visas must be issued within 15 days from the submission of the application. This is in full compliance with Article 5 (2) of the Directive. Third country national family members may enter Hungary provided that they fulfil entry conditions set out in Schengen Borders Code as it is referred to it in Article 3 (5) of Act No I of 2007.

Apart from these conditions, third country national family members are required to apply for an 'ordinary' Schengen visa, and during the visa application process they are obliged to justify the purpose of the intended stay, as it is required by the Article 5 (1) (c) of the Schengen Borders Code (<sup>251</sup>). To this extent, provisions laid down in the Schengen Borders Code do not seem to be in line with the spirit of the Directive as the right of free movement of third country family members should stem solely from the family relationship. The ECJ has emphasised this interpretation in its relevant rulings (<sup>252</sup>).

### **5.5.2. Retention of right of residence**

<b>Directive 2004/38/EC</b>	<b>Articles 12 (2) (3) and 13 (2)</b>
<b>Act No I of 2007</b>	<b>Articles 11</b>
<b>Government Decree 113/2007</b>	<b>Articles 29 and 30</b>

Certain anomalies have been identified with regard to the retention of the right of residence of family members.

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<sup>251</sup> Article 5 (1) of Regulation 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code):

'For stays not exceeding three months per six-month period, the entry conditions for third-country nationals shall be the following: (...) c) they justify the purpose and conditions of the intended stay, and they have sufficient means of subsistence, both for the duration of the intended stay and for the return to their country of origin or transit to a third country into which they are certain to be admitted, or are in a position to acquire such means lawfully.'

<sup>252</sup> Case C-157/03 *Commission v Spain* [2005] ECR I-02911 and Case C-459/99 *MRAX* [2002] ECR I-06591.

### 5.5.3. Divorce, annulment of marriage or termination of registered partnership

<b>Directive 2004/38/EC</b>	<b>Article 13</b>
<b>Act I of 2007</b>	<b>Articles 8; 10 and 11</b>

According to Articles 8 (2) and (3) of Act I of 2007, members of the household that qualify as ‘other family members’ as set out in Article 3 (2) (a) of the Directive, lose their residence rights after the relationship with the EEA citizen has come to an end, and may not retain their rights as family members in the event of the death of the EEA national or in the case when the EEA national’s residence right has been withdrawn or the EEA national has left the country for permanent purposes.

According to Article 10 (3) and Article 11 (2) of Act I of 2007, in cases of divorce or annulment of the marriage, the retention of residence rights is only granted to EU national or third country national spouses, other family members are excluded. No such restriction is contained in Articles 13 (1) and 13 (2) of the Directive.

### 5.5.4. Third country national spouses of Hungarian citizens

<b>Directive 2004/38/EC</b>	<b>Article 7 and 13</b>
<b>Act I of 2007</b>	<b>Article 11</b>

Act No I of 2007 gives more favourable treatment to third country national spouses of a Hungarian citizens over third country national spouses of EEA citizens; according to Article 11 (4) of Act I of 2007, third country national spouses of Hungarian citizens may retain their residence rights without having to comply with further requirements, including economic conditions in instances when he/she has custody of any children born during their marriage. On the other hand, Article 11 (3) of Act I of 2007 provides that a third country national spouse of an EEA citizen may retain their residence rights if he/she exercises parental responsibility rights over the child of the EEA citizen residing in Hungary, provided that the spouse *fulfils the conditions* set out in Article 7 (1) of the Directive.

### 5.5.5. Social assistance

<b>Directive 2004/38/EC</b>	<b>Article 14 (1)</b>
<b>Act No I of 2007</b>	<b>Article 5</b>
<b>Government Decree 113/2007</b>	<b>Article 35</b>

The provisions on ‘becoming an unreasonable burden’ contained in Article 35 (1) of Government Decree 113/2007 have the same legal basis and use the same calculation method contained in the sections related to ‘sufficient resources.’ Persons relying on the social assistance system for a period of more than three months may be considered as being an ‘unreasonable burden’ according to Article 35 (1) of the Government Decree 113/2007. Article 35 (3) of the Government Decree 113/2007 provides that the personal circumstances of the person in question, must be taken into consideration before declaring someone to be a unreasonable burden. In particular, the duration of residence in the territory, the duration of receipt of benefits and whether the financial difficulties are considered permanent or temporary.

If a Union citizen or a family member becomes an unreasonable burden on the social assistance system, the immigration authority will adopt a resolution declaring the termination of the right of residence of the person concerned and to order the person to leave Hungary within three months. Refusal to leave the country may constitute a legal basis for expulsion.

## 5.6. Equal treatment

<b>Directive 2004/38/EC</b>	<b>Article 24</b>
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Neither Act No I of 2007, nor the Implementation Decrees contain reference to this Article. Nevertheless, the transposition of this section of the Directive required changes made in more than 50 laws and decrees. The most important are: Employment Act (Act No IV of 1991), Act on family benefits (Act No LXXXIV of 1998), and Act on social protection (Act No III of 1993). Amendments made to these Acts entered into force on 1 July 2007, together with the provisions of the transposition measures.

### 5.6.1. Residence rights for students

<b>Act No I of 2007</b>	<b>Articles 7 (2) and (3)</b>
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Discrepancies have been noted with regard to residence rights granted to family members of EU students and Hungarian students. Automatic residence rights are only conferred on the *spouse* and *dependent* children of the EU students. There are no provisions for facilitated residence rights for dependent direct relatives in the ascending lines, whereas for a Hungarian citizen (including the status of a student), family members are entitled to reside indefinitely so long as the family members are covered by comprehensive sickness insurance and have sufficient resources for themselves or the Hungarian citizen supports them according to Article 7 (2) of the Act No I of 2007. The right of residence for a period of longer than three months may be granted to a person who exercises parental custody of a minor child who is a Hungarian citizen even in the absence of the above mentioned requirements according to Article 7 (3) of the Act No I of 2007. This would appear to infringe the equal treatment principle contained in Article 24 of the Directive.

## 5.7 Ground for expulsion and procedural safeguards

### 5.7.1. Grounds for expulsion

<b>Directive 2004/38/EC</b>	<b>Article Articles 14; 15 (2) and 27-33</b>
<b>Act No I of 2007</b>	<b>Articles 15 (3) (4); 33; 40 (1); 42 (1); 44; 45 (2); 46; 47; 49; 61 and 71</b>
<b>Government Decree 113/2007</b>	<b>Articles 44; 47 and 54(2) (4)</b>

These provisions of the Directive have not been fully transposed into Hungarian law.

Crucial provisions such as Article 14 (1) and (2) of the Directive concerning expulsion on the grounds of reliance on the social assistance system and the provision prohibiting systematic verification of the conditions related to the right of residence have not been transposed correctly



(see Articles 33-35 and 38-47 of the Act I of 2007). Articles 14 (3) - (4) concerning automatic expulsion on the grounds of recourse to the social assistance system and cases where an expulsion measure cannot be taken, and Article 15 (2) prohibiting expulsion in the event of expiry of the identity card or passport have not been transposed.

Also, Article 27 of the Directive has not been fully transposed. Certain imperative guarantees concerning expulsion contained therein such as the prohibition to impose restrictions on economic grounds, the prohibition of justifications that rely on considerations of general prevention and the clarification regarding the standing of previous criminal convictions have been omitted.

Article 28 has not been correctly transposed, for example instead of using the terms of serious grounds or ‘imperative grounds,’ Article 40 of Act No I of 2007 contains an exhaustive list of situations in which expulsion may be ordered; these include expulsion for reason of public health, expulsion due to non-compliance with an order to leave the territory and expulsion on the grounds that the EEA national or their family member has provided false or misleading information to the competent authority to verify their right of residence.

### 5.7.2. Procedural safeguards

<b>Directive 2004/38/EC</b>	<b>Article 31</b>
<b>Act No I of 2007</b>	<b>Article 46</b>

Article 31 of the Directive on procedural safeguards requires decisions to be open to administrative redress. According to Article 46 of Act I of 2007, expulsion and exclusion orders may not be appealed, but judicial review is available for the beneficiaries of the residence rights.

## 5.8. Miscellaneous

### 5.8.1 Access to employment

<b>Directive 2004/38/EC</b>	<b>Article 23</b>
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Article 23 of the Directive on the entitlement to take up employment or self-employment has not been transposed. The right of access to employment is contained in separate legal regulations.

Restrictions on access to the Hungarian labour market have been lifted through legislative means- Government Decree 355/2007 of 23 December 2007 on transitional measures applicable to persons with the right of free movement and residence was amended by Government Decree 322/2008 of 29 December 2008 <sup>(253)</sup>. The amendments entered into force on 1 January 2009. This means that EEA nationals and their family members may take up an employment in Hungary without having to apply for work permit or authorisation. Employers are only required to notify the local employment services of the employment of EEA nationals and family members.

<sup>253</sup> Hungarian Official Gazette 2008/190 of 29 December 2009.

### 5.8.2. 'A durable relationship'

<b>Directive 2004/38/EC</b>	<b>Article 3 (2) (b); 8 (5) (f) and 10 (2) (f)</b>
<b>Government Decree 113/2007</b>	<b>Article 27 (c)</b>

Article 27 (c) of Decree 113/2007 provides that during the procedure for issuing residence documents, household members (including partners) are required to present an official attestation issued by the relevant authority in the country from which they came from certifying that they have lived together with the primary beneficiary. This is more restrictive than Article 3 (2) (b) of the Directive as they are only required to prove the existence of a durable relationship by any appropriate means (this also means that Articles 8 (5) (f) and 10 (2) (f) have not been transposed, see Article 27 (c) of the Government Decree 113/2007 of 24 May 2007 for implementing the Act No I of 2007).

### 5.9. Administrative services

In Hungary, the authority in charge of the application of the rules on free movement and residence is the Office of Immigration and Nationality, which is a unified immigration authority acting under the direction of the Ministry of Justice and Law Enforcement. The Office of Immigration and Nationality consists of a central organisational unit and of seven regional directorates.

Information on the website of the national authority is clear and easily understandable for the average user. General information can be received by phone on a continuous basis (automatic information system); although phone enquires during opening hours are directed towards information available on the internet. Officers working for customer services speak foreign languages and can provide applicants with information in English, French or German, and if necessary an interpreter can be asked for. The authority runs a free service on its website where officers, mainly lawyers, give information and advice to citizens, but this service is only accessible in Hungarian. Brochures providing information are also mostly available in Hungarian.

There are no considerable problems reported in the field of administrative services for issuing residence documents. Application forms are structured in a comprehensive way, can be downloaded from the internet and printed out and are also available in English. Visa application forms for third country nationals can also be obtained in languages of the neighbouring countries. As certain applications must be submitted personally, applicants cannot avoid going to the offices themselves; although these offices are only located in bigger cities and the opening hours are fairly restricted. Applicants are encouraged to arrange appointments through the Internet.

It is necessary to note that since the enactment of the implementation Act, only a relatively small number of applications for registration certificate or residence card have been refused by the immigration authorities.

### 5.10. Conclusions

All the relevant transposition measures came into force on 1 July 2007. Therefore it is not possible from this date to the date of this study, to identify real legal weaknesses and problematic

areas relating to the transposition. As yet there has not been a judgement by the Hungarian Court on the application of these measures.

It can be concluded that the transposition of the majority of the provisions of the Directive has been satisfactory, as the entry and residence rights of Union citizens seem to have been observed, although, a number of problematic areas have been identified above.

Certain non-conformities might arise due to the fact that the Hungarian act covers different categories of beneficiaries, as it also applies to family members of Hungarian nationals not having Hungarian citizenship themselves, which does not go against the spirit of the Directive, but may result in situations in which family members of Hungarian nationals are treated more favourably than family members of Union citizens.

Transposition with regard to the right of residence granted to partners and other family members who are not close relatives is incomplete. The failure to recognise (registered) partnership has resulted in a significant lack of clarity concerning the situation of these family members. Certain inconsistencies have been identified in comparison to the requirements of the Directive relating to permanent residence documents (the same card is issued to both, Union citizens and non-EU national family members and the residence card for Union citizens is not issued as soon as possible). The transposition of provisions on restrictions on right of entry and residence on the grounds of public policy and public security is the most insufficient. The Hungarian legislation follows a very different structure; therefore, the rules governing these issues are much less comprehensive. Certain safeguard clauses, in particular prohibition of expulsion on the grounds of reliance on the social assistance system, are missing and provisions prohibiting regular checks and controls exercised by national authorities are not elaborated in detail.

## 6. IRELAND

### 6.1. Transposing measure(s)

<b>Statutory Instrument 656 of 2006</b>
<b>Statutory Instrument 310 of 2008 <sup>(254)</sup></b>

In Ireland, the Directive was transposed by Statutory Instrument 226 of 2006. This legislation was subsequently repealed in light of the accession of Bulgaria and Romania and replaced by Statutory Instrument 656 of 2006 European Communities (Free Movement of Persons) (No.2) Regulations 2006. This came into force on 1 January 2007.

Following the decision of the ECJ in *Metock* <sup>(255)</sup> delivered on 25 July 2008, a further Statutory Instrument, Statutory Instrument 310 of 2008 European Communities (Free Movement of Persons) (Amendment) Regulations 2008 was adopted on 31 July 2008 <sup>(256)</sup>. This amended Statutory Instrument 656 of 2006.

### 6.2. Right of entry and residence

The relevant laws applicable to the right of entry and residence are set out below:

<b>Directive 2004/38/EC</b>	<b>Articles 4 -15</b>
<b>Statutory Instrument 656 of 2006</b>	<b>Regulations 3; 4; 6; 7; and 9-11</b>

#### 6.2.1. Right of entry

The relevant laws applicable to the right of entry are set out below:

<b>Directive 2004/38/EC</b>	<b>Articles 5</b>
<b>Statutory Instrument 656 of 2006</b>	<b>Regulations 4 and 5</b>

Regulations 4 (1), 4 (2), and 5 (4) of Statutory Instrument 656 of 2006 provide that Union citizens and their qualifying family members i.e. "family members" under the Directive, may be refused entry into Ireland where their personal conduct is such that it would be contrary to public policy or endanger public security.

These provisions fail to provide that only where the person is a serious threat to public security and public policy should they be denied entry into the State in accordance with Article 27 (2) of the Directive. This Article provides that the conduct must represent a genuine, present and *sufficiently serious threat* affecting one of the fundamental interests of society.

<sup>254</sup> Please see: <<<http://www.inis.gov.ie/en/INIS/SI656of2006.pdf/Files/SI656of2006.pdf>>>.

<sup>255</sup> Case C-127/08 *Metock and others* [2008] ECR 00000.

<sup>256</sup> Please see:

<<<http://www.inis.gov.ie/en/INIS/SI%20310%20of%202008.pdf/Files/SI%20310%20of%202008.pdf>>>

Furthermore, the Irish authorities continue to require entry visas for third country national family members of EU nationals in situations where the family member has a residence card in another Member State.

### 6.2.2. Right of residence

The relevant laws applicable to the right of residence are:

<b>Directive 2004/38/EC</b>	<b>Articles 6 and 7</b>
<b>Statutory Instrument 656 of 2006</b>	<b>Regulations 4 and 6</b>

### 6.2.3. Right of residence for up to three months

<b>Directive 2004/38/EC</b>	<b>Article 6</b>
<b>Statutory Instrument 656 of 2006</b>	<b>Regulation 6 (1)</b>

Regulation 6 (1) of Statutory Instrument 656 of 2006 provides that the Union citizen may reside in Ireland for a period of up to three months provided he/she can demonstrate that ‘he does not become an unreasonable burden on the social welfare system of the State.’ This goes beyond the wording of Article 6 (1) of the Directive as it provides that ‘Union citizens shall have the right of residence on the territory of another Member State for a period of up to three months without any conditions or formalities other than the requirement to hold a valid identity card or passport’. Also, Article 6 (2) of the Directive clearly states that this is also applicable to ‘family members in possession of a valid passport who are not nationals of a Member State, accompanying or joining the Union citizen.’

### 6.2.4. Right of residence for more than three months

<b>Directive 2004/38/EC</b>	<b>Article 7 (4)</b>
<b>Statutory Instrument 656 of 2006</b>	<b>Regulation 6 (3)</b>

Regulation 6 (3) of the Statutory Instrument 656 of 2006 provides that the Minister for Justice may ‘following an extensive examination of the personal circumstances of the person concerned, permit a family member of a Union citizen to remain in the State,’ without clarification of what constitutes an ‘extensive examination.’ This leaves scope for lengthy and intrusive investigation into the circumstances of the Union citizen and the family member and could be regarded as disproportionate.

### 6.2.5. Permanent residence - Exemptions for persons no longer working in the host Member State and their families and documents certifying permanent residence for Union citizens

<b>Directive 2004/38/EC</b>	<b>Articles 17 and 19</b>
<b>Statutory Instrument 656 of 2006</b>	<b>Article 17</b>

Both Articles 17 and 19 of the Directive have been transposed in Ireland through Regulations 13 and 15 of Statutory Instrument 656 of 2006. Regulation 17 of Statutory Instrument 656 of 2006

provides that the Minister for Justice, Equality and Law Reform ‘may require the production of satisfactory evidence by a person to whom these Regulations apply that he/she satisfies the requirements of these Regulations.’ This transposition is ambiguous, which in turn confuses applicants. It gives the Minister wide discretion as to the documentation he can require and when such documentation can be required.

### **6.3. The definition of sufficient resources**

The relevant Articles containing reference to ‘sufficient resources’ are:

<b>Directive 2004/38/EC</b>	<b>Articles 7 (1) (b)(c); 8 (4); 12 (2) and 13 (2)</b>
<b>Statutory Instrument 656 of 2006</b>	<b>Regulations 2; 9 and 10</b>

There is some ambiguity in the definition of sufficient resources contained in the Irish implementing Regulations. Regulation 2 provides that "a person shall be regarded as not having sufficient resources to support himself or herself and his or her dependents where he or she would qualify for assistance under Part 3 of the Social Welfare Consolidation Act 2005 if a claim was made by or on behalf of that person." Only someone who can demonstrate habitual residence in Ireland would be eligible to claim any of the assistance under Part 3 of this Act.

The term "habitual residence" is not defined in either Irish or EC law, but it is intended to convey a degree of permanence evidenced by regular physical presence enduring for some time, beginning at a date usually in the past and intended to continue for a period into the foreseeable future. It implies a close association between the applicant and the country from which payment is claimed and relies heavily on fact.

Habitual residence cannot be determined simply by reference to a specific period of residence in a country. The length and continuity of a person's residence must be considered along with other factors.

The following are the relevant factors which have been set down in Ireland:

- Length and continuity of residence in Ireland or in any other particular country
- Length and purpose of any absence from Ireland
- Nature and pattern of employment
- Applicant's main centre of interest
- Future intentions of applicant as they appear from all the circumstances.

#### **6.4. The situation of (registered) partners**

The relevant Regulations applicable to the situation of (registered) partners are:

<b>Directive 2004/38/EC</b>	<b>Article 8 (5)(b); 10 (2)(b); 13 (1) and 13 (2)(a)(c) <sup>(257)</sup></b>
<b>Statutory Instrument 656 of 2006</b>	<b>Regulations 2 (1); 7; 10 and Schedule 2</b>

Regulation 2 of the Statutory Instrument 656 of 2006 does not include registered partners among the 'qualifying family members' who can benefit from free movement and residence rights. There is no provision in Ireland at the current time for registration of civil partnerships. However, legislation has been drafted "The Civil Partnership Bill 2008" which aims to provide for such partnerships.

On 25 June 2008, the Government published a draft proposal entitled General Scheme of Civil Partnership Bill for the introduction of Registered Partnership for same-sex partners only. This Bill, if enacted, will have implications for the recognition of same sex registered couples from other countries in Ireland. It will require amendment of Statutory Instrument 656 of 2006 to include registered partners among the 'qualifying family members' provided for under Regulation 2.

#### **6.5. Problems encountered by third country national family members**

In Ireland the principal problems encountered by third country national family members concerned the need to show prior lawful residence in another Member State in order to obtain residence cards until the decision of the ECJ in *Metock* <sup>(258)</sup>.

##### **6.5.1. Right of entry**

<b>Directive 2004/38/EC</b>	<b>Articles 5 (2)</b>
<b>Statutory Instrument 656 of 2006</b>	<b>Regulations 4(3) and 5(3)</b>

Article 5 (2) of the Directive provides that third country national family members shall *only* be required to have an entry visa in accordance with Regulation (EC) No 539/2001 <sup>(259)</sup> or, where appropriate with national law. Irish authorities continue to require entry visas for third country national family members of EU nationals in situations where the family member has a residence card in another Member State. This situation is the subject of numerous complaints to the CSS service, the SOLVIT service and to the EUROJUS service.

<sup>257</sup> Please see Recital 5 of Directive 2004/38/EC.

<sup>258</sup> C-127/08 *Metock and others* [2008] ECR 00000.

<sup>259</sup> Council Regulation No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement OJ L 81 1.

### 6.5.1. Residence cards

The relevant Regulations applicable to Residence cards are:

<b>Directive 2004/38/EC</b>	<b>Articles 9-11</b>
<b>Statutory Instrument 656 of 2006</b>	<b>Regulations 5 (1); 7 (1); 7 (2) and 8</b>

#### 6.5.1.1. Issue of a residence card

<b>Statutory Instrument 656 of 2006</b>	<b>Regulation 3 (2)</b>
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The date for implementation of the Directive into national law was 30 April 2006.

Since this date, there has been concern in Ireland with Regulation 3 (2) of Statutory Instrument 656 of 2006. Under this regulation, a non-EEA family member of an EEA national had to demonstrate that he/she had resided in another Member State prior to being eligible to obtain a residence card in Ireland. If this could not be demonstrated, a residence card was refused and the applicant was threatened with deportation. In a number of cases, the applicant was deported.

This adversely affected a large number of couples and was the subject of numerous complaints to, *inter alia*, the European Commission, the Immigrant Council of Ireland and the Migrant Rights Centre of Ireland. Also, a number of cases were taken before the Irish courts claiming that Article 3 (2) of the Statutory Instrument was contrary to the Directive and Community law.

The matter was ultimately resolved in the case of *Metock & Others v Minister for Justice Equality and Law Reform* <sup>(260)</sup> which was referred to the ECJ from the High Court in Ireland pursuant to Article 234 EC. The ECJ held in *Metock* that the Directive ‘precludes legislation of a Member State which requires a national of a non-member country who is the spouse of a Union citizen residing in that Member State but not possessing its nationality to have previously been lawfully resident in another Member State before arriving in the host Member State, in order to benefit from the provisions of that Directive’ <sup>(261)</sup> therefore secondary legislation requiring a non-EEA spouse of an EEA national to have lived in another Member State of the EU prior to applying for a residence card, is contrary to Community law. Regulation 3 (2) of Statutory Instrument 656 of 2006 was amended by Statutory Instrument 310 of 2008 in order to comply with the judgment in *Metock*.

All those who had been adversely affected by Regulation 3 (2) of Statutory Instrument 656 of 2006 as previously drafted and the practice of INIS have been invited by INIS to return to the INIS offices to have their cases reviewed. This review process of applications is ongoing. It is anticipated that it will take some months to review and regularise all cases. It is also not yet known if there are other reasons upon which these re-submitted applications may again be refused. Therefore, it will take until July 2009 to discern whether, in the aftermath of the *Metock* decision, Ireland is fully or largely compliant with the provisions and purpose of the Directive.

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<sup>260</sup> 2008 IEHC 77.

<sup>261</sup> Case C-127/08 *Metock and others* [2008] ECR 00000, paragraph 80.



### 6.5.1.2. Procedure to issue a residence card

<b>Directive 2004/38/EC</b>	<b>Articles 9-11</b>
<b>Statutory Instrument 656 of 2006</b>	<b>Regulation 7</b>

#### 6.5.1.2.1 Delays in the issue of residence cards

While it is provided in Regulation 7 (2) of Statutory Instrument 656 of 2006 that residence cards shall, if appropriate, be issued *within* six months of the date of receipt of the application, INIS was, in the immediate aftermath of the *Metock* decision, indicating (to applicants) that the process of issuing a residence card would take *a minimum of six months*. It appears that INIS is now issuing short term residence cards within the six month limit. These short term residence cards are being used to bridge the period during which INIS processes the application for a five year residence card. Although this is better than nothing, this procedure is not in accordance with the provisions of the Directive.

#### 6.5.1.2.2. Requirement of three months residence to submit an application for a residence card

For a short period of time during August 2008, a number of complaints were received by the Eurojus Adviser to the European Commission Representation in Ireland and by senior staff in the Immigrant Council of Ireland, that the INIS was insisting that an applicant should have resided in Ireland for a minimum of three months before submitting an application for a residence card. Many of those who complained have now confirmed that this is no longer required.

There have been no further complaints to this effect received by the Eurojus service since mid-September 2008.

#### 6.5.1.3. Appeal procedure in case of negative decision

<b>Directive 2004/38/EC</b>	<b>Article 15</b>
<b>Statutory Instrument 656 of 2006</b>	<b>Regulation 21</b>

There are ongoing concerns about the procedural safeguards available to those who wish to appeal against or seek review of any decision taken against them including an order for deportation.

Regulation 21 of Statutory Instrument 656 of 2006 provides that a review of any decisions concerning a person's entitlement to be allowed to enter the State is carried out by an officer of the Minister for Justice, Equality and Law Reform who is not the person who made the decision and is of a grade senior to the grade of the person who made the decision. This is set out in Regulation 21 of Statutory Instrument 656 of 2006. The review by a person of a grade senior to the person who made the decision is not satisfactory as this person may share the same office. There is no guarantee of independence in the review procedure. The person seeking review could not have any confidence of a fair and impartial review. The procedural safeguards provided for in Regulation 21 of Statutory Instrument 656 of 2006 thus appear to be weighted against the person seeking appeal or review.

If a person resorts to the courts, the process is efficient and reliable in that the person is guaranteed a fair hearing with the availability of interpreters, if necessary. However, resort to court proceedings is expensive and this expense can be prohibitive. Only judicial review may be sought of the decision. This is not an appeal but a review of the way in which the decision was made. The review does not have the effect of suspending the effects of the decision under review.

#### 6.5.1.4. Onerous evidentiary requirements to apply for a residence card

<b>Directive 2004/38/EC</b>	<b>Article 10</b>
<b>Statutory Instrument 656 of 2006</b>	<b>Regulation 7</b>

There are other aspects which do not comply with the Directive and cause inconvenience to applicants for residence cards. For example, the documentation required by INIS to evidence entitlement to a residence card is often very onerous and goes beyond the requirements of Article 10 (2) of the Directive. Pursuant to Regulation 7 of Statutory Instrument 656 of 2006, the following documentary evidence is required by INIS in processing an application for a residence card from a family member of a Union citizen who is not a national of a Member State:

A	Name of applicant
B	Address of applicant
C	Date and place of birth of applicant
D	Nationality of applicant
E	Number, date and place of issue of applicant's passport or identity card (original of document to be provided);
F	Occupation of applicant (copy of Employment Permit, if applicable);
G	Immigration reference number and PPS (national insurance) number in Ireland
H	Declaration of any criminal record
I	Immigration history in Ireland
J	Photographs or other documentary evidence

The requirement to provide details of the occupation of the applicant, the PPS number, the declaration of any criminal record and the immigration history go beyond what is required under Article 10 of the Directive. As an example, the Immigrant Council of Ireland has an appeal pending against the revocation of a residence permit of a family member of an EU national on the basis that he "attempted to acquire a right of residence by fraudulent means". He had failed to provide details of an admittedly serious criminal offence.

In addition, Regulation 7 (1) (b) of the Statutory Instrument provides that this information shall be 'accompanied by such documentary evidence as may be necessary to support the application.' The wording of this provision provides the opportunity for the INIS to request further information from the applicant which is not set out in either the Directive or the implementing legislation. Information that is routinely requested includes evidence of the EU national's employment.

### 6.5.1.5. Assistance for applications for residence cards

For those seeking help and advice from INIS in relation to their applications for residence cards, it is difficult to contact the organization. The telephone contact details for INIS (<sup>262</sup>) provided on the website (<sup>263</sup>) are limited to a lo-call number and a general contact number. The lo-call number is of no use if the applicant wishes to obtain information from outside Ireland as the number will not dial. The general contact number is very busy and while the caller may get through to an automated system, he/she may wait for a very long time before obtaining a response. Frequently, the automated advisor will advise that the helpline operators are so busy they cannot deal with the call and advises the caller to "try again later". Telephone call hours are limited to between 10am and 12.30pm, Monday to Friday.

### 6.5.2. Entitlement to take up employment

<b>Directive 2004/38/EC</b>	<b>Article 23</b>
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Irish Authorities insist that family members only have the right to take up employment in Ireland when they have received their residence cards. Potential employers will not employ persons without a residence card, leading to unemployment or forcing new immigrants onto the illegal employment market. This was providing severe economic hardship for EU nationals and their families. This situation has been addressed to some extent by the issue by INIS of short term residence cards while the application for a five year residence card is being processed.

This problem does not arise in relation to permanent residence cards.

### 6.6. Equal treatment

The relevant Regulations applicable to equal treatment are:

<b>Directive 2004/38/EC</b>	<b>Article 24</b>
<b>Statutory Instrument 656 of 2006</b>	<b>Regulations 18 (1) and (2)</b>

(no issues identified)

### 6.7. Grounds for expulsion and procedural safeguards

#### 6.7.1. Safeguards against expulsion

<b>Directive 2004/38/EC</b>	<b>Articles 14 (3), 14 (4) and 15 (2)</b>
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Articles 14(2), 14 (3), 14 (4) and 15 (2) of the Directive provide for safeguards against expulsion for Union citizens and their family members. These have not been transposed into Irish law.

<sup>262</sup> Irish Naturalisation & Immigration Service, 13/14 Burgh Quay, Dublin 2, Locall: 1890 551 500.

<sup>263</sup> Irish Naturalisation & Immigration Service: <<<http://www.inis.gov.ie/>>>.

## 6.7.2. Procedural safeguards

The relevant Articles setting out procedural safeguards are set out below:

<b>Directive 2004/38/EC</b>	<b>Articles 30-33</b>
<b>Statutory Instrument 656 of 2006</b>	<b>Regulation 20 and 21</b>

The procedural rules in relation to removal from the State are quite extensive under the Irish implementing legislation. However, these safeguards appear to protect the Irish State more than the person subject to the removal order. For example, the time specified in a removal order shall, under the Irish implementing legislation, be no less than 10 working days (unless the Minister certifies that the matter is urgent), while the period set out in the Directive is to be no less than one month.

## 6.8. Miscellaneous

### 6.8.1. Right of exit

<b>Directive 2004/38/EC</b>	<b>Article 4 (1)</b>
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Article 4 (1) of the Directive provides for a right of exit. This has not been transposed into Irish law.

### 6.8.2. A ‘durable relationship’

<b>Directive 2004/38/EC</b>	<b>Articles 3 (2)(b),8 (5) (f) and 10 (2) (f)</b>
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In various provisions of the Directive, reference is made to a ‘durable relationship.’ In Article 3 (2) (b) Member States must facilitate the entry of the partner of a Union citizen with whom there is a ‘durable relationship’ duly attested. In order for a registration certificate to be issued to family members of Union citizens who are themselves Union citizens, Article 8 (5) (f) provides that the existence of a ‘durable relationship’ must be proven for partners falling under Article 3 (2) (b). Article 10 (2) (f) provides that in order for residence cards to be issued, the existence of a ‘durable relationship’ must be proven for partners falling under Article 3 (2) (b).

There is no provision in Irish implementing legislation *for the evidence* required to attest a durable relationship as mentioned in the Directive.

## 6.9. National legislation that interferes or could interfere with the Directive

There is a legislative proposal that contain provisions that would apply and/or affect those persons falling under the scope of the Directive.

### 6.9.1. Immigration, Residence and Protection Bill 2008 <sup>(264)</sup>

This piece of legislation was published in January 2008 but is not yet in force. A non-governmental organization assisting all immigrants in Ireland, the Immigration Council of Ireland, submits, *inter alia*, the following points in its paper ‘Analysis of the Immigration, Residence and Protection Bill 2008’ (as initiated) <sup>(265)</sup>:

#### 6.9.1.1. Right of residence

- The Bill provides statutory footing for long term residence, but the conditions for granting this residence are not in line with the practice in other EU Member States.

#### 6.9.1.2. Third country national family members

- The Bill, as currently drafted, would allow the Irish authorities to deport any person who is unlawfully present in Ireland without prior notification. This would be of concern where the non-EEA spouse of an EEA worker failed to make an application for a residence card or was refused a residence card even though there are provisions for prior notification in the case of the latter event under Statutory Instrument 656 of 2006.

In this regard, some protection is given in Article 7 of the Bill which provides that ‘nothing in the proposed Act affects any obligation of the State under the Treaties governing the European Communities or any obligation of the State under an Act adopted by an institution of the European Communities.’ Interestingly, the Bill does not refer to decisions of the ECJ which may impact on the provisions of the Bill.

- The Bill seeks to limit access to State funded services for migrants who are unlawfully present in Ireland. However, it makes no provision for migrants who have become unlawfully present through no fault of their own e.g. the third country national, non-working spouse of an EU worker whose spouse leaves her and their children to return to his own country.
- The Bill provides that a High Court challenge to any type of immigration decision must be made within fourteen days. This requirement limits the migrant’s access to justice as a migrant may not be proficient in the official languages of Ireland or be familiar with the Irish legal system. Moreover, it may be difficult to find a lawyer to put the necessary papers in order to successfully challenge the decision and taking proceedings to the High Court is extremely expensive. Therefore, this time-limit is very restrictive.
- The Bill does not provide for migrants’ rights to family life in Ireland. There is no provision for citizens and legal residents to be joined by immediate family members. If the Bill is passed as it is, Ireland will be the only EU Member State not to have national rules regarding family reunification enshrined in primary legislation. The Regulations implementing the Directive are secondary legislation and as such would not necessarily carry the same weight as primary legislation. It seems a pity that the opportunity has not

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<sup>264</sup> Please see:

<<<http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2008/0208/B0208D.pdf>>>.

<sup>265</sup> Please see: <<[http://www.immigrantcouncil.ie/images/7670\\_irpbillanalysisplusamendments.pdf](http://www.immigrantcouncil.ie/images/7670_irpbillanalysisplusamendments.pdf)>>.

been taken to incorporate the right of family reunification as part of primary legislation in Ireland.

### **6.9.1.3. Equal treatment**

While there are currently few concerns in Ireland regarding Article 24 of the Directive, there are concerns that there may be a breach of this provision if Section 13 of the Immigration Residence and Protection Bill 2008 is enacted.

This draft legislation seeks to provide in relation to visa applications that:

- (5) A guarantor must be—
  - (a) lawfully resident in the State,
  - (b) **an Irish citizen or**, if not—
    - (i) the holder of a long-term residence permit, or
    - (ii) **a person who has been a citizen of a Member State (or States) for at least 5 years and has lawfully resided in the State for at least 5 years,**
- and
- (c) over the age of 18 years.

The Immigrant Council of Ireland has submitted in its paper ‘Analysis of the Immigration, Residence and Protection Bill 2008’ (as initiated) that this provision (if enacted), is in breach of Article 24 of the Directive.

### **6.9.1.4 Refusal of entry for Union citizens**

There appears to be an oversight in the Bill in so far as while people who are refused a visa to enter Ireland have the opportunity to appeal the decision, people who do not require a visa e.g. EEA citizens, who are refused entry when they arrive at the border do not have any opportunity to appeal the decision. Visa holders can also be refused entry when they arrive at the border. Though visa required nationals may appeal a decision to grant them a visa, they do not have an appeal if refused entry, even if they have been granted a visa.

This is a problem throughout the EU as persons who are turned back at the border have little recourse to justice. It would be very difficult for such a person to appeal the decision of the immigration officials as they would not have had the opportunity to enter Ireland to do so. Certainly, an appeal could be made from outside Ireland but this would do little to address the original refusal of entry. A claim for compensation for the loss such a person would have sustained in terms of holiday accommodation etc. would be difficult to pursue and win.

## **6.10. Administrative services**

The administrative service for Union citizens exercising their free movement rights in Ireland is poor.

While the website of the Irish Naturalisation and Immigration Service (<<[www.inis.gov.ie](http://www.inis.gov.ie)>>) is moderately informative, it signals that the procedures are very straightforward which they are not. It is not easy to find this website and it is not directly linked from the Department of Justice

website (<sup>266</sup>) which would be the normal point of departure for many citizens. While the website contains the relevant headings e.g. immigration, citizenship, visas, the information relating to these headings is limited. For example, while the "Forms" webpage refers to a selection of forms on the left hand side of the page, the only form available is one relating to visas. There is no available form for non-EEA family members of EEA nationals seeking a residence card.

The contact details for the INIS are limited to a very busy number used for all public queries on matters dealt with by INIS and a lo-call number which is of no use if the applicant wishes to obtain information from outside Ireland as the number will not dial. The telephone call hours are limited to between 10am and 12.30pm, Monday to Friday although the website refers only to Monday, Wednesdays and Fridays. Calls will not be dealt with outside these hours. Even if the caller does manage to speak with someone on the helpline, the knowledge of that person is extremely limited. They can also be rude. Frequently, they will advise that they will email the relevant person in EU Treaty Rights Section who will revert to the applicant, but often, nothing further is ever heard from the EU Treaty Rights Section.

On the "contact" page, there is no provision for email contact by a citizen with the Irish Naturalisation and Immigration Service. If the applicant chooses to email his/her query, it would not be unusual never to obtain a response. No timelines are indicated for a response to an email.

If the applicant seeks information from the local immigration officer in the garda station, he/she will again frequently encounter a lack of knowledge and conflicting information.

## **6.11. Conclusions**

To conclude, it is clear that certain provisions of the Directive have not been transposed into Irish law. While these omissions have not caused major problems for applicants for residence cards to date, it will be interesting to observe if associated problems become apparent in the future.

Following the ECJ judgment in *Metock*, Ireland is now in a period of adjustment. It will take some time for INIS to adapt its policies and procedures to meet the revised implementing legislation. There are pieces of anecdotal evidence from the Immigrant Council of Ireland and the Eurojus service who deal with complaints against the INIS from applicants seeking residence cards, suggesting that the review procedure is efficient and that applicants are receiving five year residence cards within a relatively short timeframe. However, it is currently difficult to assess whether the *Metock* decision will pave the way for full and proper implementation of the Directive in Ireland. In view of the number of outstanding transposition inconsistencies, this outlook may prove to be overly optimistic.

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<sup>266</sup> Please see <<[www.justice.ie](http://www.justice.ie)>>.

## 7. ITALY

### 7.1 Transposing measure(s)

<b>Legislative Decree No 30 of 6 February 2007 amended by the Legislative Decree No 32 of 28 February 2008</b>
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The Directive has been transposed into Italian law by Legislative Decree No 30 of 6 February 2007 <sup>(267)</sup> entitled ‘Transposition of Directive 2004/38/EC of the European Parliament and the Council of the 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 <sup>(268)</sup>’.

This measure has subsequently been amended by Legislative Decree No 32 of 28 February 2008 entitled ‘Amendments and integrations to the Legislative Decree of 6th February 2007,’ n. 30, transposing Directive 2004/38/EC of the European Parliament and the Council of the 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 <sup>(269)</sup>. Both of these measures were adopted by the Government by proxy of the National Parliament.

Law Decree 15 February 2007, n. 10 <sup>(270)</sup>, was adopted by the Parliament and transposed into law by Law 6 April 2007 No 46 to address the infringement proceedings n.1998/2127 <sup>(271)</sup> and n. 2006/2126 <sup>(272)</sup> against Italy concerning Legislative Decree 286/1998 on migration policy <sup>(273)</sup>. Although it does not directly concern the Directive, it was adopted in order to comply with the Schengen *acquis* <sup>(274)</sup> and brings Decree 286/1998 in line with the Directive particularly as regards third country national workers sent to provide services in Italy within the framework of this fundamental freedom. It is necessary to note that not all of the provisions of Decree 10/2007 concern the free movement of persons; it was adopted to ensure that Italian law complies with Community and international law in general <sup>(275)</sup> (in particular, some judgements from the ECJ regarding State aid, some European Commission decisions concerning the freedom to provide services, provisions of an International Treaty regarding agricultural and food etc).

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<sup>267</sup> Hereinafter ‘Decree 30/2007’ or ‘Decree’

<sup>268</sup> Please see: <<<http://www.parlamento.it/leggi/deleghe/07030dl.htm>>>.

<sup>269</sup> Please see: <<<http://www.parlamento.it/leggi/deleghe/08032dl.htm>>>.

<sup>270</sup> Hereinafter Decree 10/2007. Such decree was transposed – with some amendments – into law by Article 1 of Law 6 April 2007, n. 46, published on the Italian official journal 11 April 2007, n. 84.

<sup>271</sup> Article 5 of Decree 10/2007 was modified the provisions of law 286/1998 according to which employees of a company established in another EU member State were obliged to ask for an Italian work permit at anytime they were sent by their company to provide services in Italy.

<sup>272</sup> These proceedings were opened by the Commission because Italian legislation did not comply with Schengen *acquis* (in particular Articles 5; 19; 20 and 22) and with Article 6 (2) and Article 5 (5) of the Directive which had not yet been transposed into Italian law.

<sup>273</sup> Decreto Legislativo 25 luglio 1998, n. 286, "Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero" (Text regulating migration and rules concerning migrants' status ), published on the Italian Official Journal n. 191 of 18 August 1998 – SO n. 139.

<sup>274</sup> Please see Article 5 of Decree 10/2007.

<sup>275</sup> D.L. 15-2-2007 n. 10 “Disposizioni volte a dare attuazione ad obblighi comunitari ed internazionali”



Article 5 of the Decree 10/2007 concerns free movement rights (<sup>276</sup>). As an example of an amendment, Article 5 (2) of Decree 10/2007 now provides that a residence permit is no longer required by third country nationals residing in Italy for less than three months. In fact, they would only need a visa (<sup>277</sup>).

## **7.2. Right of entry and residence**

The relevant Articles applicable to the right of entry and residence are set out below:

<b>Directive 2004/38/EC</b>	<b>Articles 4 -15</b>
<b>Legislative Decree 30/2007</b>	<b>Articles 9-13 and 20-22</b>

### **7.2.1. Right of entry**

The laws applicable to the right of entry are set out below:

<b>Directive 2004/38/EC</b>	<b>Article 5</b>
<b>Legislative Decree 30/2007</b>	<b>Article 5</b>

(no issues identified)

### **7.2.2. Right of residence**

The laws applicable to the right of residence are set out below:

<b>Directive 2004/38/EC</b>	<b>Articles 6 and 7</b>
<b>Legislative Decree 30/2007</b>	<b>Articles 6 and 7</b>

(no issues identified)

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<sup>276</sup> “Modifiche al testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, di cui al decreto legislativo 25 luglio 1998, n. 286, in materia di distacco di lavoratori cittadini di Paesi terzi nell'ambito di una prestazione di servizi. *Procedura d'infrazione n. 1998/2127*”.

<sup>277</sup> See also Article 1 of Law 68/2007 of 28 May 2007 published in the Italian Official Journal n. 126 of 1 June 2007 regulating the third country nationals' residence for tourism, study, work and visiting purposes

### 7.3 The definition of sufficient resources

The relevant Articles containing reference to ‘sufficient resources’ are set out below:

<b>Directive 2004/38/EC</b>	<b>Articles 7 (1) (b)(c); 8 (4); 12 (2) and 13 (2)</b>
<b>Legislative Decree 30/2007</b>	<b>Articles 7; 9;11 and 12</b>

Article 9 of Decree 30/2007 sets out the requirements to be satisfied by Union citizens wishing to reside on the Italian territory for a period longer than three months.

#### 7.3.1. Proof of sufficient resources

<b>Directive 2004/38/EC</b>	<b>Article 8 (3)</b>
<b>Legislative Decree 30/2007</b>	<b>Article 9</b>
<b>Legislative Decree 286/1998</b>	<b>Article 29 (3)</b>

According to Article 9 (3) of Decree 30/2007, Union citizens who register with their local registry office, must provide evidence of ‘sufficient economic resources’ for themselves and for their family in accordance with the benchmarks provided by Article 29 (3) of Decree 286/1998. This Article requires that the citizen proves the *legality* of their economic resources. This requirement seems to go beyond Article 8 (3) of the Directive which simply provides that Union citizen *provide proof* that they have sufficient resources. Neither Article 9 (3) of Decree 30/2007 nor Article 29 (3) of Decree 286/1998 distinguish on this point between workers, self employed persons, students or inactive persons.

#### 7.3.2 A figure to determine sufficient resources

<b>Directive 2004/38/EC</b>	<b>Article 8 (4)</b>
<b>Legislative Decree 30/2007</b>	<b>Article 9 (3) lett. b</b>
<b>Legislative Decree 286/1998</b>	<b>Article 29 (3) lett. b</b>

Article 9 (3) of Decree 30/2007 does not set out a fixed amount to determine whether or not the Union citizen has ‘sufficient resources.’ Instead reference is made to Article 29 (3) of Decree 286/1998 which has been amended by Article 1 of Legislative Decree 160 of 3 October 2008. This provides that a third country national who applies for family reunification will be required to show the lawfulness of the origin of their economic resources of which the amount cannot be lower than the yearly social allowance; such an amount must be increased by up to the half of the yearly social allowance per each family member.

For reunification of two or more sons 14 years or younger, or for the reunification of two or more family members having the status of subsidiary protection, it is necessary to provide an annual amount no lower than the annual amount of the social allowance. When calculating the annual figure, the total amount of all the family members living with the Union citizen will be taken into account.

Article 29 (3) of Decree 286/1998 as amended by Article 1 of Legislative Decree 160 of 3 October 2008 is also referred to in Memorandum n. 13 of 28 October 2008 (circolare n.13 del 28 Ottobre 2008) of the Ministry of Interior adopted on the basis of Article 9 (3) lett. b) of the

Decree 30/2007. This memorandum was repealed by Memorandum n. 19 of 6 April 2007. According to the Memorandum currently in force, the citizen must show an amount of 5.142,67 Euros, plus 2.571,33 Euros for each family member; if he has two or more sons 14 years or younger, the amount to be shown is 10.285,34 Euros. The economic resources of all family members living with the citizen are also taken into account.

Such a provision does not seem to be in line with both the last sentence of Article 8 (3) of the Directive according to which “Member States may not require this declaration to refer to any specific amount of resources,” however paragraph (4) of the same Article states that “Member States may not lay down a fixed amount which they regard as "sufficient resources", but they must take into account the personal situation of the person concerned.” It then also states that “in all cases this amount shall not be higher than the threshold below which nationals of the host Member State become eligible for social assistance, or, where this criterion is not applicable, higher than the minimum social security pension paid by the host Member State.” Therefore, the latter sentence of the Directive seems to allow MS to fix an approximate amount within the specified limits.

Article 9 paragraph 3 lett. b of the Decree 30/2007 provides among the requirements that every Union citizen willing to stay on the Italian territory for a period longer than three months, that he/she would be asked to show the availability of sufficient economic resources for himself and his family members in accordance with the thresholds set out in Article 29 (3) lett b of Decree 286/1998 on migration policy. It means that even if Decree 286/1998 concerns migration policy, in such case the provisions in Article 29 (3) will apply to Union citizens too as they are referred to in Article 9 (3) lett. b of Decree 30/2007.

#### **7.4 The situation of (registered) partners**

The relevant Articles applicable to the situation of (registered) partners are:

<b>Directive 2004/38/EC</b>	<b>Articles 2 (2) (b) ; 3 (2) (a) ; 8 (5) (b) ; 10 (2) (b) ; 13 (1) and 13 (2) (a)(c) <sup>(278)</sup></b>
<b>Legislative Decree 30/2007</b>	<b>Articles 9; 10 and 11</b>

As Civil partnerships between same-sex couples are not recognised under Italian law, Article 2 (2) (b) has not been transposed. In fact, Italian law does not recognise the status of ‘partner’ as is the case in other Member States.

<sup>278</sup> Please see Recital 5 of Directive 2004/38/EC.

## **7.5. Problems encountered by third country national family members**

### **7.5.1 Facilitation of the right of entry and residence of third country family members of a Union citizen**

<b>Directive 2004/38/EC</b>	<b>Article 3 (2)</b>
<b>Legislative Decree 30/2007</b>	<b>Articles 3 (2) (a) and (b)</b>

Article 3 (2) of the Directive mandates facilitation of entry and residence for family members irrespective of their nationality according to sub-section (a). This has been transposed into Italian law through Articles 3 (2) (a) and (b) of Legislative Decree 30/2007. Italian law provides for the issue of a ‘priority short term visa free of charge’ if sufficient economic resources, accommodation and return tickets to the country of origin can be shown. The return ticket is not a means to facilitate entry and residence, but one of the conditions to have a ‘priority short term visa free of charge’ issued.

### **7.5.2 Dependants**

<b>Directive 2004/38/EC</b>	<b>Articles 2 and 3</b>
<b>Legislative Decree 30/2007</b>	<b>Article 3 (2)</b>

Decree 30/2007 does not contain any provision in the sections on the right of entry and of residence of third country nationals accompanying or joining an EU as ‘dependents.’ The provisions of Articles 2 and 3 of the Directive have been transposed into Italian law by Article 3 (2) of Decree 30/2007.

## **7.6. Equal treatment**

The relevant Articles applicable to equal treatment are set out below:

<b>Directive 2004/38/EC</b>	<b>Article 24</b>
<b>Legislative Decree 30/2007</b>	<b>Article 19</b>

### **7.6.1 Social allowance entitlement for the over-65’s**

<b>Directive 2004/38/EC</b>	<b>Article 24</b>
<b>Legislative Decree 30/2007</b>	<b>Article 19</b>
<b>Legislative Decree 133/2008</b>	<b>Article 20</b>

Article 20 of Law 6 August 2008 n.133 transposing into law ‘Decree 25 June 2008’ n.112 concerning the social allowance entitlement of the over-65 provides that the citizen must have resided lawfully on the Italian territory *for at least ten years*. This is a form of indirect discrimination on the grounds of nationality that is detrimental to the citizens of other Member States, infringing Article 12 EC and Article 24 of the Directive.

## 7.6.2. Social housing

<b>Directive</b>	<b>Article 24</b>
<b>Legislative Decree 30/2007</b>	<b>Article 19</b>
<b>Legislative Decree 133/2008</b>	<b>Article 11</b>

Article 11 of Law n.133 of 6 August 2008 n.133 provides that in order to be provided with social housing, non-Italian citizens are asked to prove that they have resided lawfully on the Italian territory *for at least ten years or in the same Region for at least five years*. A number of administrative practices carried out by regional entities based on this Article have been causing concern in the context of social housing or other social benefits. As a matter of fact, Article 11 of the Law n.133 of 6 August 2008 establishing the adoption of a national social housing plan, at Article 2 lett. g provides that the plan is addressed to regular migrants having a low income, who have been residing for at least ten years on the national territory or at least five years on the territory on the same Region. Such a requirement even if is not provided by a national law adopted in order to transpose Community law into the Italian legal order, constitutes nonetheless an equal treatment issue as it infringes the Community principle of non-discrimination on the basis of the nationality established by Article 12 of the EC Treaty along with Article 24 of the Directive, given that it constitutes an indirect discrimination against Union citizens who are not Italian citizens (<sup>279</sup>).

## 7.7 Grounds for expulsion and procedural safeguards

### 7.7.1. Grounds for expulsion

The relevant Articles applicable to expulsion are set out below:

<b>Directive 2004/38/EC</b>	<b>Articles 14 (3); 14 (4); 15 (2) and Articles 27-33</b>
<b>Legislative Decree 30/2007</b>	<b>Articles 8; 13; 20; 21 and 22</b>

#### 7.7.1.1 Public policy and public security

<b>Directive 2004/38/EC</b>	<b>Article 27</b>
<b>Legislative Decree 30/2007</b>	<b>Article 20</b>

According to Article 27 of the Directive, ‘Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on the grounds of public policy, public security or public health’ and ‘the personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.’

Article 20 of Decree 30/2007 does not fully transpose Article 27 of the Directive. According to Articles 20 (1) of Decree 30/2007, the right of entry and residence of Union citizens and their family members, whatever their nationality, can be restricted by a specific measure only for reasons of public security; imperative grounds of public safety or public order. The ambiguous

<sup>279</sup> The information is gathered through a direct knowledge of the legislation concerned by the Italian expert, established while carrying on research.

nature of these provisions could result in the relevant Italian authorities using Article 20 as a legal basis to adopt measures restricting free movement in breach of the Directive.

Specifically, in practice the expulsion measure set out in Article 20 (3) of Decree 30/2007 could be applied when there is simply *a risk* of harm as it provides that ‘imperative reasons of public security occur when the person who has to be expelled behaved in a way that constitutes a concrete, effective and serious threat over the human fundamental rights or the public safety by making *urgent the expulsion* since their further stay is incompatible with civil and safe communal life.’ This seems to be in breach of the principle laid down in Article 30 (3) of the Directive on the notification of decisions that ‘...*save in duly substantiated cases of urgency, the time allowed to leave the territory shall be no less than one month from the date of notification.*’ This transposition could give rise to infringement proceedings against the Italian Government for incorrect transposition of the Directive.

### 7.7.2. Procedural safeguards

The relevant Articles setting out procedural safeguards are set out below:

<b>Directive 2004/38/EC</b>	<b>Articles 30-33</b>
<b>Legislative Decree 30/2007</b>	<b>Articles 8; 20 and 22</b>

(no issues identified)

## 7.8 Miscellaneous problems

### 7.8.1. Dependants

<b>Directive 2004/38/EC</b>	<b>Articles 2 and 3</b>
<b>Legislative Decree 30/2007</b>	<b>Articles 2 and 3</b>

Legislative Decree 30/2007 does not contain a clear definition of a ‘dependant’ within the meaning of Article 2 and Article 3 of the Directive. The absence of a clear and definite definition provides Italian officials with the opportunity to give their own interpretation of who qualifies as this particular family member, as they can rely on benchmarks such as socio-economic conditions to conclude whether the person is a ‘dependant.’ Visas are normally issued to third country nationals whose status is regulated in Italy by Legislative Decree 286/1998 on migration policy. In particular, such benchmarks can be found in the provisions of the Title II<sup>(280)</sup> of such decree where the conditions that a third country national would be asked to comply with are established should he/she wish to enter or stay on the Italian territory. According to these rules that are normally followed by Italian officials in the visa offices, if according to such an evaluation the Union citizen and his or her family have an income lower than the annual average income fixed by the Italian government, then the non national can be considered as dependant of the Union citizen having the right of residence.

<sup>280</sup> “TITOLO II Disposizioni sull'ingresso, il soggiorno e l'allontanamento dal territorio dello Stato Capo I - Disposizioni sull'ingresso e il soggiorno”.

## 7.8.2. More favourable national provisions

<b>Directive 2004/38/EC</b>	<b>Article 37</b>
<b>Legislative Decree 112/2008</b>	<b>Article 37 (2)</b>

Article 1 (2) of Decree 25 July 1998 No 286 concerned the migrants' status <sup>(281)</sup>. This provision has been amended by Article 37 (2) of Law Decree 112/2008, transposed into law by Law 133/2008.

Before the amendment of Article 1 (2) of Decree 25 July 1998 n.286, it provided that the provisions of this law are only applicable to Union citizens when they are *more favourable*. This Article now reads that the provisions of this law *are not applicable to Union citizens unless required by EC law*. This provision seems to be in breach of Article 37 of the Directive which provides that the provisions of this Directive do not affect any laws, regulations or administrative provisions laid down by a Member State which would *be more favourable* to the persons covered by the Directive. It is also in breach of the non-discrimination principle contained in Article 12 EC and equal treatment principles set out in Article 24 of the Directive applicable to all the workers lawfully residing on the national territory, either Community or third country nationals. The effect of this provision could also be that third country nationals could enjoy more favourable treatment than citizens of other Member States.

## 7.9. National legislation that interferes or could interfere with the Directive

### 7.9.1. **Law Decrees No 181 of 1 November 2007, No 255 of 2 November 2007 and No 249 of 29 December 2007**

Law Decrees No 181 of 1 November 2007, No 255 of 2 November 2007 and No 249 of 29 December 2007 concerning the right of entry and residence on grounds of public policy and public security have been adopted by the Italian government. However, these decrees did not enter into force, as stated in the Communication of the Italian Ministry of Justice of 2 January 2008 published in the Italian Official Journal of 2 January 2008, n.1, since *they were not submitted* to the Italian Parliament within the required time to be transposed into Italian law.

### 7.9.2. **Legislative Decree 92/2008 ('Security Package')**

<b>Legislative Decree 92/2008</b>	<b>Article 1</b>
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The Italian Government adopted on 22 May 2008 Law Decree 92/2008 'Misure urgenti in materia di sicurezza pubblica' ['Urgent measures for public security' published on the Italian Official Journal of 26 May 2008, n. 122]. This decree, known as 'Pacchetto sicurezza' (Security package) was composed of a law decree, a bill, and three legislative decrees. It amended Article 61 of the Italian criminal code that lists aggravating circumstances (i.e. situations in which criminal convictions will be lengthened) should a crime be committed. Article 1 of Law Decree

<sup>281</sup> Decreto Legislativo 25 luglio 1998, No 286 Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero.

22 May 2008 n. 92 turned into law by Law 125/2008 <sup>(282)</sup> adds to the list of aggravating circumstances through paragraph 11 bis which provides for crimes committed by a person who resides illegally on the territory.

This set of laws was partially amended and turned into law on 24 July 2008 through the adoption of the Law n. 125/2008 published on the Italian Official Journal n. 173 on 25 July 2008. However, one of the last mentioned legislative decrees which should have amended the Decree 30/2007 did not enter into force. In fact, following detailed scrutiny by the relevant officials of the European Commission during a meeting with the Italian government representatives held in Brussels on July 2008 (some comments and proposals even came from committees of the European Parliament dealing with EU citizenship issues), the Italian government was asked to modify some parts of the scrutinized text of the decree, because it could infringe EC law and more specifically the provisions of the Directive. In particular, Article 9 (6) of Decree 30/2007 provided that the administrative formalities for Union citizens and their family members should have been amended by Scheme proposal n. 5. According to this provision, Union citizens and their family members who wished to reside in Italy for longer than three months and who were required to register with the relevant authorities would have been asked to comply with the same obligations for Italian citizens in order to be issued with the registration certificate and the identity card. Amongst these obligations, the citizens concerned would have even been asked to provide the relevant authorities with their fingerprints. The decision of the European Commission adopted on 4 September 2008 considered that this amendment was incompatible with Article 12 ECT since the Italian Authorities had stated that it was in line with provisions of Article 3 (2) of the Italian R.D. 18 June 1931 n. 773 regulating the issuing of the identity card to the Italian citizens. As a matter of fact, according to the opinion of the European Commissioner Barrot, the intention of the Italian government to adopt such plan in order to deal with the acts of violence that occurred around gypsies camps in more than one Italian city, did not aim at collecting data about people's ethnic origin or religion, but to prevent phenomena such as begging. Secondly, concerning restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health provided by Article 27 of the Directive, some problems may have arisen from Scheme proposal n. 5 as identified by the European Commission in its comments addressed to the Italian Ministry of Interior. According to Article 9 (2) of the Decree as amended by the Scheme proposal n. 5, the Union citizen who wished to stay on the Italian territory for a period longer than three months would have been bound to ask for his/her registration to the relevant local registry office, within a 10 days deadline beginning from the expiry of its initial three months period of residence. Article 20 (3) of Decree 30/2007 as amended by Scheme proposal n.5 established that in the event of a failure to comply with this provision, the relevant Italian authorities could expel the citizen concerned on the grounds of public security.

As a consequence, the Italian Council of Ministries agreed on 1 August 2008 to adopt a new version of this legislative decree named 'Schema di decreto legislativo n. 5 concernente: 'Ulteriori modifiche ed integrazioni al decreto legislativo 6 febbraio 2007, n. 30 recante attuazione della direttiva 2004/38/CE relative al diritto dei cittadini dell'Unione e dei loro familiari di circolare e di soggiornare liberamente nel territorio degli Stati membri' [More amendments and integrations to the legislative decree of 6th February 2007, n. 30 transposing the Directive 2004/38] <sup>(283)</sup>. It is important to note that on the same day the Italian Ministry of

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<sup>282</sup> L. 24-7-2008 n. 125 Conversione in legge, con modificazioni, del decreto-legge 23 maggio 2008, n. 92, recante misure urgenti in materia di sicurezza pubblica. Pubblicata nella Gazz. Uff. 25 luglio 2008, n. 173.

<sup>283</sup> Hereinafter 'Scheme proposal n. 5'.



Interior issued a press release stating that this Scheme could not be considered as the final version, since it was sent to the relevant services of the European Commission in order to allow them to check it once again and find a common solution.

The Italian Minister of Interior, Roberto Maroni, also stated that the final version of the 'Pacchetto sicurezza' should have been adopted by the Italian Council of Ministries by mid September in accordance with the Italian Parliament enabling act. However, this deadline was postponed until January by Article 1 (3) of the Law of 6th August 2008, n° 133, published on the Italian Official Journal on 21 August 2008 n.195. On 15 October 2008, during a meeting of the Schengen committee held in the European Parliament in Brussels, the Italian Ministry of Interior, Mr. Roberto Maroni, announced his intention not to continue with the procedure for approval of the amendments to the Decree 30/2007 as envisaged in the 'Schema di decreto legislativo n. 5'.

On the 15 January 2009, the Italian Government presented two amending proposals to the national Parliament clarifying that the aggravating circumstances provided for by Article 61, paragraph 1, n. 11-bis of the Italian criminal code are to be considered as referring only to third country nationals and to the stateless, and that the expulsion of an European citizen from the Italian territory shall comply with the requirements, guarantees and procedures laid down by Article 20 d. lgs. of Decree 30/2007. It is submitted that this may not assuage the concerns mentioned above since it does not expressly clarify the situation of third country nationals who are family members of Union citizens with regard to the application of the aggravating circumstances.

#### **7.10. Administrative services**

Concerning the administrative services for Union citizens exercising their free movement rights, the user-friendliness of the relevant documents and the competences of the personnel contacted for the research at the Department for European affairs of the Italian Presidency of the Council was very good. However, documents translated into the main foreign languages and the personnel contacted at the police headquarters who are able to speak foreign languages can be considered as very poor.

#### **7.11 Conclusions**

Certain provisions implemented in Italy go against the spirit of the Directive because they set requirements based on residence in a national and/or regional territory, constituting discrimination on the grounds of nationality. There is also some level of uncertainty with regard to the requirements of Article 9 (3) (b) of Decree 30/2007 in relation to the sufficient economic resources of EU-citizens and their family members. Also inconsistencies exist with the administrative formalities that the Union citizens are expected to comply with in order to reside in a Member State for longer than three months in the national territory. It is envisaged that problems may arise because of the incorrect transposition of regarding the grounds for expulsion and the requirement of urgency for immediate expulsions.

It is to be noted that the European Commission opened infringement proceedings against Italy for failure to transpose the Directive (<sup>284</sup>). The infringement proceedings were closed on the 27

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<sup>284</sup> No 2006/0426.

November 2008 as the Italian government adopted a measure transposing the Directive into Italian Law. However, infringement proceedings for incorrect transposition could be opened by the Commission, especially as regards the grounds for expulsion (i.e. the nature of the transposition of Article 27 of the Directive by Article 20 of Decree 30/2007).

## 8. ROMANIA

### 8.1 Transposing measure(s)

1	<b>Government Emergency Ordinance No 102 of 14 July 2005</b> <sup>(285)</sup>
2	<b>Law 260 of 5 October 2005</b> <sup>(286)</sup>
3	<b>Government Ordinance 30 of 19 July 2006</b> <sup>(287)</sup>
4	<b>Law 500 of 28 December 2006</b> <sup>(288)</sup>

There are four measures transposing the Directive into Romanian law.

The first measure is Government Emergency Ordinance No 102 of 14 July 2005 concerning the free movement of EEA and Union citizens <sup>(289)</sup>. It entered into force on 1 January 2007 <sup>(290)</sup>.

This measure was amended by Law 260 of 5 October 2005 <sup>(291)</sup> and Law 500 of 28 December 2006 and Government Ordinance 30 of 19 July 2006 <sup>(292)</sup>. These measures completed the transposition of the Directive into Romanian law.

It is also necessary to note that Government Decision No 1864 of 21 December 2006 approving the Methodological Norms for the implementation of the Government Emergency Ordinance No 102/2005 establishes the form and content of the documents issued to Union citizens and their family members <sup>(293)</sup>.

According to Government Ordinance no. 30/2006 the transposing measures should have been re-published in the form of a single new Act. However, this has not yet taken place.

### 8.2 Right of entry and residence

The relevant Articles applicable to the right of entry and residence are set out below:

<b>Directive 2004/38/EC</b>	<b>Articles 4 -15</b>
<b>Ordinance no.30/2006</b>	<b>Article I (7); (8); (18); (19); (20) and (22)</b>
<b>GEO 102/2005</b>	<b>Articles 5; 6 (2); 7; 9; 12; 13; 15 (1); 16; 17; 18; 19 (1) (b) (5); 20 (1) (2); 21 and 24</b>
<b>Law no.500/2006</b>	<b>Article I (1) – (7)</b>

<sup>285</sup> Please see: <<[http://www.cdep.ro/pls/legis/legis\\_pck.htm\\_act?ida=58085](http://www.cdep.ro/pls/legis/legis_pck.htm_act?ida=58085)>>.

<sup>286</sup> Please see: <<[http://www.cdep.ro/pls/legis/legis\\_pck.htm\\_act?ida=59593](http://www.cdep.ro/pls/legis/legis_pck.htm_act?ida=59593)>>.

<sup>287</sup> Please see: <<[http://ori.mira.gov.ro/pagini/cetateni\\_ue\\_see/OG%2030.pdf](http://ori.mira.gov.ro/pagini/cetateni_ue_see/OG%2030.pdf)>>.

<sup>288</sup> Please see: <<[http://www.cdep.ro/pls/legis/legis\\_pck.htm\\_act?an=2006&nr=500](http://www.cdep.ro/pls/legis/legis_pck.htm_act?an=2006&nr=500)>>.

<sup>289</sup> Published in the Romanian Official Journal No 1055 of 30 December 2006. Hereinafter ‘emergency ordinance’ or GEO.

<sup>290</sup> Published in the Romanian Official Journal, Part I, No 646 of 21 of July 2005.

<sup>291</sup> Published in the Romanian Official Journal No 900 of 7 October 2005.

<sup>292</sup> Published in Romanian Official Journal, Part I, No 636 of 24 July 2006.

<sup>293</sup> Published in the Romanian Official Journal No 1051 of 29 December 2006.

### 8.2.1. Right of entry

The relevant Articles applicable to the right of entry are set out below:

<b>Directive 2004/38/EC</b>	<b>Article 5</b>
<b>Ordinance no.30/2006</b>	<b>Article I (7) and (8)</b>
<b>GEO.no.102/2005</b>	<b>Articles 5 (1)-(4) and 6 (2); 9</b>
<b>Law no.500/2006</b>	<b>Article I (1)</b>

(no issues identified)

### 8.2.2. Right of residence

The relevant Articles applicable to the right of residence are set out below:

<b>Directive 2004/38/EC</b>	<b>Articles 6 and 7</b>
<b>Ordinance no.30/2006</b>	<b>Article I (18); (19); (20) and (22)</b>
<b>GEO.no.102/2005</b>	<b>Articles 12 (1); (2); (3) and 13</b>

#### 8.2.2.1. Administrative formalities for the right of residence

<b>Directive 2004/38/EC</b>	<b>Articles 8 (2) and 9 (2)</b>
<b>Ordinance no. 30/2006</b>	<b>Article I (22) and (23)</b>
<b>GEO no. 102/2005</b>	<b>Article 15 (1); 17 (1) and 19 (1)</b>
<b>Law no. 500/2006</b>	<b>Article I (3); (4) and (5)</b>

Articles 8 (2) and 9 (2) of the Directive provide that the deadline for registration ‘may not be less than three months from the date of arrival’. Under Article 15 of Ordinance 102/2005, registration with the relevant Romanian authority for Union citizens and for their third country national family members (Article 19 (1)) must be conducted within 90 days. Hence, it is clear that these laws do not comply with the Directive as the deadline for registration should be ‘less than three months’.

### 8.3 The definition of sufficient resources

The relevant Articles containing reference to ‘sufficient resources’ are:

<b>Directive 2004/38/EC</b>	<b>Articles 7 (1) (b)(c); 8 (4); 12 (2) and 13 (2)</b>
<b>Ordinance no. 30/2006 GEO no 102/2005</b>	<b>Article I (18) Articles 13 (1) (b); 15 (1) (b) and 16 (2)</b>

(no issues identified)

### 8.4 The situation of (registered) partners

The relevant Articles applicable to the situation of (registered) partners are:

<b>Directive 2004/38/EC</b>	<b>Articles 2 (2) (b) ; 8 (5) (b) ; 10 (2) (b); 13 (1); 13 (2) (a)and (c) <sup>(294)</sup></b>
<b>Ordinance 30 /2006 GEO No.102/2005</b>	<b>Article I (3) Article2 (1) - (7)</b>

According to Articles 2 (1) – (7) of GEO No. 102/2005, the registered partner ‘is considered only as a simple beneficiary’ of the freedom of movement and residence provisions and is not categorised as a ‘family member’ as set out in Article 2 (2) (b) of the Directive. Therefore, to this extent this Article has not been transposed into Romanian law.

### 8.5 Problems encountered by third country national family members

#### 8.5.1. Residence card for family members who are non-nationals

<b>Directive 2004/38/EC</b>	<b>Article 20 (1)</b>
<b>GEO no.102/2005</b>	<b>Article 24 (2)</b>

Article 20 (1) of the Directive provides that the permanent residence card issued to third country nationals must be automatically renewed every 10 years. Article 24 (2) of GEO no.102/2005 as amended by Ordinance no.30/2006 does not comply with the Directive as the permanent residence card is renewed *upon request*. The wording “upon request” or “on request”, as set out in the Romanian transposing act, implies that it is optional. In other words, it seems to be the choice of the third country national to apply for renewal. “Upon request” might be interpreted as “who wishes to apply for renewal is free to do it”; it is enough to make a request (implying that “who wishes not, is also free not to apply”).

It is not clear what the consequences are if there is no request for renewal from the applicant in the case. Therefore, as long as there is no mention of this in legislation, the issue seems to be left to the authorities’ discretion. This may not always be in the citizen’s advantage.

<sup>294</sup> Please see Recital 5 of Directive 2004/38/EC.

### 8.5.2. Retention of the right of residence

<b>Directive 2004/38/EC</b>	<b>Article 13 (2) (c)</b>
<b>GEO no. 102/2005</b>	<b>Article 18 and 21</b>

Article 13 (2) of the Directive concerning the right of residence by family members in the event of divorce, annulment of marriage or termination of a registered partnership, provides that there shall be no loss of the right of residence for third country national family members in the event of ‘particularly difficult circumstances’ such as domestic violence during the marriage or registered partnership. Romanian law does not refer to domestic violence or even ‘particularly difficult circumstances’ as reasons for the retention of the right of residence.

### 8.5.3. Equal treatment in expulsion orders

#### 8.5.3.1. Expulsion procedure further to a Court judgement

<b>Directive 2004/38/EC</b>	<b>Article 33</b>
<b>GEO no. 102/2005</b>	<b>Article 30 and 24 (6)</b>
<b>Law no. 500/2006</b>	<b>Article 30 (3)</b>

Article 30 (3) of GEO 102/2005 as introduced by Law no. 500/2006, provides for the possibility of third country national family members to be taken in public custody in case of expulsion from Romania when they are found guilty of a crime by the Courts as set out in Article 30 (1). The public custody provision is not applicable to Union citizens in the same situation. This constitutes discriminatory treatment between Union citizens and their third country national family members.

#### 8.5.3.2. Failure to meet residence conditions

<b>GEO 102/2005</b>	<b>Article 24<sup>1</sup> (1)</b>
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When Union citizens and their third country national family members do not meet the conditions for exercising the right of residence in Romania (i.e. when they become an unreasonable burden on the Romanian social security system according to Article 24<sup>1</sup> (1) GEO 102/2005), the Authority for Aliens may issue an order to leave the Romanian territory within 30 days. If the order is not complied with, the Union citizen or the family member will be escorted to the border within 24 hours.

For third country national family members, if the measure cannot be enforced within the specified period of time, upon request from the Authority for Aliens, the prosecutor appointed by the Prosecution Department affiliated to the Court of Appeal of Bucharest, can order the person to be taken into custody until the measure is implemented. For Union citizens in this situation, there is no reference to an option to take him/her into custody. On the face of it there appears to be discriminatory treatment between Union citizens and their third country national family members.

## 8.6. Equal treatment

The relevant Articles applicable to equal treatment are:

<b>Directive 2004/38/EC</b>	<b>Article 24</b>
<b>Ordinance no.30/2006</b>	<b>Article I (4)</b>
<b>GEO.no.102/2005</b>	<b>Article 3 (1)</b>

(no issues identified)

## 8.7 Grounds for expulsion and procedural safeguards

### 8.7.1. Grounds for expulsion

The relevant Articles applicable to expulsion are set out below:

<b>Directive 2004/38/EC</b>	<b>Articles 14 (3), 14 (4), 15 (2) and Articles 27-33</b>
<b>Ordinance no.30/2006</b>	<b>Article I (35), (38)</b>
<b>GEO.no.102/2005</b>	<b>Articles 25 (1) ; 25 (2) ; 25 (3) ; 25 (4) ; 32 (1) ; 30 (1) ; 30 (2) and 30 (3)</b>
<b>Law no. 500/2006</b>	<b>Article I (8)</b>

#### 8.7.1.1. Recourse to social assistance

<b>Directive 2004/38/EC</b>	<b>Article 14 (3)</b>
<b>Ordinance no.30/2006</b>	<b>Article I (33)</b>
<b>GEO.no.102/2005</b>	<b>Article 24<sup>1</sup> (1)</b>

Article 14 (3) of the Directive provides that an expulsion measure shall not be the *automatic* consequence of a Union citizen's or his or her family member's recourse to the social assistance system of the host Member State. Article 24<sup>1</sup>(1) of GEO 102/2005, as amended by Ordinance 30/2006 provides that Union citizens and their family members shall benefit from the residence rights provided for by Article 12 of GEO 102/2005 as long as they do not become an excessive burden on the Romanian social security system. It also provides that if Union citizens and their family members do not comply with the conditions for exercising residence rights, the Authority for Aliens may issue an order to leave the Romanian territory within 30 days. If he/she does not comply with this order, he/she will be escorted to the border within 24 hours, according to Articles 24<sup>2</sup> (3) and (5) of GEO 102/2005 as introduced by Ordinance 30/2006. Therefore, an order to leave the Romanian territory seems to be the only option and the automatic consequence of recourse to social assistance.

### 8.7.2. Procedural safeguards

The relevant Articles setting out procedural safeguards are set out below:

<b>Directive 2004/38/EC</b>	<b>Articles 30-33</b>
<b>Ordinance no.30/2006</b>	<b>Article I (35)</b>
<b>GEO. No.102/2005</b>	<b>Article 25 (6) and (7)</b>

(no issues identified)

## 8.8 Miscellaneous problems

### 8.8.1. Family members

<b>Directive 2004/38/EC</b>	<b>Articles 2 (2)(c) and (d)</b>
<b>Ordinance no. 30/2006</b>	<b>Article I (3)</b>
<b>GEO No.102/2005</b>	<b>Article 2</b>

Articles 2 (2) (c) and (d) of the Directive provide that a ‘family member’ includes direct descendants who are under the age of 21 or are dependents of the spouse or registered partner, and dependent direct relatives in the ascending line of the spouse and registered partner. Article 13 (7) of GEO No.102/2005 does not consider ascendants of a Union citizen who exercise their free movement rights as a student to be ‘family members’ for the purpose of having the right of residence for more than three months. Also Article 3 of GEO 102/2005 does not include the direct descendants and the dependent direct relatives in the ascending line of the partner as family members.

### 8.8.2. Articles 38 and 39 of Law 248/2005 concerning the freedom of movement of Romanian citizens abroad <sup>(295)</sup>

<b>Directive 2004/38/EC</b>	<b>Article 4</b>
<b>Law 248/2005</b>	<b>Articles 38 and 39</b>

Articles 38 and 39 of Law 248/2005 on the conditions for free movement of Romanian citizens abroad, permits the right to travel to another Member State to be restricted on the grounds of public policy and public security for a period no longer than three years in light of the Readmission Agreements signed by Romania (before joining the EU) with other EU countries <sup>(296)</sup>. It provides for the application of restrictions to the free movement of Romanians based

<sup>295</sup> Published in the Romanian Official Journal no. 689 of 29 July 2005.

<sup>296</sup> The Readmission Agreements signed by Romania with the other EU Member States, in chronological order are:

1. Government Decision No. 772 of 30 December 1993 for approval of the Agreement between Romanian Government and Slovakian Government with regard the returning-readmission of nationals of both countries who entered illegally or whose staying became illegal, published in the Romanian Official Journal (therein after ROJ) No. 16 of 21 January 1994;
2. Government Decision No.278 of 16 June 1994 for approval of the Agreement between Romanian Government and French Government concerning the readmission of persons in illegal situation, published in the Romanian Official Journal No. 170 of 6 July 1994;



solely on the Admission Agreements, without taking personal conduct into consideration. This is in breach of Article 27 (2) of the Directive which provides that in order to restrict the rights contained in the Directive, the conduct must constitute a ‘genuine, present and sufficiently serious threat’ to one of the fundamental interests of society. Therefore, this provision must not be applied as it is both an obstacle to the free movement of Romanian citizens and disproportionate and, as has been held by the Romanian High Court of Cassation and Justice concerning Romanian citizens who were repatriated from other EU Member States on account of their ‘illegal immigration’ to certain countries before accession, that in accordance with the

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3. Government Decision No. 635 of 14 September 1994 for approval of Agreement between Romanian Government and Hellenic Government with regard the readmission of persons in illegal situation, published in ROJ No. 282 of 5 October 1994;
  4. Law No. 513 of 4 October 2001 for ratification of the Agreement between Romanian and Slovenian Governments concerning the persons who entered and/or illegally reside on the territory of the both countries, signed at Bucharest on 4 October 2000, published in ROJ No. 663 of 23 October 2001;
  5. Agreement of 6 June 1995 between Romanian Government and Governments of Belgium, Luxembourg and the Netherlands with regard the readmission of persons in illegal situation, published in ROJ No. 241 of 20 October 1995;
  6. Law No. 45 of 4 April 1997 for the ratification of Agreement between Romania and Spain with regard the readmission of persons in illegal situation, signed at Bucharest on 29 April 1996, published in ROJ No. 58 of 8 April 1997;
  7. Law No. 173 of 4 November 1997 for the ratification of Agreement between Romania and Italy with regard the readmission of persons in illegal situation, signed at Bucharest on 4 March 1997, published in ROJ No. 304 of 7 November 1997;
  8. Law No. 61 of 14 March 2001 for the ratification of the Agreement between Romanian and Bulgarian Governments with regard the readmission of their citizens and of foreigners, signed at Bucharest on 23 June 2000, published in ROJ No. 132 of 16 March 2001;
  9. Law No. 80 of 20 March 2001 for ratification of the Agreement between Romanian and Irish Governments concerning the readmission of the own nationals and third country nationals who illegally stay on their territories, signed at Bucharest on 12 May 2000, published in ROJ No. 147 of 23 March 2001;
  10. Law No. 642 of 16 November 2001 for ratification of the Agreement between Romanian and Swedish Governments concerning the readmission of persons, signed at Bucharest on 2 April, published in ROJ No. 768 of 3 December 2001;
  11. Law No. 134 of 21 March 2002 for approval of Government Emergency Ordinance No. 188/2001 concerning the ratification of the Agreement, and of the Protocol for the application of the Agreement, between Romanian and Austrian Governments with regard the readmission of persons, both signed at Vienna at 28 November 2001, published in ROJ No. 202 of 26 March 2002;
  12. Law No. 230 of 23 April 2002 for approval of Government Emergency Ordinance No. 12/2002 for the ratification of the Agreement between Romanian and Hungarian Governments with regard the readmission of persons, signed at Bucharest on 10 December 2001, published in ROJ No. 296 of 30 April 2002;
  13. Law No. 26 of 13 January 2003 for the ratification of the Agreement between the Romanian and Latvia Governments concerning the readmission of persons, signed at Riga on 5 July 2002, published in ROJ No. 31 of 21 January 2003;
  14. Law No. 128 of 11 April 2003 for ratification of the Agreement between Romanian and Portuguese Governments with regard the readmission of persons in illegally stay, signed at Lisbon on 26 September 2002, published in ROJ No. 266 of 16 April 2003;
  15. Law No. 369 of 19 September 2003 for ratification of Agreement between Romanian and United Kingdom Governments with regard the readmission of persons, signed at Bucharest on 20 February 2003, published in ROJ No. 684 of 29 September 2003.

principles of direct effect and supremacy Articles 38 and 39 of Law 248/2005 should not be applied so that it is in breach of the Directive (<sup>297</sup>).

In this regard it is necessary to consider the judgment of the ECJ in the *Jipa* case (<sup>298</sup>) which concerns the application of Law 248/2005. In this case the ECJ held that Community law(<sup>299</sup>) does not preclude national legislation that allows the right of a national of a Member State to travel to another MS to be restricted, in particular on account of ‘illegal residence’ there, *provided that certain requirements are met*. Firstly, the personal conduct of that national must constitute a genuine, present and sufficiently serious threat to one of the fundamental interests of society. Secondly, the restrictive measure must comply with the principle of proportionality (<sup>300</sup>). Notwithstanding this judgment and despite the judgments of the High Court against this law (<sup>301</sup>), we have been told by the Chief of the Directorate of Passports in person and during a meeting with the officials responsible for the Directorate, that this Directorate will continue to promote and defend the Authority’s interests in civil proceedings in order to restrict the freedom of movement of Romanian citizens as nothing has been changed by the ECJ judgement. All the Romanian High Court Decisions found against the restriction orders on the grounds that they were based on Readmission Agreements signed by Romania with other EU countries before to access the Union and did not take into consideration the personal conduct of the Romanian citizen.

Nevertheless, it must be noted that as the Readmission Agreements signed by Romania with other EU Member States have automatically ceased to produce legal effects after accession, therefore Article 38 of Law 248/2005 should no longer be applied when dealing with Romanian citizens repatriated to Romania for this reason. It is submitted that there should be some provision in Romanian Law that it is no longer applicable.

#### **8.8.4. Article 30 of Law 248/2005 concerning the freedom of movement of Romanian citizens abroad (<sup>302</sup>)**

<b>Law 248/2005</b>	<b>Article 30</b>
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Article 30 (2) (b) of Law 248/2005 on the conditions for the free movement of Romanian citizens abroad, provides that ‘(...) a Romanian minor, registered in the parent’s passport or holder of his individual passport or ID card and who travels together with one of the parents, is allowed exit

<sup>297</sup> Please see *The role of national judge within the European Union legal system* (‘Rolul judecatorului national in sistemul juridic al Uniunii Europene’), hearing at European Parliament by jud. Dana Cristina Girbovan, the Tribunal of Bihor, Romania, link:

<<[http://www.europarl.europa.eu/comparl/juri/hearings/20070611/girbovan\\_ro.pdf](http://www.europarl.europa.eu/comparl/juri/hearings/20070611/girbovan_ro.pdf)>>.

See also Decision no. 5843 of 19/09/2007 of the High Court of Cassation and Justice in Romania, <<<http://www.scj.ro/SC%20jurisprudenta.asp>>>, Decision 4144 of 22/05/ 2007 of the High Court of Cassation and Justice in Romania, <<<http://www.scj.ro/SC%20jurisprudenta.asp>>> and Decision no. 2119 of 31/03/2008, of the High Court of Cassation and Justice in Romania, <<<http://www.scj.ro/SC%20jurisprudenta.asp>>>.

<sup>298</sup> Case C-33/07, *Ministerul Administrației și Internelor - Direcția Generală de Pașapoarte București v Jipa* [2008] ECR 00000

<sup>299</sup> Article 17 (1) EC, Articles 4 (1), 18 and 27 of the Directive, see paragraphs 15-21 *Ibid*.

<sup>300</sup> Please see paragraph 30.

<sup>301</sup> Please see Decisions 4144/2007, 5843/2007, 8243/2007, 2253/2008 of the High Court of Cassation and Justice in Romania.

<sup>302</sup> Published in the Romanian Official Journal no. 689 of 29 July 2005.

out of Romania (...) only if the accompanying parent presents a statement from the other parent proving her/his agreement on the respective travel to the destination State (or States) and on the period of the journey.’ The law specifies that this declaration is not necessary if the parents have divorced and the minor was entrusted by the judge to the accompanying parent, or if the other parent is deceased.

This provision constitutes an obstacle to the free movement in the following two situations:

- The parents and the minor(s) are Romanian citizens resident in, or permanent residents of another EU Member State according to the Directive.
- At least one of the minor(s) parents is national of another EU Member State, while the other is a Romanian national, and all the family members are residents in another Member State

In these situations, if the minor(s) exercise the right of free movement to Romania together with one parent or only with the Romanian parent when leaving Romania to return to the Member State of residence where the other parent is waiting, the situation of not having this Declaration to present to border control has the effect precluding the minor and his parent from leaving Romania. Such a measure is clearly not in the minor(s) best interest as they will not be permitted to return to the family environment (<sup>303</sup>).

It will be recalled that the ECJ held in *Jipa* that Community law does not preclude national legislation that allows the right of a national of a MS to travel to another MS to be restricted, provided that the restrictive measure is proportionate (<sup>304</sup>). It is submitted that this measure is not proportionate because additional conditions have been imposed such as the declaration mentioned above or additional information is required which is unnecessary for the scope of application of the Directive (<sup>305</sup>).

If the aim of introducing this requirement is to ensure that in the case of disputes or even divorce between a child’s parents that a child is not taken from Romania without the permission of the other parent, then it is legitimate. However, under the conditions in which the minor(s) and the parent are resident in another Member State of the EU, specific rights have been acquired which should allow them to freely leave Romania, without no further restrictions to their freedom of movement (except for those restriction set out in the Directive) (<sup>306</sup>). As it constitutes an obstacle to free movement and is not proportionate, a more appropriate option would be to show their registration certificates issued by the Member State of residence to Border control.

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<sup>303</sup> During my Citizens Signpost Service activity I have received complaints from Romanian citizens resident in other Member States of European Union who have had their children prevented from leaving Romania to return to their family home in the Member State of residence because of this declaration. This resulted in the parent having to lose time and pay extra money in order to obtain this declaration from the various Romanian Consular offices.

<sup>304</sup> *Jipa, op. cit.*

<sup>305</sup> *Jipa, op. cit.*

<sup>306</sup> According to my Citizen’s Signpost Service experience, particularly in one case, the Romanian parents were permanent residents in one Member State of the Union, their child was born there and was attending the school in the respective Member State; during a summer holiday the child went in Romania with one of his parents (while the other had to remain for work reasons) to strengthen the child’s ties with Romania, it was a shock to this child that he was not allowed to leave Romania and neither was his parent until a successful declaration was made at the Romanian Consulate in the respective Member State. The citizen who addressed the CSS Service expressed his frustration, adding that he will think twice before sending his son to Romania, because of having to pay for this Declaration.

## **8.9. National legislation that interferes or could interfere with the Directive**

(none identified)

## **8.10. Administrative services**

A Union citizen who wishes to reside in Romania should make an application to one of the 43 Romanian Offices for Immigration. General information can be found on the internet including the location of the 43 Romanian administrative regions, telephone numbers, timetables and working hours (<sup>307</sup>). All the documents (the registration certificate for Union citizens, as well as the document certifying permanent residence for Union citizens and permanent residence card for third country family members), have been drawn up in Romanian, English and French and are easily understandable and user-friendly.

The Romanian national visa centre is a specialized unit of the General Directorate for Consular Relations within the Ministry of Foreign Affairs. The Romanian national visa centre is the entity in charge of entry visas and accelerated procedures. The National Directorate for Passports is a specialized unit of the Ministry of Interior and Administrative Reform which organizes and offers guidance on issuing passports. This Directorate also supervises the public services carried out in community prefectures. The Romanian Border Police, which is part of the Ministry of Interior and Administrative Reform, is in charge of the surveillance and control of the Romanian border, illegal migration and cross-border criminal activity. Finally, the Ministry of Health is in charge of updating and monitoring the list of diseases which may justify the measures of denial of entry or removal from the territory of Romania in conformity with the recommendation issued by the World Health Organization.

## **8.11. Conclusions**

The implementation of the Directive in the form of the Ordinance 102/2005 and its amendments has been difficult and lengthy, yet it has not succeeded in ensuring that Union citizens are able to benefit from the rights conferred by the Directive as certain important provisions and its spirit have not been fully implemented into Romanian law as set out above, four legislative measures notwithstanding.

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<sup>307</sup> Romanian Office for Immigrations, website: <<<http://aps.mai.gov.ro/index.htm>>>.

## 9. SWEDEN

### 9.1. Transposing measure(s)

<b>‘Aliens Act’ (Law 2005:716) <sup>(308)</sup></b>
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The main Act that transposes the Directive into Swedish law is the ‘Aliens Act’ (*Utlänningslag*) (2005: 716) <sup>(309)</sup>. The Aliens Act came into force on 30 April 2006 (Law 2006:219).

This Act has been amended several times. The first amendment was made in order to transpose the Directive (Lag 2006:219) followed by several further amendments with the last one on 1 July 2008 (Lag 2008:884).

The Aliens Act regulates the conditions, rights and obligations of Union citizens and their family members. It mainly covers the legal basis for stay up to the three months, residence for more than three months, employment and studies in Sweden, specifies who should be considered as a family member. In addition, it extends and broadens the concept of ‘EU’ citizenship to cover EEA and Swiss citizens <sup>(310)</sup>.

It is necessary to note that there are a number of other Swedish acts that fall under the ambit of the Directive. These include the Passport Act (*Passlagen*) (Law 1978:302) <sup>(311)</sup>, the Act on the special Control of Foreigners (*Lagen om särskild utlänningskontroll*) (Law 1991:572) <sup>(312)</sup> and the Study Loan Act (*Studiestödslagen*) (Law 1999:1395) <sup>(313)</sup>.

### 9.2. Right of entry and residence

The relevant Articles applicable to the right of entry and residence are set out below:

<b>Directive 2004/38/EC</b>	<b>Articles 4 -15</b>
<b>Aliens Act</b>	<b>Chapter 3 a 1§-§14</b>

According to Chapter 1,§3b, the right of stay is not only applicable to Union citizens, but also to citizens of EEA countries (Iceland, Liechtenstein, Norway and Switzerland).

Application forms for the right of residence must be completed and granted by the Migration Board (*Migrationsverket*). The *Migrationsverket* (including consulates abroad) is the sole administrative entity that can issue the right of residence and is the sole entity responsible for the registration of Union citizens and their family members. The right of stay is also to be applied by the *Migrationsverket*. It will provide the authorisation, but will not issue a card. A number of local *Migrationsverk* offices exist in most of the large cities in Sweden <sup>(314)</sup>.

<sup>308</sup> Please see: <<<http://www.riksdagen.se/webnav/index/>>>.

<sup>309</sup> Hereinafter ‘Aliens Act’.

<sup>310</sup> Please see: <<<http://www.riksdagen.se/webnav/index/>>>.

<sup>311</sup> Please see: <<<https://lagen.nu/1978:302>>>.

<sup>312</sup> Please see: <<<http://www.notisum.se/rnp/sls/fakta/a9910572.htm>>>.

<sup>313</sup> Please see: <<<https://lagen.nu/1999:1395>>>.

<sup>314</sup> For a list please see: <<<http://www.migrationsverket.se/>>>.

### 9.2.1. Right of entry

The law applicable to the right of entry is set out below:

**Directive 2004/38/EC**  
**Aliens Act**

**Article 5**  
**Chapter 3 a §1**

(no issues identified)

### 9.2.2. Right of Residence

The law applicable to the right of residence is set out below:

<b>Directive 2004/38/EC</b>	<b>Articles 6 and 7</b>
<b>Aliens Act</b>	<b>Chapter 3 a 1§-§12</b>

The right of residence in accordance with the Directive was transposed into Swedish law in 2006. The relevant provisions of national law can be found in Chapter 3a of the Aliens Act.

#### 9.2.2.1. Right of residence for up to three months

<b>Directive 2004/38/EC</b>	<b>Article 6</b>
<b>Aliens Act</b>	<b>Chapter 3 a §1</b>

The term ‘right of stay’ (*uppehallsrätt*) was introduced into the Aliens Act through Ch. 3a § 1 in 2006. It can be understood as a right for Union citizens and their family members to stay in Sweden for three months without an authorisation to stay.

#### 9.2.2.2. Right of residence for more than three months

<b>Directive 2004/38/EC</b>	<b>Article 7</b>
<b>Aliens Act</b>	<b>Chapter 3a§5-§10</b>

According to Chapter 3a §10 of the Aliens Act, a Union citizen who has the right to stay, but intends to stay in Sweden for more than three months must register with the *Migrationsverket*. If the requirements in Chapter 3a§5 of the Aliens Act are fulfilled, then the right of residence for more than three months should be granted immediately and be maintained as long as the relevant requirements remained fulfilled.

Article 8 (1) of the Directive contains an option for Member States to require Union citizens to register with the relevant authorities for periods of residence longer than three months. Sweden has taken advantage of this option. According to Chapter 3a § 10 of the Aliens Act, a Union citizen must register with the authorities (i.e. the *Migrationsverket*) if he/she intends to stay in Sweden after the three months period. This ‘registration’ is literally considered as a ‘registration.’ It is not an application for a residence right or the equivalent; it is just an acknowledgement of the Union citizen’s general rights under EU law.

Registration is made to the *Migrationsverket* that will also grant the acknowledgement. The procedure takes more than three months (as confirmed on *Migrationsverket's* website) <sup>(315)</sup>. This means that the Union citizen does not receive a response within the three month time limit contained in Chapter 3 a § 10 of the Aliens Act. The application forms for the right to residence for longer than three months, require various information and accompanying documents (such as documents to prove a marriage, a birth certificate, a cohabitant certificate etc.). Therefore the procedure is time-consuming and in practice takes more than three months.

### 9.2.2.3. The right of residence for more than three months for Nordic citizens

<b>Directive 2004/38/EC</b>	<b>Article 7</b>
<b>Aliens Act</b>	<b>Chapter 3 a §11</b>

The situation has become less favourable for Union citizens than for Nordic citizens (Iceland, Norway, Finland and Denmark), because Nordic citizens enjoy a more favourable position as according to Chapter 3 a §11 of the Aliens Act as they only have to register in the Commune where they live, whereas Union citizens have to register with the *Migrationsverket*.

### 9.2.3. Permanent residence

<b>Directive 2004/38/EC</b>	<b>Article 19.2</b>
<b>Aliens Act</b>	<b>Chapter 3 a §3-§5 and §6-§9</b>

Ch. 3a §§ 3, 4 and 5 of the Aliens Act sets out the categories of beneficiaries of the right of residence. These are workers, self-employed persons, job seekers with realistic prospects of employment (*verklig möjlighet*) <sup>(316)</sup>, students or other persons having sufficient means to support themselves and their family members and, further, a health insurance covering also accompanying family members. In accordance with Chapter 3 a §6 to § 9 of the Aliens Act, a “permanent residence right” will be granted to a Union citizen and his/her family members who have lawfully resided in Sweden consecutively for at least five years.

### 9.3. The definition of sufficient resources

The relevant Articles containing reference to ‘sufficient resources’ are:

<b>Directive 2004/38/EC</b>	<b>Articles 7 (1) (b)(c); 8 (4); 12 (2) and 13 (2)</b>
<b>Aliens Act</b>	<b>Chapter 3 §34 , Chapter 3 § 4</b>

There is no definition of ‘sufficient resources’ in Swedish law.

Union citizens and their third country national family members must show ‘sufficient means’, in order not to be an ‘unreasonable burden’ to the Swedish State and also must show insurance covering the whole family which is valid under Swedish social security laws (see Social Security

<sup>315</sup> Please see: <<<http://www.migrationsverket.se/>>>.

<sup>316</sup> Please see Chapter 3 §3.



Act (*Socialförsäkringslag*) (1999:799) <sup>(317)</sup> and the Social Services Act (*Socialtjänstlagen*) (2001:453) <sup>(318)</sup>.

According to Chapter 5 §5 and § 9 of the Aliens Act, exceptions to the rules concerning “sufficient resources” can be applied in case of emergency, health and humanitarian reasons.

#### 9.4. The situation of (registered) partners

The relevant Articles applicable to the situation of (registered) partners are:

<b>Directive 2004/38/EC</b>	<b>Article 2 (2) (b) ; 8 (5)(b);10 (2)(b);13 (1) and 13 (2)(a)(c)<sup>(319)</sup></b>
<b>Aliens Act</b>	<b>Chapter 3 a §1§2-§3</b>

The term ‘family member’ of a Union citizen or his or her husband/wife/cohabitant is defined in the Chapter 3a § 2 Aliens Act as follows:

- Husband/wife or cohabitant
- Registered partner (The inclusion of this category follows from Chapter. 3 § 1 of the Act on registered partnership (1994:1117) <sup>(320)</sup> and amendment in 2005 through Law (2005:447) <sup>(321)</sup>). The term ‘registered partner’ can be a married partner or a cohabitant.
- Children (this includes grandchildren or great grandchildren) under 21 or older if they are financially dependent on their parents.
- Relatives in the ascending line or who are financially dependent on the Union citizen.

#### 9.5 Problems encountered by third country national family members

##### 9.5.1. Application for a residence card

<b>Aliens Act</b>	<b>Chapter 3a §10</b>
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Third country national family members of a Union citizen must have a ‘right of stay’ before entering the Swedish territory.

The Swedish authorities have opted for a right of stay as opposed to a stamp or a visa. The third country national acquires the right of stay by going to the Swedish Embassy in the country where he/she resides or directly through the *Migrationsverket* through online application forms <sup>(322)</sup>. It will be recalled that the right to stay means a right to stay in Sweden for three months; if the third country national wants to stay after the three month period he or she must get residence card from the Swedish *Migrationsverket* (Migration Board), upon arrival on the Swedish territory in accordance with Chapter 3 a § 10 of the Aliens Act, i.e. within the three months time frame.

<sup>317</sup> Please see: <<<http://www.notisum.se/rnp/sls/fakta/a9990799.htm>>>.

<sup>318</sup> Please see: <<<http://www.notisum.se/rnp/sls/LAG/20010453.htm>>>.

<sup>319</sup> Please see Recital 5 of the Directive.

<sup>320</sup> Please see: <<<http://www.notisum.se/rnp/sls/lag/19941117.HTM>>>.

<sup>321</sup> Please see: <<<http://www.notisum.se/rnp/sls/lag/19941117.HTM>>>.

<sup>322</sup> Please see Chapter 3, § 10 of Law 2005:716 and Law 2006:219.



According to Article 6 (2) of the Directive, there is a right of residence on the territory of another Member State for a period of up to three months without any conditions or any other formalities other than the requirement to hold a valid identity card or passport. Chapter 3a §10 of the Aliens Act provides that a third country national family member of a Union citizen who has the right of residence must ask the *Migrationsverket* for a residence card “latest three months upon arrival on the Swedish territory”. The *Migrationsverket* requires that registration is made *immediately* upon arrival on the territory, whereas the *Migrationsverket* has several months to give its authorization (1 to 7 months as indicated on their web-site). The *Migrationsverket* does not issue the residence card. It is clear that this is in breach of Article 6 (2) of the Directive.

### 9.5.2. Visa requirements

<b>Aliens Act</b>	<b>Chapter 2 § 3</b>
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The visa rules of the Schengen Agreement are applicable in Sweden. According to these rules, if a visa is obtained in another EU/EEA country it should also be valid in Sweden. However, in exceptional cases, such as the intention of the visa holder not to leave the territory after the visa period applied by Sweden or another Member State, restrictions will be applied concerning this (<sup>323</sup>). According to Chapter 3 §4 of the Aliens Act, if a visa is extended by the Swedish authorities, these authorities must immediately inform the other Schengen countries. Also, according to Chapter 2 § 8-§10 of the Aliens Act, nationals from a number of third countries do not have to fulfil any visa requirements if the duration of their stay is shorter than three months.

Spouses and partners of Swedish citizens living abroad must have a visa before entering the Swedish territory. They must, through a Swedish Embassy or consulate abroad, give numerous documents, pay a fee because they are married or living in partnership with a Swedish national. As experienced by a great number of enquiries to the Citizens’ Signpost Service and from the administrations, the reasoning behind this is that under the Aliens Act, Swedish nationals, living abroad are not included or mentioned in this Act, being neither a Swede residing in Sweden or a ‘Union citizen’; this type of statute is outside the scope of the law (<sup>324</sup>). Also, third country national family members of a Union citizen must have a ‘right to stay’ *before* entering the Swedish territory.

Third country national family members of a Union citizen can no longer enter Sweden by showing an identity card (<sup>325</sup>). From 2006 they must show a passport since the Aliens’ Act does not stipulate that a family member who is a third country national is entitled to enter Sweden by showing an identity card (see Chapter 2 of the law §1 and 2). Hence the law on this matter has been restricted referring to the Directive. The rationale for prohibiting the use of identify cards as experienced by the expert when working for the Citizens’ Signpost Service, is the risk of false identity documents being used when entering Sweden.

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<sup>323</sup> Experienced by the national expert as expert for the Citizens’ Signpost Service.

<sup>324</sup> This problematic situation has been experienced by the enquiries received as expert of the Citizens’ Signpost Service.

<sup>325</sup> Please see former Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families OJ L 257/13.

### 9.5.3. Identification cards

The issue of Identification Cards (ID Cards) is not mentioned in the law.

Sweden has retained a number of valid ID cards. Swedish citizens born in Sweden and residing in Sweden are entitled to receive an ID card issued by police authorities. Until recently, ID cards were also being distributed to EU-citizens by the Swedish Cashier Service (*Svensk Kassaservice*) through the banking system (<sup>326</sup>). Since 30 April 2008, this service is no longer provided.

At present, Union citizens and their families who have just arrived do not have access to the Swedish cashier service and, as a result, the persons concerned are not able to apply for official documents, open a bank account, apply for a Swedish driving license or receive registered mail. Also, in order to work or to carry out basic administrative tasks, the ID cards distributed by the Swedish cashier service were required (experienced by national expert as Citizen's Signpost Service expert). Therefore, the only document accepted by Chapter 2 §1 "Passport" of the Aliens Act is a valid passport. This could be considered as a breach of the Directive.

All persons residing in Sweden for a period longer than three months also have to register with the population registration, and be given a so-called 'person nummer' (personal number) which is issued by the tax authorities (*Skatteverket*). The personal number is relatively easy to acquire but may not be used for identification purposes as the registration with the tax authorities does not comprise certain data or biometric photographs (<sup>327</sup>).

The local police authorities in the future should issue ID cards according to the discussions of the Swedish Parliament. A law is under discussion at the Parliament in January 2009 (the national expert is unable to give a date to this future law).

## 9.6 Equal treatment

The relevant Articles applicable to equal treatment are:

<b>Directive 2004/38/EC</b>	<b>Article 24</b>
<b>Aliens Act</b>	<b>Chapters 3 a and 5a §1-§6</b>

According to Article 24 (2) of the Directive, if a Union citizen is a job-seeker, he/she should not be entitled to social assistance during the period he/she is looking for a job. However, referring to the judgement of the ECJ in the *Collins* case (<sup>328</sup>), in situations when a job seeker has a 'sufficient connection' to the Swedish labour market, an official investigation organised by the Ministry of Labour has stated that the job seeker could most likely have a right to equal treatment regarding social benefits.

Before the implementation of the Directive, the right to equal treatment concerned workers and self-employed as well as their family members. These categories were already entitled to Swedish study loans in accordance with the Study Loan Act (1999:1395). Article 24 of the Directive extends the equal treatment principle to include citizens of all Member States (and their

<sup>326</sup> <<[http://www.svenskassaservice.se/other\\_languages/other\\_languages.html](http://www.svenskassaservice.se/other_languages/other_languages.html)>>.

<sup>327</sup> <<<http://www.personnummer.nu>>>.

<sup>328</sup> Case C-138/02 *Brian Francis Collins v Secretary of State for Work and Pensions* [2004] ECR I-2703.

family members who are not Union citizens themselves) having a right of permanent residence. In fact, this category of persons is entitled to enjoy equal treatment with Swedish nationals.

Following an amendment that came into force on 1 July 2006, in accordance with the Swedish Study Loan Act, the right to a study loan is restricted. Therefore, only foreign citizens with a permanent right of residence independent of nationality who can derive rights from EC law concerning social benefits, should be equal to Swedish citizens regarding the right to study loans (see the Study loan Act Ch. 1 § 4). The reason for this restriction is that, in an international context, the Swedish study loans system is considered to be very generous. Moreover, according to Swedish law, a precondition for the grant of a study loan is that the foreigner in question must have a ‘strong connection to Sweden’ <sup>(329)</sup>. In the administrative practice from the CSN (*Centrala Studiestödsnämnden*- the national authority for handling the Swedish financial aid for students) this means that third country nationals and Union citizens should have stayed or worked in Sweden for the last two years <sup>(330)</sup>.

### 9.7. Grounds for expulsion and procedural safeguards

The relevant Articles applicable to expulsion are set out below:

<b>Directive 2004/38/EC</b>	<b>Articles 14 (3); 14 (4); 15 (2); 27-29, and 33</b>
<b>Aliens Act</b>	<b>Chapter 8 §1 -21§ Chapter 9 §1-§11</b>

In the event that a valid passport or ID card cannot be produced, according to Chapter 2 § 2 of the Aliens Act, they can be replaced by other documents (driving license, old ID card). Union citizens and their family members from third countries cannot be expelled (Chapter 8 §1 of the Alien’s Act) for failure to have a valid passport or ID card! However, restrictions on the right to enter Sweden can be imposed referring to public order or security according to Chapter 7 §1-§7b of the Aliens Act. Refusing entry on the grounds of ‘public health’ is not mentioned in the Swedish laws and regulations.

It was established in the *Mrax* <sup>(331)</sup> case that a person who is a family member should have the possibility to show his or her identity in another way, such as witnesses, and further, the family member should not be refused entry into a Member State if the Union citizen can prove his or her

<sup>329</sup> Law (1999:1395, chapter 1 § 4 and CSN web-site).

<sup>330</sup> <<<http://www.csn.se/en/2.135>>>.

<sup>331</sup> Case C-459/99 *Mouvement contre le racisme, l'antisémitisme et la xénophobie ASBL (MRAX) v Belgian State* [2002] ECR I-6591. The case concerns the following areas: Third country nationals who are the spouse of a Member State national/Requirement for a visa/Right of entry for spouses not in possession of identity documents or a visa/Right of residence for spouses who have entered unlawfully/Right of residence for spouses who have entered lawfully but whose visa has expired when they apply for a residence permit and applications of Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families OJ L 257/13 and Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services OJ L 172/14 and Council Regulation 2317/95 of 25 September 1995 determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States OJ L 234/1.

identity and relationship and if the person concerned is not a threat to public order, security or health.

### 9.7.1. Safeguards against expulsion

<b>Directive 2004/38/EC</b>	<b>Articles 14 (3); 14 (4); 15 (2); 27- 29 and 33</b>
<b>Aliens Act</b>	<b>Chapter 8 §1 -21§ Chapter 9 §1-§11</b>

(no issues identified)

## 9.8 Miscellaneous problems

### 9.8.1 Right of exit

<b>Directive 2004/38/EC</b>	<b>Article 4</b>
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Article 4 of the Directive has not been transposed into Swedish law.

### 9.8.2. Job-seekers

<b>Directive 2004/38/EC</b>	<b>Article 7 (1)</b>
<b>Aliens Act</b>	<b>Chapter 3 a § 3 4<sup>th</sup> indent</b>

A crucial issue concerns the time-period that job seekers can remain in Sweden in order to look for employment. Referring to the *Antonissen case* (<sup>332</sup>), the Swedish Parliament advocated a six months rule ('or longer') as a 'rule of thumb' for a right to stay in Sweden searching for a job, even though exceptions could be made in line with the judgements from the ECJ.

In the *Antonissen case*, the ECJ considered the question whether the right of a job seeker to remain in a Member State for the purpose of seeking employment can be subject to a temporal limitation. It held that it was not contrary to EU law governing the free movement of workers for the legislation of a Member State to provide by national legislation that a national of another Member State entering the first state to find employment might be required to leave the territory of that State if he has not found employment there after six months unless the person concerned provides evidence that he is continuing to seek employment and that he has a genuine chance of being engaged. The ECJ originally excluded job-seekers from the right to equal treatment in relation to social assistance in the host state. However, in the *Collins case* (<sup>333</sup>), the ECJ took a different approach. Mr Collins was an Irish national who went to the United Kingdom and claimed unemployment benefit whilst still looking for employment. He was denied the benefit on the grounds that he was not habitually resident in the United Kingdom and being merely a job seeker and not a worker was not according to previous case law of the ECJ on entitlement to equal treatment in relation to welfare benefits. The ECJ held that Article 39 had to be interpreted

<sup>332</sup> C-292/89 *The Queen v Immigration Appeal Tribunal, ex parte Gustaff Desiderius Antonissen* [1991] ECR I-745).

<sup>333</sup> C-138/02 *Brian Francis Collins v Secretary of State for Work and Pensions* [2004] ECR I-2703.

in the light of the introduction of Union citizenship. Since Union citizens are entitled to equal treatment in regard to all matters falling within the material scope of the Treaty it was no longer possible to exclude job seekers from the scope of the application of Article 39(2) which provides for the general right to equal treatment benefits of a financial nature for work seekers. It is open to the Member States to justify indirect discrimination (a residence requirement would be so considered) by claiming a necessity to ensure that a genuine link exists between the claimant and the labour market therefore limiting if not eliminating the possibility of welfare tourism. The ECJ went on to state that the United Kingdom was able to require a connection between persons claiming entitlement and the employment market. A residence requirement has to be proportionate and cannot go beyond what is necessary to achieve the objective. If a period of residence is required the period must not exceed what is necessary for the national authorities to be able to satisfy themselves that the person concerned is genuinely seeking work).

## **9.9 National legislation that interferes or could interfere with the Directive**

The issue of an ID card is under discussion with the Parliament in January 2009. No law has yet been voted.

## **9.10. Administrative services**

The information available on the web-sites is very user-friendly and exists in most languages of the EU and even in other third country languages (<sup>334</sup>). All forms are available on the *Migrationsverket* web-site (<sup>335</sup>), but it can be difficult to fill in the forms, as sometimes certain information is missing so forms cannot be retrieved properly. A computer must be available for filling in the forms, unless you go to a local *Migrationsverk* and fill in the forms by hand.

As an example, if a certain number is missing such as the personal number (*personnummer*) the whole process is blocked! Contact has to be made with the *Migrationsverket* this causes even more delays! The timing in that case is a great problem: the *Migrationsverket* is slow to deliver responses to the citizens wishing to stay in Sweden, the problem of being able to stay longer than three months with an answer from the *Migrationsverket* and the issuing of the ID card is both a time consuming and a negative element in the whole process of staying in Sweden.

For the purpose of this report the expert has been in contact with various local *Migrationsverk* (Migration Board) (mostly with the one situated in Lund, in the South of Sweden, a university town and a town very close to Denmark and the so-called ‘Malmö-area’ and with the Stockholm *Migrationsverk*). The personnel and the legal department are both helpful competent and experienced.

Legal uncertainties due to a lack of definition of certain terms, such as “Passport”, “Visa”, “Staying right” (see Chapter 2 “Passport” “Visa” “Right of stay” of the Aliens Act) are all terms used in a vague way and are not defined making the wording of the law the biggest challenge for Swedish authorities and especially the *Migrationsverket* (Migration Board) which has been experiencing difficulties in applying the Swedish implementing legislation appropriately. The expert has contacted the local *Migrationsverk* (Migrations Boards of Lund and Stockholm)

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<sup>334</sup> Please see *Migrationsverket*'s web-site: <<<http://www.migrationsverket.se>>>.

<sup>335</sup> Please see <<[http://www.migrationsverket.se/blanketter/bob/eu/blur\\_140011\\_en.pdf](http://www.migrationsverket.se/blanketter/bob/eu/blur_140011_en.pdf)>>.

several times (<sup>336</sup>) and the relevant administrations are aware of the problem. Experience of these legal uncertainties has also been proven by the enquiries sent to the national expert as legal expert for Sweden in the frame of the Citizens Signpost Service. Another uncertain transposition of the Directive lies in the fact that registration is not interpreted under Swedish law as a right to remain in Sweden. The same principle applies for residence cards, which are just an acknowledgement of the right to stay of a Union citizen family member.

### **9.11. Conclusions**

The transposition process of the Directive is unfortunately rather imperfect and could be improved.

The text of the Act has been introduced through various amendments into the previous Aliens Act and makes the reading, the interpretation and even the understanding of the full text difficult. However the *overall* evaluation of the transposition of the Directive into Swedish law via the Aliens Act has been satisfactory and the rights of EU-citizens and their family members seem to have been observed. In practice however, the free movement and the right of residence has been limited by administrative difficulties.

The very specific situation of Sweden for ID cards is very time consuming and partly infringes the free movement of Union citizens and their family members and makes the daily life of Union citizens complicated (as described above and as experienced by the national expert as Citizen's Signpost Service expert).

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<sup>336</sup> Mainly the one situated in Lund in the south of Sweden and the one in Stockholm.

## 10. UNITED KINGDOM

### 10.1 Transposing measure(s)

<b>Immigration (European Economic Area) Regulations 2006 (Statutory Instrument 2006 No 1003) as regards England, Scotland, Northern Ireland and Scotland <sup>(337)</sup></b>
<b>Immigration Control (Amendment) Act 2008 as regards Gibraltar <sup>(338)</sup></b>

In the United Kingdom, <sup>(339)</sup> the Directive has been transposed into national law by the Immigration (European Economic Area) Regulations 2006 (Statutory Instrument 2006 No 1003) <sup>(340)</sup>. The Regulations came into force on 30 April 2006. Separate legislation exists for Gibraltar, through the recently adopted Immigration Control (Amendment) Act 2008 which came into force on 26 June 2008 <sup>(341)</sup>.

These Regulations govern entry and residence of Union citizens and also apply to all EEA nationals (EU nationals and nationals from Norway, Iceland and Lichtenstein). As the Regulations apply to all EEA nationals (even though we understand that EFTA has yet to incorporate the Directive into the EEA Agreement), the Regulations have broadened the scope of the Directive. Special rules have also been adopted separately for nationals of Switzerland in accordance with the EU-Swiss Agreement of Free Movement of Persons.

The Regulations also cover certain situations that are not governed by the Directive but reflect legal obligations set out by case law of the ECJ and the EEA Agreement. For example, the Regulations also cover the situation of family members of British citizens returning home after exercising their free movement rights in another EEA country (see Regulation 9).

Other separate legislation transposes the equal treatment provision contained in Article 24 of the Directive and applies to the right to the right to employment for workers from the new Member States.

The UK has taken advantage of the transitional arrangements and requires nationals from the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovak Republic and Slovenia who are seeking work in the UK to register with the Home Office under the scheme set up under the Accession (Immigration and Worker Registration) Regulations 2004 (Statutory Instrument 2004 No 1219) <sup>(342)</sup>.

The UK has also taken advantage of the transitional arrangements for Bulgarian and Romanian nationals seeking work in the UK. These nationals are required to obtain prior authorisation from the Home Office under the Worker Authorisation Scheme. The rules are contained in the Accession (Immigration and Worker Authorisation) Regulations 2006 (Statutory Instrument 2006 No 3317) <sup>(343)</sup> which came into force on 1<sup>st</sup> January 2007. The rules require all Bulgarian and Romanian citizens to obtain authorisation (worker authorisation card) from the Home Office

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<sup>337</sup> The text is available online at <<<http://www.opsi.gov.uk/si/si2006/20061003.htm>>>.

<sup>338</sup> The text is available online at <<<http://www.gibraltarlaws.gov.gi/articles/2008-12.pdf>>>.

<sup>339</sup> Hereinafter 'UK'.

<sup>340</sup> Hereinafter 'Regulations'.

<sup>341</sup> The text is available online at <<<http://www.gibraltarlaws.gov.gi/articles/2008-12.pdf>>>.

<sup>342</sup> The text is available online at <<<http://www.opsi.gov.uk/si/si2004/20041219.htm>>>.

<sup>343</sup> Please see <<<http://www.opsi.gov.uk/SI/si2006/20063317.htm>>>.

before being able to work in the UK in an employed capacity. Also, certain sectors of the job market are not open to Bulgarian and Romanian citizens.

## **10.2 Right of entry and residence**

The relevant Articles applicable to the right of entry and residence are set out below:

<b>Directive 2004/38/EC</b>	<b>Articles 4 -15</b>
<b>Immigration (European Economic Area) Regulations 2006</b>	<b>Regulations 2(1); 4(4); 5; 6(1)-(4); 7(1) - (2); 10(2) - (5); 11(1) - (4), 13(1) - (2), (3)(b); 14(1) - (3); 15 (1)(f), (3) - (4); 16(1) - (3); 17 (1) - (6); 18 and 26</b>

### **10.2.1. Wide discretion in facilitation of entry and residence of other family members**

<b>Directive 2004/38/EC</b>	<b>Article 3(2)</b>
<b>Immigration (European Economic Area) Regulations 2006</b>	<b>Regulation 8</b>

Complaints received by the Citizens Signpost Service suggest that the UK immigration authorities enjoy a very wide margin of discretion in respect of the ‘examination of the personal circumstances’ of ‘other family members’ applying for entry or residence under Article 3(2) of the Directive. Whilst Article 3(2) requires national authorities to undertake ‘an extensive examination of the personal circumstances’ of such ‘other family members’ complaints received indicate that the UK immigration authorities do not systematically undertake such an extensive examination. Furthermore, despite the authorities being under an obligation to ‘justify any denial of entry or residence,’ in some cases the reasons given for a refusal to permit entry or residence have not been persuasive.

### **10.2.2. Right of entry**

The law applicable to the right of entry is set out below:

<b>Directive 2004/38/EC</b>	<b>Article 3(2); 5</b>
<b>Immigration (European Economic Area) Regulations 2006</b>	<b>Regulations 8; 11(1)-(4); 12 (4); 15 and 17-18</b>

#### **10.2.2.1. Questioning by immigration officials upon arrival in the UK**

<b>Directive 2004/38/EC</b>	<b>Article 5(1)</b>
<b>Immigration (European Economic Area) Regulations 2006</b>	<b>Regulation 11(1)</b>

Based on complaints received by the Citizens Signpost Service, we are aware of a number of instances where EU nationals (particularly from the new Member States) have complained about being questioned at length by the UK immigration officials in relation to the purpose of their visit into the UK, despite Article 5(1) of the Directive stating that EU nationals are *only* required to



present their passports or identity cards in order to enter another country. Questions have usually been concerned with the purpose of their entry into the UK.

### 10.2.3. Right of residence

The laws applicable to the right of residence are:

<b>Directive 2004/38/EC</b>	<b>Articles 6 - 7</b>
<b>Immigration (European Economic Area) Regulations 2006</b>	<b>Regulations 5; 6(1); 7(1) - (2); 13 (1) - (2) and 14 (1) - (2)</b>

#### 10.2.3.1. Retention of the right of residence- self-employed persons

<b>Directive 2004/38/EC</b>	<b>Article 7(3)</b>
<b>Immigration (European Economic Area) Regulations 2006</b>	<b>Regulation 6(3)</b>

It should be noted that Regulation 6(3) only transposes Article 7(3) (a) of the Directive on temporary inability to work as a result of illness or accident concerning self-employed workers. The other situations where a self-employed person retains the status of self-employed person after ceasing working (involuntary employment after having been employed for more than one year and has registered as a job seeker with the relevant employment office, or involuntary employment after completing a fixed term employment contract of less than a year or after having become involuntarily unemployed during the first twelve months and has registered as a job-seeker with the relevant employment office or finally, when the worker embarks on vocational training related to the previous employment, unless involuntarily unemployed (Articles 3(b)-(d) respectively)), are not contained in the Regulations.

#### 10.2.3.2. Retention of the right of residence – recourse to social assistance

<b>Directive 2004/38/EC</b>	<b>Article 14(1), (3)</b>
<b>Immigration (European Economic Area) Regulations 2006</b>	<b>Regulation 19(4)</b>

Pursuant to Article 14(1) of the Directive, Union citizens and their family members benefit from the residence right so long as they do not become an unreasonable burden on the social assistance system of the host Member State. However, Article 14(3) provides that recourse to social assistance must not lead to an automatic expulsion (implemented in the UK by Regulation 19(4) of the Regulations).

Concerning this point, the practice of the UK is questionable with regard to new Member State nationals accessing social benefits. Based on complaints made to the Citizens Signpost Service, Union citizens who have resorted to social assistance (in particular citizens of the new Member States) have received official communications stating that they no longer had the right to remain in the UK simply by virtue of the fact that they had recourse to the social welfare system (rather

than because they had become an unreasonable burden) <sup>(344)</sup>. This practice breaches Article 14(3) of the Directive and Regulation 19(4), and runs contrary to the spirit of the Directive, in particular Recital 16 which provides that ‘as long as the beneficiaries of the right of residence do not become an unreasonable burden on the social assistance system of the host Member State, they should not be expelled (...) therefore, an expulsion measure should not be an automatic consequence of recourse to the social assistance system.’

Further, it also has the potential to establish differential treatment between the EU 15 and EU 12 nationals, maintaining a different concept of Union citizenship for different Union citizens.

**10.2.3.3. Problems encountered in seeking permanent residence in the UK**

<b>Directive 2004/38/EC</b>	<b>Article 16(1)</b>
<b>Immigration (European Economic Area) Regulations 2006</b>	<b>Regulation 15(1)</b>

Article 16(1) of the Directive provides for a right to permanent residence for citizens and family members who have resided in a country for at least 5 years. The Home Office has confirmed that this 5-year period is being calculated as starting from the date of accession to the EU of the country whose nationality the citizen holds, instead of the date of arrival in the UK of the person concerned. There is no such limitation contained in the Directive or the relevant Accession Treaties. We have received complaints from a number of citizens from new Member States who have been denied documentation attesting to their permanent residence.

This also has the potential to establish differential treatment between the EU 15 and EU 12 nationals, again maintaining a different concept of Union citizenship for different Union citizens. In some cases, it will not be sufficient for the EU 12 nationals to have resided in the UK for 5 years because any period of residence predating the date of accession will not be taken into account when making the calculation. EU 15 nationals, on the other hand, face no such deduction from their period of residence in the UK.

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<sup>344</sup> The problem may also be partly attributed to the absence of the word ‘unreasonable’ in Article 7 (1) of the Directive (Right of residence for more than 3 months) and Article 14 (2) (Retention of right of residence - period of more than 3 months). There appears to be an inconsistency between those Articles and Recital 16 of the Directive, which states that ‘as long as the beneficiaries of the right of residence do not become an unreasonable burden on the social assistance system of the host Member State they should not be expelled.’

### **10.3 The definition of sufficient resources**

The relevant Articles containing reference to ‘sufficient resources’ are:

<b>Directive 2004/38/EC</b>	<b>Articles 7 (1)(b) - (c); 8(4); 12(2) and 13(2)</b>
<b>Immigration (European Economic Area) Regulations 2006</b>	<b>Regulations 4(4) and 15(1)(f)</b>

Article 8(4) of the Directive provides that the question of whether a citizen’s resources are sufficient may not be made by reference to a fixed amount. Furthermore, this level of resources cannot ‘be higher than the threshold below which nationals of the host Member State become eligible for social assistance, or, where this criterion is not applicable, higher than the minimum social security pension paid by the host Member State’. In the UK, the provision is implemented by Regulation 4(4) which specifies that ‘the resources of the person concerned and, where applicable, any family members, are to be regarded as sufficient if they exceed the maximum level of resources which a United Kingdom national and his family members may possess if he is to become eligible for social assistance under the United Kingdom benefit system.’ This poses a question of legal certainty. There is no further explanation given as to what eligibility for social assistance would entail. In the UK, persons on low incomes are entitled to social assistance. However, there is no single level of income specified for all benefits, and each category of benefits incorporates an assessment of the different level of income as part of the eligibility requirements for entitlement to the benefit in question. This lack of legal certainty may lead to a myriad of possible outcomes and therefore to possible inconsistencies in the assessment of the personal situation of citizens by the immigration authorities.

### **10.4 The situation of (registered) partners**

The relevant Articles applicable to the situation of (registered) partners are:

<b>Directive 2004/38/EC</b>	<b>Articles 2(2)(b) ; 3(2)(a) ; 8(5)(b) ; 10(2)(b) ; 13(1) and (2)(a)(c)<sup>345</sup></b>
<b>Immigration (European Economic Area) Regulations 2006</b>	<b>Regulations 7(1)(a); 8; 10(5); 14(3); 17 (1) - (2) and (4) - (5)</b>

The Civil Partnership Act 2004 only recognises same-sex partnerships entered into in other specified EEA countries (Sections 212-218 read in combination with Schedule 20). The countries are Belgium, Denmark, Finland, France, Germany, Iceland, Netherlands, Norway and Sweden. The partners to a heterosexual partnership (whether recognised or not) are not automatically recognised under the Act. This situation is not clearly addressed in the Regulations since the term ‘civil partner’ is not defined.

When we contacted the Home Office on this point, the following clarification was provided:

‘The meaning of ‘civil partners’ is given by Schedule 1 to the Interpretation Act 1978 as amended by paragraph 59 of Schedule 27 to the Civil Partnership Act 2004 (‘the 2004 Act’). Schedule 27 of the 2004 Act defines a civil partnership as one which exists under or by virtue of the 2004 Act. There is no provision in UK law for heterosexual unmarried partners to register

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<sup>345</sup> Please see Recital 5 of the Directive.

their relationship under the 2004 Act as a civil partnership and the UK consequently does not recognise registered partnerships of heterosexual couples.’<sup>(346)</sup>

As a result, the partners to a heterosexual partnership registered in another Member State are not considered as ‘family members’ under Article 2(2) of the Directive (as implemented by Regulation 7(1)(a)) but could be considered as a partner under Article 3 (2) (as implemented by Regulation 8). Conversely, the partners to a registered homosexual partnership would be considered as ‘family members.’ This does not appear to be in line with the spirit of the Directive. Recital 5 of the Directive specifies that ‘for the purposes of this Directive, the definition of ‘family member’ should also include the registered partner if the legislation of the host Member State treats registered partnership as equivalent to marriage.’ On the basis of this Recital, it therefore appears that, if registered partnerships are recognised in the UK, even if only for same-sex unions, *all* registered partnerships should be recognised, whether the partnership involves a same-sex couple or not. The Home Office has confirmed that the UK takes the opposite view <sup>(347)</sup>.

## **10.5. Problems encountered by third country national family members**

### **10.5.1. Condition of prior residence in the EU/EEA**

<b>Directive 2004/38/EC</b>	<b>Articles 3(2) ; 5(2) and 6(2)</b>
<b>Immigration (European Economic Area) Regulations 2006</b>	<b>Regulations 8 and 12</b>

Regulation 12 deals with the issue of EEA family permits to third-country family members who seek entry to the UK when accompanying or joining the Union citizen. It imposes a condition of prior residence in the EEA on such third-country family members. Those who do not fulfil this condition of prior residence in the UK must meet the additional conditions for entry under the UK immigration rules. This constitutes a clear breach of Article 5 (2) of the Directive. Further, the ECJ held in *Metock* that ‘Directive 2004/38/EC (...) precludes legislation of a Member State which requires a national of a non-member country who is the spouse of a Union citizen residing in that Member State but not possessing its nationality to have previously been lawfully resident in another Member State before arriving in the host Member State, in order to benefit from the provisions of that Directive’ <sup>(348)</sup>.

Regulation 8 contains a similar restriction on ‘extended family members’ who are defined as other family members (the same categories as those listed in Article 3 (2) of the Directive) who are residing in the EEA at the time in which they make their application to join or accompany a Union citizen. Those who do not fulfil this condition of prior residence in the UK have no right to apply for ‘facilitation’ of entry and residence. This does not seem to be in keeping with the wording or spirit of the Directive, since Article 3 (2) contains no wording that limits (by reference to geographical location) the right of third country nationals who are ‘other family members’ to join or accompany their EU family member(s).

<sup>346</sup> E-mail received from the UK Border Agency (Home Office) on 5<sup>th</sup> December 2008.

<sup>347</sup> E-mail received from the UK Border Agency (Home Office) on 5<sup>th</sup> December 2008.

<sup>348</sup> Case C-127/08 *Metock* [2008] ECR 00, paragraph 80.

We understand that this condition of prior residence in the EEA is based upon the UK’s interpretation of the Judgment of the ECJ in *Akrich* (<sup>349</sup>). In this case, the ECJ held that the exercise of family rights by a third country national who is the spouse of a citizen of the Union under Article 10 of Regulation No 1612/689 (now Article 6 (2) of the Directive) on the free movement of workers was conditional upon that third country national family member being lawfully resident in a Member State when he moves to another Member State to which the citizen of the Union is migrating or has migrated (<sup>350</sup>). However, it is clear that *Akrich* no longer constitutes good law following the judgement in *Metock*. It should also be noted that the UK government has not replied to our request for confirmation on whether it intends to amend the Regulations to comply with this judgement.

When contacted on this point, the UK authorities declared that ‘the Home Office will be amending the Immigration (European Economic Area) Regulations 2006 (‘the 2006 Regulations’) to implement the ECJ’s ruling in the case of *Metock* in early 2009. The interim amended guidance for decision makers on assessing applications for European documentation, in the UK and pre-entry, under the Directive is being issued to comply with the judgment. This guidance removes the prior lawful residence (in an EEA State) requirement for direct family members – those family members covered by Article 2(2) of the Directive’ (<sup>351</sup>).

#### 10.5.2. Requests for excessive documentation in processing applications

<b>Directive 2004/38/EC</b>	<b>Article 10</b>
<b>Immigration (European Economic Area) Regulations 2006</b>	<b>Regulation 17</b>

As regards the processing of applications, complaints received by the Citizens Signpost Service demonstrate that the UK authorities sometimes request additional documents or imposing conditions which are listed in neither the Directive nor the Regulations. For example, self-employed persons are being asked to prove they have obtained a National Insurance Contribution number from the UK tax authorities (HM Revenue & Customs). Another example relates to students who are being asked to demonstrate that the course they are enrolled on comprises a minimum number of hours of tuition, even though there is no such requirement under the Directive. In some cases, the documents provided are not considered adequate. This is also the case for marriage certificates issued abroad. The Citizens Signpost Service has received complaints that that the UK immigration officials do not consider a marriage certificate as satisfactory or sufficient proof of a family relationship. One citizen was required to obtain an attestation of his marriage certificate from the British Embassy in the country where he was married even though he had already left that country a number of years before. Placing such additional requirements on applicants may represent ‘divergent administrative practices or interpretations constituting an undue obstacle to the exercise of the right of residence’ within the meaning of Recital 14 of the Directive.

Finally it should be noted that complaints received by the Citizens Signpost Service indicate that consular staff in British embassies located outside the EU are not sufficiently informed of the rights of third-country family members and are applying the UK immigration rules in situations covered by the Directive.

<sup>349</sup> Case C-109/01 *Akrich* [2003] ECR I-09607.

<sup>350</sup> Case C-109/01 *Akrich* [2003] ECR I-09607, paragraphs 50 and 51

<sup>351</sup> Email received from the UK Border Agency (Home Office) on 5<sup>th</sup> December 2008

### 10.5.3. Delays in processing applications for residence cards of family members

<b>Directive 2004/38/EC</b>	<b>Article 10(1)</b>
<b>Immigration (European Economic Area) Regulations 2006</b>	<b>Regulation 17(3)</b>

Based on information published on the Home Office's website, we understand that there are considerable delays in processing applications for residence cards of family members who are third-country nationals. According to the Home Office, it currently takes approximately 11 months to process an application for a residence card (<sup>352</sup>). This clearly does not comply with Article 10(1) of the Directive and Regulation 17(3) which both provide that the residence card must be issued 'no later than six months' from the date on which they submit the application.

### 10.5.4. Non-acceptance of residence cards issued by other EU countries to family members who are third-country nationals *in lieu* of entry visa

<b>Directive 2004/38/EC</b>	<b>Articles 5(2) and 10</b>
<b>Immigration (European Economic Area) Regulations 2006</b>	<b>Regulations 12 and 17</b>

Article 5(2) of the Directive provides that 'possession of the valid residence card referred to in Article 10 (i.e. 'residence card of a family member of a Union citizen' issued by a Member State) shall exempt such family members from the visa requirement.' However, Regulation 12 appears to exclude the possibility for a non-EU family member who has a residence card issued by another country under Article 10 of the Directive from entering the country without a visa. This has been confirmed by the Home Office, which when contacted on the issue, replied as follows:

'We do not interpret Article 5(2) as providing for the mutual recognition of residence cards between Member States.

Article 5(2) provides for third country national (TCN) family members to be exempt from a visa requirement if they hold a valid residence card as referred to in Article 10. Article 10 provides for the issuing by a Member State of a residence card to TCN family members of EEA nationals as evidence that they have a right to reside in their territory. The UK's interpretation of those Articles is that the reference to residence cards in Article 5(2) is a reference only to those issued by the host Member State in accordance with Article 10. So for anyone travelling to the UK a residence card issued by the UK authorities would exempt them from visa requirements.

Those TCN family members who do not have a residence card issued by the UK authorities require an EEA family permit as provided for in Regulation 12 of the 2006 Regulations'(<sup>353</sup>).

As a result, all third-country national family members wishing to enter the UK have to apply for an 'EEA family permit' under Regulation 12. This constitutes an infringement of Article 5(2) of

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<sup>352</sup> On 1st January 2009, the Home Office was still considering applications for residence cards made in February 2008. Please see:

<<[<<http://www.ind.homeoffice.gov.uk/eucitizens/applyingundereuropeanlaw/>>](http://www.ind.homeoffice.gov.uk/eucitizens/applyingundereuropeanlaw/)>>.

<sup>353</sup> E-mail received from the UK Border Agency (Home Office) on 5<sup>th</sup> December 2008.

the Directive as further explained by Recital 8: ‘with a view to facilitating the free movement of family members who are not nationals of a Member State, those who have already obtained a residence card should be exempted from the requirement to obtain an entry visa within the meaning of Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement or, where appropriate, of the applicable national legislation.’

Additionally, Regulation 17 also appears to exclude the possibility for a non-EU family member who has a residence card issued by another country under Article 10 of the Directive from entering the country for transit purposes without a ‘direct airside transit visa’ (DATV) in breach of with Article 5(2).

According to complaints received by the Citizens Signpost Service, we understand that these anomalies have led to a number of family members being denied boarding on aircrafts for flights within Europe.

**10.5.5. Problems in processing entry visas**

<b>Directive 2004/38/EC</b>	<b>Article 5(2)</b>
<b>Immigration (European Economic Area) Regulations 2006</b>	<b>Regulations 11 (2); 12 and 12 (4)</b>

Article 5(2) of the Directive provides that visas for entry by third-country family members ‘*shall be issued free of charge as soon as possible and on the basis of an accelerated procedure.*’ Under Regulation 12(1), the UK authorities are required to issue an entry visa (called EEA family permit) to third country national family members who are seeking to join or accompany a Union citizen. The Regulations do not specify any deadline within which such an entry visa must be issued.

The Citizens Signpost Service has received numerous complaints of extensive delays in obtaining entry visas for third-country nationals seeking to accompany or join Union citizens. In some cases plans to visit the UK by Union citizens and their families have had to be abandoned, which has resulted in financial loss due to cancellation of flights and hotel bookings. Delays have been further exacerbated by the large number of supporting documents being requested by the UK authorities from applicants for an ‘EEA family permit.’ In some situations, the documents provided to the UK immigration officials have been rejected. One further practical problem relates to the use of the telephone as the means to process applications. A number of complaints have been made that the waiting time is excessive. Other complaints relate to the fact that, because the telephone service has been outsourced to private contractors, the telephone number is a ‘premium service’ meaning that the telephone charges can be costly, particularly if the applicant is made to wait on the telephone as part of the queuing system. In some cases, the telephone is the *only way* to start the process as individual appointments can only be arranged by telephone.

## 10.6. Equal treatment

The relevant Articles applicable to equal treatment are:

<b>Directive 2004/38/EC</b>	<b>Article 24 (1)</b>
<b>Immigration (European Economic Area) Regulations 2006</b>	<b>no corresponding provision</b>

The Regulations have not specified the right to equal treatment of the beneficiaries of the Directive as stipulated in Article 24 of the Directive.

### 10.6.1. Higher education

<b>Directive 2004/38/EC</b>	<b>Article 24</b>
<b>Education (Fees and Awards) Regulations 1997 (as amended)</b>	<b>Regulation 4</b>

The UK operates a system of higher education which allows universities and other higher education institutions to charge students annual tuition fees. In order for Union citizens to benefit from the right to pay the same university fees as home students, Regulation 4 read in conjunction with paragraphs 1 and 5 of the Schedule of the Education (Fees and Awards) Regulations 1997 (as amended notably in 2006) <sup>(354)</sup> require those persons to have been resident in the EEA for three years prior to the start of the academic year. There is no requirement in the Directive that Union citizens need to have resided in the EEA for at least 3 years immediately prior to exercising their rights to free movement. This precludes Union citizens who may have been resident outside the EEA before studying in the UK from benefiting from the right to equal treatment.

### 10.6.2. Sickness insurance for students and self-sufficient persons

<b>Directive 2004/38/EC</b>	<b>Article 7(1)(c) and 24</b>
<b>National Health Service (Charges to Overseas Visitors) Regulations 1989</b>	<b>Regulation 4</b>

As regards the right of residence of students, Article 7(1)(c) of the Directive requires that students ‘have comprehensive sickness insurance cover in the host Member State.’ A similar condition is imposed by Article 7(1) (b) on self-sufficient persons such as pensioners and inactive persons who do not work or study but who have sufficient resources to live without being an unreasonable burden on the national social assistance system.

According to Regulation 4 of the National Health Service (Charges to Overseas Visitors) Regulations 1989 <sup>(355)</sup>, a student is exempt from paying charges for the NHS where it is ‘shown to the satisfaction of the Authority to be present in the United Kingdom (...)’, for the purpose of (...) pursuing a course of study where the period of study during the first year of the course is

<sup>354</sup> Please see: <<<http://www.opsi.gov.uk/si/si1997/19971972.htm>>>.

<<<http://www.opsi.gov.uk/si/si2006/20060483.htm>>>.

<sup>355</sup> Please see <<[http://www.opsi.gov.uk/si/si1989/Uksi\\_19890306\\_en\\_1.htm](http://www.opsi.gov.uk/si/si1989/Uksi_19890306_en_1.htm)>>.



broken by a period or periods of industrial or analogous experience forming an integral part of the course amounting in aggregate to not less than 12 weeks (Regulation 4(a)(iii)).' Likewise, in order for self-sufficient persons to receive free healthcare from the NHS, they must have resided in the UK for at least one year (Regulation 4(b)). Other categories of beneficiaries of the free movement right do not face similar restrictions.

However, complaints received by the Citizens Signpost Service have indicated that immigration officials are requiring students and self-sufficient persons to show that they have insurance cover other than NHS cover, such as private health insurance. This practice infringes Article 24 on equal treatment.

### 10.6.3. Social welfare benefits

<b>Directive 2004/38/EC</b>	<b>Article 24</b>
<b>Social Security (Persons from Abroad) Amendment Regulations 2006</b>	<b>Regulation 4</b>

Article 24 of the Directive gives its beneficiaries a right to equal treatment with nationals of the host country. The UK has introduced changes to various Regulations in the field of social security following implementation of the Directive by way of the Social Security (Persons from Abroad) Amendment Regulations 2006 (Statutory Instrument 2006 No 1026) <sup>(356)</sup>. The changes introduced relate to residency requirements. A 'person from abroad' is not eligible for social assistance and is broadly defined as someone who is not habitually resident in the UK, Channel Islands, Isle of Man or Republic of Ireland. These regulations also provide for categories of persons who are not considered to be from abroad which replicates some but not all the categories of beneficiaries of a right of residence under the Directive. Whilst employed and self-employed workers are listed within these categories, students and self-sufficient persons who have a right of residence under the Directive are not. This means that students or self-sufficient persons may be considered to be from abroad despite having a right to reside in the UK and would therefore be excluded from the possibility of claiming certain social welfare benefits.

## 10.7 Grounds for expulsion and procedural safeguards

### 10.7.1. Grounds for expulsion

The relevant Articles applicable to expulsion are set out below:

<b>Directive 2004/38/EC</b>	<b>Articles 14(3); 14(4); 15(2) and 27 - 29</b>
<b>Immigration (European Economic Area) Regulations 2006</b>	<b>Regulations 6(1) - (3); 7 - 8; 12(5); 13(3)(a); 14(5); 15(3); 16(8); 17(8); 18(5), 19; 20(1) and (6); 21 and 22(c)</b>

It should be noted that the Home Office has provided information to the UK Parliament that approximately 160 EEA nationals were deported in 2006 <sup>(357)</sup>. In 2007, the number rose to more than 500 deportations <sup>(358)</sup>.

<sup>356</sup> Please see: <<<http://www.opsi.gov.uk/si/si2006/20061026.htm>>>.

<sup>357</sup> Commons Written Answers, 16<sup>th</sup> December 2006 Commons Hansard, 1958w

<<<http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm061219/text/61219w0049.htm>>>.

As mentioned above, complaints received by the Citizens Signpost Service indicate that Union citizens who have resorted to social assistance (in particular citizens of the new Member States) have received official communications stating that they no longer had the right to remain in the UK simply by virtue of the fact that they had recourse to the social welfare system (rather than because they had become an unreasonable burden) <sup>(359)</sup>. This practice breaches Article 14(3) (and Regulation 19(4) of the Regulations) and runs contrary to the spirit of the Directive. We have been unable to determine if any persons have been deported for having recourse to the social welfare system.

### 10.7.2. Procedural safeguards

The relevant Articles setting out procedural safeguards are set out below:

Directive 2004/38/EC	Articles 30 - 33
<b>Immigration (European Economic Area) Regulations 2006</b>	<b>Regulations 12(3); 16(6); 17 (5); 19 (3)(b); 24 (3); 24 (2), (3), (5), (6), 26-29, Schedule 2 and Paragraph 5 of Schedule 5</b>

According to Regulation 27, persons who have applied to enter the UK may not appeal the decision made under the Regulations that denied them entry if they are in the UK at the time they make an appeal. The effect of this is that the person in question must first leave the territory of the UK before being able to challenge the decision before the courts.

The same goes for deportation orders, refusal to issue an EEA family permit or a removal order. This could seriously affect their ability to obtain affordable legal advice on UK immigration rules and will limit their ability to obtain legal aid (financial assistance with legal fees).

This Regulation seems to be in breach of established case law of the ECJ as it relates to rules of procedure that relate to the exercise of rights under EU law, and national rules of court procedure are subject to a requirement of proportionality meaning that the rules do not make it practically impossible nor excessively difficult for appellants to fulfil the conditions under national law <sup>(360)</sup>.

<sup>358</sup> Commons Written Answers, 3<sup>rd</sup> March 2008 Commons Hansard 2082w <<<http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080303/text/80303w0010.htm>>>.

<sup>359</sup> The problem may also be partly attributed to the absence of the word ‘unreasonable’ in Article 7 (1) of the Directive (Right of residence for more than 3 months) and Article 14 (2) (Retention of right of residence - period of more than 3 months). There appears to be an inconsistency between those Articles and Recital 16 of the Directive, which states that ‘as long as the beneficiaries of the right of residence do not become an unreasonable burden on the social assistance system of the host Member State they should not be expelled.’

<sup>360</sup> The ECJ has consistently held that ‘while it is, in principle, for national law to determine an individual’s standing and legal interest in bringing proceedings, Community law nevertheless requires that the national legislation does not undermine the right to effective judicial protection (...) It is for the Member States to establish a system of legal remedies and procedures which ensure respect for that right (...). In that regard, the detailed procedural rules governing actions for safeguarding an individual’s rights under Community law must be no less favorable than those governing similar domestic actions (principle of equivalence) and must not render practically impossible or excessively difficult the exercise of rights conferred by Community law (principle of effectiveness) (...) See Case: C-432/05 *Unibet (London) Ltd and Unibet (International) Ltd v Justitiekanslern* [2007] ECR I-2271, Case: C-30/02 *Recheio - Cash &*

## 10.8. Miscellaneous problems

(no issues identified)

## 10.9. National legislation that interferes or could interfere with the Directive

(no issues identified)

## 10.11 Conclusions

The majority of the rights contained in the Directive have been correctly implemented into UK law. However, a number of problematic areas have been identified. Firstly, there is considerable divergence between the Directive and the Regulations as regards third country nationals who are family members of Union citizens in relation to their rights of entry and residence. Secondly, there is no provision specifying a right to equal treatment in the implementing regulations. Thirdly, the enforcement of the implementing regulations by the UK authorities does not seem to be in keeping with the spirit of the Directive particularly as regards the excessive amount of documents which has often been requested from citizens. Finally, the UK authorities are experiencing serious delays in processing applications for registration certificates and residence cards: at present applications are taking approximately eleven months to be processed. If these problems can be addressed and rectified, the implementation of the Directive into UK law will have been successful.

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*Carry SA v Fazenda Pública/Registo Nacional de Pessoas Colectivas, and Ministério Público* [2004] ECR I-6051, Case: C-467/01 *Ministero delle Finanze v Eribrand SpA* [2003] ECR I-6471 Case: C-13/01 *Safalero Srl v Prefetto di Genova* [2003] ECR I-8679, Case: C-453/99 *Courage Ltd v Bernard Crehan and Bernard Crehan v Courage Ltd and Others* [2001] ECR I-6297, Case: C-231/96 *Edilizia Industriale Siderurgica Srl (Edis) v Ministero delle Finanze* [1998] ECR I-4951, Case: C-312/93 *Peterbroeck, Van Campenhout & Cie SCS v Belgian State* [1995] ECR I-4599, Cases: C-45/76 *Comet BV v Produktschap voor Siergewassen* [1976] ECR 2043 and Case: C-33/76 *Rewe-Zentralfinanz eG et Rewe-Zentral AG v Landwirtschaftskammer für das Saarland* [1976] ECR 1989.

## CHAPTER IV

### NON-CONFORMITY ISSUES IDENTIFIED FOR EU-27, WITH FOCUS ON THE 10 MEMBER STATES SELECTED FOR IN-DEPTH ANALYSIS

Throughout the last 50 years, measures taken under the free movement provisions of the EC Treaty and in accordance with the case law of the ECJ have enabled nationals of the Member States to take advantage of the fundamental free movement rights enshrined in the Treaty. Directive 2004/38/EC is an important measure constituting a significant step in the realisation of free movement rights as an attribute of Union citizenship.

This Directive recognises that the right of free movement and residence is ‘a primary and individual right’ conferred on Union citizens. Further, in order to ensure that ‘Union citizenship should be the fundamental status of nationals of the Member States when they exercise their right of free movement and residence’, the Directive codifies and reviews existing measures which dealt separately with workers and other categories of persons enjoying rights of free movement ‘in order to simplify and strengthen the right of free movement and residence of all Union citizens’.

#### 1. RIGHT OF ENTRY AND RESIDENCE

Article 18 of the EC Treaty confers on every citizen of the Union the right to move and reside freely within the territory of the Member States subject to limitations and conditions laid down in the Treaty and by measures adopted to give it effect.

##### 1.1. Right of Entry

<b>Article 5 (1) of Directive 2004/38/EC</b>
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<i>Without prejudice to the provisions on travel documents applicable to national border controls, Member States shall grant Union citizens leave to enter their territory with a valid identity card or passport and shall grant family members who are not nationals of a Member State leave to enter their territory with a valid passport</i>
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Article 5(1) of the Directive, read in light of recital 9 of the preamble, provides a facilitated right of entry whereby Union citizens have the right of entry in the host Member State for a period not exceeding 3 months without being subject to any conditions or any formalities other than the requirement to hold a valid identity card or passport.

Although, this provision has been satisfactorily implemented in the legislation of all Member States, difficulties were identified in the United Kingdom, where Union citizens have made complaints related to lengthy questioning by UK immigration officials regarding the purpose of their visit.

**Article 5 (4) of Directive 2004/38/EC**

*When a Union citizen, or a family member who is not a national of a Member State, does not have the necessary travel documents or, if required, the necessary visas, the Member State concerned shall, before turning them back, give such persons every reasonable opportunity to obtain the necessary documents or have them brought to them within a reasonable period of time or to corroborate or prove by other means that they are covered by the right of free movement and residence*

Whereas a Union citizen does not hold the necessary travel document whilst exercising the right to free movement, Article 5(4) of the Directive provides that Member States shall give Union citizens ‘every reasonable opportunity to obtain the necessary document or have them brought to them within a reasonable period of time or to corroborate or prove by other means that they are covered by the right of free movement and residence’. The transposition of the requirement to give ‘every reasonable opportunity’ has been implemented in varying degrees by the national legislators. In Slovenia, for instance, border police may simply deny entry to Union citizens who fail to have the necessary travel documents without affording ‘every reasonable opportunity’. Czech authorities have also stated that Union citizens may be refused entry into the Czech territory if they do not hold any identification document. However, to transpose the ‘every reasonable opportunity’ principle into Czech law, Union citizens have been allowed to use their driving license as an alternative identification document.

Other Member States, such as Estonia, have simply failed to implement Article 5 (4) into national law. This failure results in a large amount of discretion on the part of border officials who may or may not offer ‘every reasonable opportunity’ for Union citizens to get a hold of their identification documents.

In other Member States, such as Lithuania, a complex mechanism has been introduced in the event of a failure to provide valid documents. The lengthy process in this case would be instigated by a recorded violation and an examination by the relevant authorities. The minimum sanction incurred would be an oral warning issued by the authority. Such a system of sanctions is not envisaged by the Directive and seems to be contrary to the underlying idea of facilitating free movement.

**Article 5 (5) of Directive 2004/38/EC**

*The Member State may require the person concerned to report their presence within its territory within a reasonable and non-discriminatory period of time. Failure to comply with this requirement may make the person concerned liable to proportionate and non-discriminatory sanctions*

Article 5(5) of the Directive provides that Member States may require a Union citizen to report their presence in its territory within a reasonable and non-discriminatory period of time. The time period granted to Union citizens before they are required to report their presence varies greatly depending on the Member State in question. In Austria and Slovenia, this period expires after merely 3 days (which seems unreasonably short), in Lithuania it is 7 days and the Czech Republic grants Union citizens 30 days to report their presence. In Romania it is 15 days (non-compliance with this obligation is considered as a ‘contravention’ and is sanctioned with fine). In some Member States, such as Malta and Romania, Union citizens who do not report their presence within the prescribed period will be deemed to be guilty of an offence and shall be liable to a conviction and a fine. It is arguable that these measures may not comply with the Directive as they are disproportionate and involve the penal system in what is essentially an administrative matter.

## 1.2. Right of Residence

A few Member States have adopted a liberal policy with regards to the right of residence, going beyond what is required by the Directive. This has been the case for the legislation implemented in Spain and Czech Republic which specifies that Union citizens do not need to be engaged in an economic activity and are free to reside in the country for an unlimited period. Estonia has implemented a very similar provision which specifies that Estonian authorities will not control the reasons behind a Union citizen's registration (although this will not be the case if the Union citizen is accompanied by family members who are third country nationals). These Member States seem to embrace the spirit of the Directive and in particular the fundamental right of residence of Union citizens, however they constitute the exception as opposed to the general rule.

### **Article 8 (2) of Directive 2004/38/EC**

*The deadline for registration may not be less than three months from the date of arrival. A registration certificate shall be issued immediately, stating the name and address of the person registering and the date of the registration. Failure to comply with the registration requirement may render the person concerned liable to proportionate and non-discriminatory sanctions*

Article 8(2) of the Directive clearly states that 'the deadline for registration may not be less than three months from the date of arrival'. Notwithstanding this clear instruction, a number of Member States have provided that registration must be conducted *within* three months from the date of arrival of the Union citizen (Denmark, Germany, Bulgaria, Slovenia, Luxembourg, France, Belgium, Sweden, and within 90 days in Romania). The other Member States comply with the requirement of the Directive by correctly providing that a Union citizen must register within 30 days after the initial three month period of residence.

Article 8(2) of the Directive further specifies that 'a failure to comply with the registration requirement may render the person concerned liable to proportionate and non-discriminatory sanctions'. The sanctions introduced by Member States in the event of failure to comply with the registration requirement vary. Importantly, Luxembourg (<sup>361</sup>), France (<sup>362</sup>) and Greece have introduced criminal sanctions. Greece has introduced a criminal provision linked to Article 458 of the Penal Code regarding 'the infringements of administrative provisions'. Article 458 of the Penal Code introduces, in such a case, a fine of 59 Euros. It is questionable whether these criminal sanctions can be considered as necessary and proportionate to the type of act (in this case the failure by Union citizens to register) bearing in mind that they have a fundamental right of entry and residence. In France, Union citizens who fail to register at the local town hall are subject to fines ranging from 450€ to 750€ according to Articles R621-1 of the Penal Code. The conformity of this fine with the principle of proportionality of sanctions set out in Article 8 (2) can be questioned especially when considering that these procedures are not in themselves pre-conditions to the existence of residence rights.

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<sup>361</sup> Article 139 of the Law of 29 August 2008 on free movement of persons and immigration, published in Mémorial A-138 of 10 September 2008, page 2024, foresees a fine between 25 and 250 Euro for failure to comply with registration formalities. Remaining in Luxembourg without performing legal requirements is punished by an imprisonment from 8 days to 1 year, and/or by a fine between 251 and 1.250 Euro. Such sanctions also apply to the fact of taking up employment without any work permit if needed (Article 140 of the Law of 29 August 2008). Making false statement or providing false information in order to enter into the territory, or to obtain a residence card or a work permit, is punished by an imprisonment from 1 month to 2 years, and/or by a fine between 251 and 3.000 Euro (Article 141 of the Law of 29 August 2008).

<sup>362</sup> Please see the country report on France.

### 1.3. Registration certificate and other documents

#### Article 8 (3) of Directive 2004/38/EC

*For the registration certificate to be issued, Member States may only require that*

- *Union citizens to whom point (a) of Article 7(1) applies to present a valid identity card or passport, a confirmation of engagement from the employer or a certificate of employment, or proof that they are self-employed persons;*
- *Union citizens to whom point (b) of Article 7(1) applies present a valid identity card or passport and provide proof that they satisfy the conditions laid down therein;*
- *Union citizens to whom point (c) of Article 7(1) applies present a valid identity card or passport, provide proof of enrolment at an accredited establishment and of comprehensive sickness insurance cover and the declarations or equivalent means referred to in point (c) of Article 7(1). Member States may not require this declaration to refer to any specific amount of resources'*

The documents that Union citizens are required to provide in order to register have been listed exhaustively in Article 8 of the Directive. It is clear that different documents are required from the different categories in Article 7 (1) of the Directive: workers or self-employed persons (Article 7(1) (a)); those with sufficient resources (Article 7(1) (b)); and students (Article 7(1) (c)). Recital 14 of the preamble to the Directive specifies that 'the supporting documents required by the competent authorities for the issuing of a registration certificate or of a residence card should be comprehensively specified in order to avoid divergent administrative practices or interpretations constituting an undue obstacle(...)'.<sup>363</sup>

A number of Member States have required additional evidence in relation to accommodation. For instance, in the Czech Republic some relevant authorities require a lease contract as evidence of living in Czech Republic. In Belgium, registration is always conditional on a police investigation *in situ* of the reported residence address. In France, the prefectures appear to have requested Union citizens seeking registration to provide a 'justification of domicile' (<sup>363</sup>), a circulaire had to be published in order to inform the prefectures that they were no longer entitled to do so.

Recital 14 of the Directive provides that the supporting documents required by the competent authorities for the issuing of a registration certificate or of a residence card should be comprehensively specified in order to avoid divergent administrative practices or interpretations constituting an obstacle to the exercise of the right of residence by Union citizens and their family members. It is necessary to set out certain examples, which although they cannot be considered as issues of non-conformity *per se* (as they are not in breach of particular Article of the Directive). Again, it should be noted that as there is scope for confusion on the part of citizens in a particular Member State (see below), this may be considered to be an obstacle to free movement which goes against the spirit of the Directive.

<sup>363</sup> A '*justification de domicile*' is factual evidence of living at a given address, e.g. through phone or electricity bills – it is very commonly used in France.

Registration certificates have been introduced by the Directive to facilitate and simplify the task of registering and residing in a host Member State. The registration certificate has been incorporated in the legislation to replace compulsory residence cards formerly issued by Member States. At their discretion, Member States have decided to maintain certain residence cards and other ID cards in order to enable Union citizens to integrate and access services offered to nationals of the host Member State.

One of the reasons behind the choice of Member States to include additional cards relates to the content and pragmatism of registration certificates. A large number of commentators have questioned the value of registration certificates as the Directive provides that they should contain a restricted amount of information. As mentioned above, the registration certificate replaces residence cards, which is in itself a positive step towards free movement rights; however registration certificates appear to be considered as ‘weak’ documents which fail to provide national administrations with enough data. As a result, Union citizens have witnessed a proliferation of additional ID and residence cards in order to fully take advantage of their free movement rights.

In Hungary, in addition to the registration procedure, Union citizens are encouraged to apply for an ‘address card’ which is a document commonly used by Hungarian Citizens as an official proof of address. Additionally, permanent residence cards are not widely accepted by public and private bodies alike because they do not contain the same type of information as classic Hungarian ID cards.

Sweden has retained a number of valid ID cards including the ID card issued by the Swedish cashier service (<sup>364</sup>). This particular ID card was used by Union citizens to apply for official documents, to open bank accounts, to apply for a Swedish driving license and to receive registered mail. Moreover, persons residing in Sweden for a period longer than three months must be issued with a ‘person number’ which is supplied by the tax authorities (<sup>365</sup>). This special ID card from Svensk Kassaservice can no longer be issued as August 2008. At the date of 31 December 2008 it is still uncertain which authority is going to issue the ID cards, however according to discussions in the Swedish Parliament, the local police authorities should issue ID cards in the future.

In Portugal, several Complaints have been received that SEF (Serviço de Estrangeiros e Fronteiras) (<sup>366</sup>) is asking Union citizens to present more documents and that, in at least one case, this has led to difficulties in employment by a company.

In France and Spain, Union citizens are issued with documents that could go against the letter and the spirit of the Directive and the eradication of the residence cards. In Spain, for example, in addition to the registration certificate, Union citizens must obtain a Foreigner Identity Number (Numero de Identification de Extranjero or NIE). In fact, Union citizens are unable to work, open a bank or register with the Spanish Social Security without having obtained the NIE, which could take up to 6 weeks. In France, the government has maintained an ambiguous voluntary residence title in addition to the registration certificate issued to Union citizens. Article L121-2, par. 2 of

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<sup>364</sup> Svensk Kassaservice.

<sup>365</sup> Skatteverket.

<sup>366</sup> Foreigners and Borders Service: <<<http://www.sef.pt/portal/v10/PT.aspx/page.aspx>>>.



the Code mentions the ‘residence title,’ a document which Union citizens may choose to ask for *on a voluntary basis*, even for periods of residence which do not exceed five years. Although there is no evidence that a failure to request such a document will have an affect on residence rights, it is clear that the voluntary nature of this law causes confusion, with many services unaware that residence ‘permits’ or ‘cards’ (the two wordings had been used interchangeably) are no longer required for Union citizens. It is interesting to observe that the conditions for issuing the voluntary ‘residence title’ are exactly the same as those foreseen in the Directive for issuing a registration certificate (<sup>367</sup>). This should be combined with the observation that the Code specifies that the registration certificate does not establish the right of residence. There is a risk that, under the guise of voluntary ‘residence titles’, the French legislator has simply kept the system of residence cards which, before 2004, was systematically required to establish legal residence in France.

The initial intentions of national legislation to facilitate access to national services for Union citizens are legitimate. Nevertheless, in practice, the proliferation of different ID and residence cards has rendered the free movement of Union citizens confusing and inconvenient. As an additional comment, ID and residence cards may ‘facilitate’ the integration of Union citizens, but continuing to maintain residence cards (not connected to the access of a particular service or advantage) may be undermining and circumventing the Directive. It is advisable that the current status quo related to ID and residence should be closely monitored by the European Commission, and where necessary, appropriate actions should be taken to address any acts of non-conformity adopted in the Member States.

#### **1.4. Permanent Residence**

<b>Article 16 (1) of Directive 2004/38/EC</b>
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<i>Union citizens who have resided legally for a continuous period of five years in the host Member State have the right of permanent residence there. This right shall not be subject to the conditions provided for in Chapter III</i>
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According to Article 16 of the Directive, Union citizens are entitled to the right of permanent residence when they have resided legally for a continuous period of five years in the host Member State.

As examples of good practice, the prescribed period has been reduced from 5 to 3 years in Spain and in Belgium; undoubtedly good news for the large number of Union citizens living and moving in these respective countries.

Article 19(2) on the administrative formalities of permanent residence stipulates that permanent residence cards must be supplied ‘as soon as possible’. This provision has not been complied with in Greece and in Hungary, the former providing no time limits whilst the latter provides a *three month* period for authorities to issue a permanent residence card.

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<sup>367</sup> Article R121-10 to 13.

**Article 16 (3) of Directive 2004/38/EC**

*Continuity of residence shall not be affected by temporary absences not exceeding a total of six months a year, or by absences of a longer duration for compulsory military service, or by one absence of a maximum of twelve consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.*

In order to alleviate concerns of Union citizens that absence from the host Member State during the qualifying period of residence could deprive them of the right of permanent residence, Article 16(3) of the Directive contains rules on when periods of absence may be included when calculating the duration of residence.

In some countries, such as the Czech Republic, officials have refused to issue permanent residence cards on the grounds that Union citizens have interrupted the duration of residence for periods shorter than the prescribed six months. This practice does not seem to comply with the Directive.

Union citizens from the new Member States have encountered additional hurdles in relation to their right to acquire permanent residence. In particular, certain Member States such as the United Kingdom, Belgium and the Czech Republic have been counting the five year period requirement for the issue of a permanent residence card from the date of accession of the new Member State to the EU as opposed to from the time of arrival of the person concerned. The situation regarding the permanent residence cards for Union citizens from the New Member States is unclear. The current lack of clarity is detrimental to Union citizens from the new Member States who have been residing in the host Member State prior to the date of accession of their country of origin.

## 2. THE DEFINITION OF SUFFICIENT RESOURCES

**Article 7 (1) (b) of Directive 2004/38/EC**

*All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they: (...) (b) have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State.*

**Article 8 (4) of Directive 2004/38/EC**

*Member States may not lay down a fixed amount which they regard as 'sufficient resources', but they must take into account the personal situation of the person concerned. In all cases this amount shall not be higher than the threshold below which nationals of the host Member State become eligible for social assistance, or, where this criterion is not applicable, higher than the minimum social security pension paid by the host Member State.*

Article 18 of the EC Treaty does not confer an unqualified right of free movement and residence on all Union citizens. It is clear that the right is subject to limitations and conditions in the EC Treaty and secondary measures. One such limitation is contained in Article 7 (1) (b) of the Directive which limits the class of 'non-active' persons enjoying rights of free movement and residence to those who possess 'sufficient resources'. Article 7(1) (b) effectively replaces

Directive 90/365 (<sup>368</sup>) (on the right of residence for employees and self-employed persons who have ceased their occupational activity), which enabled economically inactive Union citizens to exercise their right to residence provided that they had sufficient resources and health insurance. This Article reflects the concern that extending such rights to *all* Union citizens could lead to unacceptable burdens on the social assistance systems of the Member States.

Given the wide divergences between Member States as to what constitutes ‘sufficient resources’, the Directive has understandably not provided for a single fixed amount of resources which should be regarded as sufficient by national authorities. Instead, the Directive has been deliberately vague in order to grant a certain amount of freedom to national authorities, whilst reminding them in Article 8 (4) of the Directive that they ‘must take into account the personal situation of the person concerned’. Also, Article 8(4) of the Directive contains a ‘safety net’ in the event of abuse of the ‘sufficient resources’ condition by national authorities. This consists of a requirement that the amount of the sufficient resources ‘shall not be higher than the threshold below which nationals of the host Member State become eligible for social assistance, or, where this criterion is not applicable, higher than the minimum social security pension paid by the host Member State’.

## **2.1. The definition of ‘sufficient resources’ according to Member State legislation**

The different approaches adopted by Member States can be divided into 9 different categories:

1. Member States where no issues have been identified (Austria, Cyprus, Portugal and Sweden)
2. Member States that have set out an amount as to what constitutes sufficient resources (France, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Romania, Slovenia and the United Kingdom)
3. Member States in which no amount has been set out, however the determination of whether a citizen has sufficient resources is set out by the relevant authorities (Denmark, Lithuania and Malta)
4. Member States in which no amount has been set out, a threshold is applied together with an examination of the personal circumstances of the citizen (Belgium (Wallonia and Flanders), the Netherlands and Luxembourg)
5. The Member State in which the determination of sufficient resources is governed at the local level with no requirement to request documents proving sufficient resources (Germany)
6. Member States in which evidence of sufficient resources is required (Bulgaria, Estonia and Slovakia)
7. The Member State in which a declaration of sufficient resources will suffice (Poland)
8. Member States in which there is no requirement to submit evidence of sufficient resources (Czech Republic and Spain)
9. The Member State in which the amount of sufficient resources has not been set out in any measures. (Finland)

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<sup>368</sup> Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity OJ L 1990 L180/28, repealed by Directive 2004/38/EC.

It is clear from the information set out below that there are divergences as to the sufficient resources criterion.

### **2.1.1. No issues have been identified**

Concerning Austria, Cyprus, Portugal and Sweden no issues have been identified.

### **2.1.2. A fixed amount for sufficient resources**

It is important to stress that Member States are required, in all cases, to determine whether or not a person has sufficient resources on the basis of the personal situation of the person concerned. The amount determined in individual cases cannot be higher than the threshold specified in Article 8(4). However, a number of Member States seem to treat the threshold figure as the amount which must be satisfied in all cases.

France (for students), Greece, Hungary (due to ambiguity in the relevant legislation), Italy, Latvia (although the legislation does not specify which documents could be submitted as proof of sufficient resources), Luxembourg, Romania, Slovenia and the United Kingdom require sufficient resources and have made a determination as to an amount that constitutes ‘sufficient resources.’

In France concerning students, notwithstanding that a ministerial ‘circulaire’ (Nr IMID0768184C of 12 October 2007) states that the rule in the Directive means that it is sufficient to ‘declare’ sufficient resources, the information portal [www.service-public.fr](http://www.service-public.fr) still contains information based on the ‘circulaire’ of 2000’, which requests evidence of the nature and amount of sufficient resources (i.e. sufficient resources appreciated with regard to the personal situation of the student and to the minimum revenue – ‘RMI’ – criterion). Hence, it is arguable that the problem persists in practice, at least insofar as it does not provide legal certainty.

In Greece, according to Article 36 (1) of Law 3386/2005 entitled “Entry, residence and social inclusion of third country citizens into Greek territory”<sup>(369)</sup>, a person will be considered to have sufficient resources if he/she has a ‘stable’ income that can cover his/her living expenses. In the Common Ministerial Decision 4415/2006<sup>(370)</sup> entitled “Defining the amounts of money and the proof of sufficient resources according to Law 3386/2005” categories of citizens are set out and a monthly amount of 2000 euros for economically independent individuals is stipulated.

In Hungary, according to the Article 21 (1) of Government Decree 113/2007, a Union citizen is considered to have sufficient resources if the citizen’s household monthly income per capita reaches the prevailing minimum old-age pension. The amount of the minimum old-age pension is determined by the Government for every year. In 2009, the amount is HUF 28.500 (circa 100-120 Euros depending on the exchange rate). If the applicant’s monthly income per capita does not reach the prevailing minimum old-age pension, the national authority should take into consideration the personal financial background when evaluating the sufficient resources of the applicant. Article 21 (1) of Government Decree 113/2007 provides that persons relying on the social assistance system (i.e. persons receiving certain social benefits defined in the Government Decree) for a period of more than three months are not considered as having sufficient resources and therefore constitute an ‘unreasonable burden’ according to Article 35 (1) of the Government

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<sup>369</sup> FEK A 212.

<sup>370</sup> FEK 398/B/2006.

Decree 113/2007. To this extent, the provisions for “having sufficient resources” and for “becoming an unreasonable burden” are transposed together and in consideration of each other.

In Ireland, there is some ambiguity in the definition of sufficient resources contained in the implementing Regulations. Regulation 2 provides that "a person shall be regarded as not having sufficient resources to support himself or herself and his or her dependents where he or she would qualify for assistance under Part 3 of the Social Welfare Consolidation Act 2005 if a claim was made by or on behalf of that person." Only someone who can demonstrate habitual residence in Ireland would be eligible to claim any of the assistance under Part 3 of this Act.

In Italy, Article 9 (3) of Decree 30/2007 does not set out a fixed amount to determine whether or not the Union citizen has ‘sufficient resources.’ Instead reference is made to Article 29 (3) of Decree 286/1998 which has been amended by Article 1 of Legislative Decree 160 of 3 October 2008. This provides that a third country national who applies for family reunification will be required to show the lawfulness of the origin of their economic resources whose amount cannot be lower than the yearly social allowance; such an amount must be increased by up to half of the yearly social allowance per each family member. The requirement to show the lawfulness of the origin of economic resources also applies to Union citizens. For reunification of two or more sons 14 years or younger, or for the reunification of two or more family members having the status of subsidiary protection, it is necessary to provide an annual amount no lower than the annual amount of the social allowance. When calculating the annual figure, the total amount of all the family members living with the Union citizen will be taken into account. Article 29 (3) of Decree 286/1998 is also referred to in Memorandum n. 13 of 28 October 2008 (circolare n.13 del 28 Ottobre 2008) of the Ministry of Interior adopted on the basis of Article 9 (3) lett. b) of the Decree 30/2007. This memorandum was repealed by Memorandum n. 19 of 6 April 2007. According to the Memorandum currently in force, the citizen must show an amount of 5.142,67 Euros, plus 2.571,33 Euros for each family member; if he has two or more sons 14 years or younger, the amount to be shown is 10.285,34 Euros. The economic resources of all family members living with the citizen are also taken into account.

In Latvia, in accordance with the Regulation of the Cabinet of Ministers No 586 from 18.07.2006: Procedures for Entry and Residence in Latvia for Citizens of the EU, European Economic Area States and the Swiss Confederation, and their family members, sufficient resources are equivalent to a monthly income that is greater than 50% of the minimum wage in force for the relevant period of time. Currently, 50% of the minimum wage in force is 90 *lats* (approximately 128 Euros). The Latvian provisions do not specify which documents could be submitted as proof of sufficient resources.

In Romania, according to Law no. 416 of 18/07/2001 concerning the minimum income level (<sup>371</sup>), Union citizens must prove that they hold the equivalent of the minimum income level guaranteed in Romania. At present these thresholds stand at 96 lei RON (approximately 30 Euros) per person (the minimum level income is indexed annually by Government decision, according to the evolution of consumer prices; the actual threshold of 96 RON per person was indexed at 9 August 2006). Pension allowances, income revenues, deposit or savings receipts and other documents can constitute satisfactory proof to fulfil the sufficient resources condition.

In Slovenia, Article 93(g) of the Foreigners Act provides for a Union citizen to submit a document certifying sufficient resources (<sup>372</sup>). The lowest amount of minimum income (from 1

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<sup>371</sup> The Law no. 416 was adopted by Romanian Parliament at 18 July 2001, published in the Romanian Official Journal no. 401 of 21 July 2001 and entered into force at 1<sup>st</sup> January 2002.

<sup>372</sup> Official Consolidated text of the Foreigners Act published on 14 July 2008.

January 2008 this amount is 212, 97 per month) amounts to sufficient resources within the meaning of the Directive.

In the United Kingdom, Regulation 4 (4) of the Immigration (European Economic Area) Regulations 2006 specifies that resources are regarded as sufficient if they exceed the maximum level (<sup>373</sup>) of resources which a UK national may possess if he/she is to become eligible for social assistance under the United Kingdom benefit system (<sup>374</sup>).

### **2.1.3. The relevant authorities set out the threshold for sufficient resources**

Legislation in Denmark, Lithuania and Malta does not set out a specific amount for sufficient resources. However the relevant authorities in these Member States determine the threshold.

In Denmark, no figure is set out in the legislation. No problems were identified at the date of 31 August 2008; however it seems that certain local administrations may ask for proof of 7,500 EUR in a bank account and a proof of a health insurance. A new Guide has been issued by the Ministry of Employment (<sup>375</sup>).

In Lithuania, Article 27 of the Law on Legal Status of Foreigners provides that the amount of ‘sufficient resources’ to be able to live in the Republic of Lithuania for a foreigner is determined by the Ministry of Social Security and Labour. The decision of the Ministry is officially published in the governmental gazette. It is considered that the minimum amount per month in order to have ‘sufficient resources’ is the minimum monthly wage.

In Malta, Article 5 of the ‘Free Movement of European Union Nationals and their Family Members Order 2007’ (<sup>376</sup>) (amended by Legal Notice 191 of 2007) states that resources are deemed sufficient if they are equivalent to the level of resources indicated by the Minister responsible for social policy as being the minimum means which determine the grant of social assistance to Maltese nationals. If the above criterion cannot be applied, such resources shall be deemed sufficient if they are equivalent to the level of the national minimum social security pension payable by the Government at the time.

### **2.1.4. A threshold for sufficient resources together with an examination of personal circumstances**

Belgium (Wallonia and Flanders) and the Netherlands have not set out an amount for ‘sufficient resources’, however there is a threshold applied together with an examination of the personal circumstances of the citizen.

In Wallonia, following the Judgment of the ECJ in the *Commission v Belgium* (<sup>377</sup>), the Belgian government issued a royal decree in November 2007 in order to conform with the sufficient resources provision in the Directive. The personal situation of the citizen should be taken into

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<sup>373</sup> This level has not been determined since the level of earnings below which social assistance will be provided depends on the nature of the welfare benefits being sought.

<sup>374</sup> The Regulations were published on 6 April 2006 and entered into force on 30 April 2006. *Source* : <<<http://www.tsoshop.co.uk/bookstore.asp?AF=A10075&Action=Book&ProductID=9780110744650>>>

<sup>375</sup> Vej no 19 of 04/04/2008 on how to obtain start up funds for citizens from the EU and EEA.

<sup>376</sup> Act published on 20 July 2007.

<sup>377</sup> Case C-408/03 *Commission v. Belgium* [2006] ECR I-2647.

consideration when evaluating the sufficient resources of an applicant (nature, regularity of the resources and number of family members that are dependant). The decree also lists all the categories of revenues that should be taken into consideration by the authorities. According to administrative guidance to the local authorities, the sufficient resources should at least be equal to the level of revenue under which social assistance is provided (in 2008, 698 Euros for a single person). In Flanders, the amount that is considered as ‘sufficient resources’ shall not be higher than the threshold below which Belgian nationals become eligible for social assistance. In this respect, the Belgian authorities take into account the personal situation of the Union citizen and amongst other the nature and the frequency of their income and the number of persons living at their charge. In practice, this means that the Union citizen needs to prove that he/she has at least 698 EUR plus 232 EUR per person ‘at his charge’ (1 January 2008).

In Luxembourg, there is no fixed minimum amount which is considered as ‘sufficient resources’. The criteria of ‘sufficient resources’ are now set out in the Grand-Duke Regulation of 5 September 2008<sup>(378)</sup>. This regulation contains the rule that sufficient resources are evaluated in consideration of the personal situation of the concerned person, and that, in no case, may the required amount may be higher than the guaranteed minimum salary as defined by the modified law of 29 April 1999<sup>(379)</sup>. The concerned person must provide documents certifying his means of subsistence and in particular the nature and regularity of his remuneration. The student may provide this proof through a declaration or any other equivalent means. The regulation provides particular provisions applicable to certain categories of persons.

In the Netherlands, Chapter B10/4 of the Foreigners Circular 2000<sup>(380)</sup> provides that Union citizens may prove by the means of their choice that they have sufficient resources. The amount that shall be considered as sufficient resources shall not be higher than the threshold below which Dutch nationals become eligible for social assistance.

#### **2.1.5. Determination of sufficient resources at the local level without a requirement to request documents**

In Germany, the sufficient resources criterion is governed at the local level, with no guidelines having been provided by the federal government on this matter. A handout<sup>(381)</sup> issued by the Federal Ministry of the Interior specifies that local authorities are not required to request documents proving sufficient resources.

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<sup>378</sup> ‘Règlement grand-ducal du 5 septembre 2008 définissant les critères de ressources et de logement prévus par la loi du 29 août 2008 sur la libre circulation des personnes et l’immigration’, published in Mémorial A-138 of 10 September 2008, page 2053.

<sup>379</sup> Loi du 29 avril 1999 portant création d’un droit à un revenu minimum garanti, as amended (published in Mémorial A-60 of 1 June 1999, p. 1389, and entered into force on 1 March 2000. (For a coordinated text of the law, see <<<http://www.secu.lu/legis/legis/sl99429.html>>>). As of 1 July 2008, the amount of the guaranteed minimal salary is set at 1.146,50 Euro.

<sup>380</sup> Originally the Act has been published in 2001. The Revised Aliens Circular is published on 30 August 2006, and entered into force on 1 January 2007.

<sup>381</sup> Vorläufige Anwendungshinweise AufenthG of 22 December 2004, <<[http://www.bmi.bund.de/Internet/Content/Common/Anlagen/Themen/ZuwanderungIntegration/DatenundFakten/Vorlaeufige\\_Anwendungshinweise\\_AufenthG\\_FreizuegG.templateId=raw,property=publicationFile.pdf/Vorlaeufige\\_Anwendungshinweise\\_AufenthG\\_FreizuegG.pdf](http://www.bmi.bund.de/Internet/Content/Common/Anlagen/Themen/ZuwanderungIntegration/DatenundFakten/Vorlaeufige_Anwendungshinweise_AufenthG_FreizuegG.templateId=raw,property=publicationFile.pdf/Vorlaeufige_Anwendungshinweise_AufenthG_FreizuegG.pdf)>>.

### **2.1.6. Member States in which evidence of sufficient resources is required**

Bulgaria, Estonia and Slovakia require evidence of sufficient resources.

In Bulgaria, the By-Law <sup>(382)</sup> on the Law for the Foreigners in the Republic of Bulgaria <sup>(383)</sup> specifies that proof of sufficient resource shall mean any official documents, certifying the availability of financial means, securities, real estate or movables on the territory of Bulgaria <sup>(384)</sup>.

In Estonia, there is no special regulation or list of documents that are accepted as evidence of sufficient resources.

In Slovakia, Chapter 5 of the Law No 48/2002 <sup>(385)</sup> states that an EEA citizen must provide proof that he/she has access to sufficient resources but the law does not specify what could constitute a proof of sufficient financial resources.

### **2.1.7. Acceptance of a declaration of sufficient resources**

In Poland, sufficient resources may be proven by submitting an oral declaration stating that the Union citizen has sufficient resources according to par 3.1.2 of the Ordinance of the Ministry of Interior dated 24 August 2006 on documents and applications to be supplied by Union citizens residing in the Republic of Poland.

### **2.1.8. Member States in which no evidence of sufficient resources is required**

In the Czech Republic and Spain, there is no requirement to submit evidence of sufficient resources. In particular in Spain, Royal Decree 240/2007 does not require Union citizens to provide proof of sufficient resources in order to register as residents.

### **2.1.9 No amount confirmed for sufficient resources.**

In Finland, the amount of sufficient resources has not been confirmed in the Finnish legislation or any other regulation.

## **2.2. Emerging trends concerning ‘sufficient resources’**

It is necessary to highlight the trends that are emerging together with specific examples from Member States. Firstly, some Member States have given a liberal and expansive definition to sufficient resources to the point of eliminating any resources requirements for EU migrants. In Spain, for instance, Royal Decree 240/2007 does not require EU migrants to provide any information related to resources and in Poland the documentation related to sufficient resources

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<sup>382</sup> By-laws are secondary laws that implement the main piece of legislation.

<sup>383</sup> The By-Law on the Law for the Foreigners in the Republic of Bulgaria:  
<<<http://lex.bg/laws/ldoc.php?IDNA=-12560383>>>.

<sup>384</sup> Additional Provisions, Para 1, point 1, By-Law on the Law for the Foreigners in the Republic of Bulgaria.

<sup>385</sup> Published in the Collection of Laws of the Slovak Republic on 13 December 2001.



has been kept to a minimum as Union citizens are only requested to provide a declaration to the authorities stating that they have sufficient resources (no supporting evidence is required).

Secondly, some Member States have inserted a requirement of sufficient resources in their legislation but have not set out how the sufficient resources threshold may be satisfied. This has, for example, been the case for the implementation of the Directive into Estonian law. Although this does not necessarily mean that a restrictive approach could be taken, the absence of clear published guidelines can result in uncertainty and can itself act as an obstacle to free movement. The lack of transparency and the amount of discretion given to individual officials can result in unequal treatment and can deter Union citizens from taking advantage of their residence rights.

Thirdly, the nature of transposing legislation may be ambiguous, causing problems for citizens. Consider for example the transposition by the United Kingdom. The legislation specifies that resources are regarded as sufficient if they exceed the maximum level for resources which a UK national may possess if he/she is to become eligible for social assistance under the United Kingdom benefit system, whereas Article 8(4) of the Directive stipulates that sufficient resources 'shall not be higher than the threshold below which nationals of the host Member State become eligible for social assistance'. This transposition creates, at the very least, unnecessary ambiguities, in fact, the terminology prescribed in this case is detrimental to transparency for Union citizens as the figure representing the 'maximum level of resources which a UK national may possess if he/she is to become eligible for social assistance' remains difficult to quantify.

Fourthly, other Member States have chosen to include additional requirements not provided for in the Directive. Italy, for example, has retained a law which requires Union citizens to prove the legality and authenticity of their sufficient resources. From Article 9 (3) of Decree 30/2007 which makes reference to Article 29 (3) of Decree 286/1998 it can be derived that this is applicable to both third country nationals and Union citizens. This additional requirement is an unnecessary and degrading hurdle for Union citizens who are requested to provide evidentiary proof related to the authenticity of their sufficient resources.

In sum, the large number of definitions linked to the concept of 'sufficient resources' will undoubtedly give rise to confusion amongst Union citizens taking advantage of their free movement rights. In particular, the evidence required to prove sufficient resources, the lack of transparency and the varying attitudes in different Member States result in a patchwork of uneven legislation. This has the consequence of different treatment of the Union citizen depending on the host Member State. This is contrary to the requirement of uniform implementation highlighted by the ECJ in the *Metock* case.

### 3. THE SITUATION OF (REGISTERED) PARTNERS

#### **Article 2 (2) (b) of Directive 2004/38/EC**

*For the purposes of the Directive: family member means [among other cases] ... the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State.*

#### **Article 3 (2) of Directive 2004/38/EC**

*Without prejudice to any right to free movement and residence the persons concerned may have in their own right, the host Member State shall, in accordance with its national legislation, facilitate entry and residence for the following persons:*

- (a) any other family members, irrespective of their nationality, not falling under the definition in point 2 of Article 2 who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen;*
- (b) the partner with whom the Union citizen has a durable relationship, duly attested.*

A partner – whether of the same or mixed sex – of a Union citizen will be regarded as a family member under Article 2(2) (b) of the Directive when a number of conditions are met. Firstly, the couple must have contracted a registered partnership on the basis of the legislation of one of the Member States (which may be the host Member State). Secondly, the host Member State must in its legislation recognise registered partnerships as equivalent to marriage in accordance with conditions laid down in relevant legislation. Thus, there must be a qualifying registered partnership and a qualifying recognition of this partnership. Member States are not required under the Directive, or under any other EC rules, to introduce legislation in this area and, even if there are such rules, the host Member State has some freedom to determine the conditions that must be satisfied.

Even where Article 2(2) (b) does not apply, a partner may enjoy the right to have his or her entry and residence *facilitated* under Article 3(2). This will be the case where the relationship is ‘a durable relationship, duly attested’ in the light of Article 3(2)(b). It may also be the case where the national rules regard the partner as a family member who, in the country from which he or she has come, is a member of the household of the Union citizen (Article 3(2)(a)). However, in both cases, the right is less absolute than for family members as defined in Article 2(2) and the conditions of eligibility are clearly more demanding.

Four groups of Member States can be distinguished with respect to free movement rights conferred to partners:

1. Countries which recognize both, the partnership and the household members (Cyprus)
2. Countries that have transposed the relevant Article in the Directive and have explicit clauses about partners in their legislation (Luxembourg, Sweden, Cyprus, Denmark, Spain, Portugal, Czech Republic, Bulgaria)
3. Countries that do not have special clauses on partners and partnership in their legislation but they can be considered as household members and therefore their status can be recognized

(Hungary, Estonia, Finland, Latvia)

4. Countries that have transposed neither Article 2(2)(b) or Article 3(2)(a) about facilitating partners or household members, to join the Union citizen.

(Romania, Germany, Slovenia, Austria, Lithuania, Poland, Luxembourg, Greece, France)

The recognition of partnerships is very uneven. In most cases, the very first condition stated in Article 2(2)(b) is not fulfilled - there is no legislation in place in the Member State of origin and therefore the partnerships are not recognized and registered (see the Table 3 below).

**TABLE 3: Registered Partnerships and Cohabitation country-by-country:**

Country	Same-sex marriage	Registered partnership	Unregistered Cohabitation	Registered Cohabitation	Not legally recognized
Austria			Recognized <sup>(386)</sup>		
Belgium-Flanders	Marriage 2003 <sup>(387)</sup>			Registered Cohabitation 1999 <sup>(388)</sup>	
Belgium-Wallonia					
Bulgaria					No legal recognition
Cyprus					No legal recognition
Czech Republic		Registered Partnership 2006 <sup>(389)</sup>	Recognized		
Denmark		Registered Partnership 1989 <sup>(390)</sup>			
Estonia					No legal recognition
Finland		Registered Partnership 2001 <sup>(391)</sup>			
France		Registered Partnership 1999 <sup>(392)</sup>	Recognized <sup>(393)</sup>		

<sup>386</sup> Following the European Court of Human Rights Decision in *Karner v Austria* [2003] cohabiting same-sex partners are entitled to the same limited set of rights available to unmarried cohabiting different-sex partners.

<sup>387</sup> In 2003, *Loi ouvrant le mariage à des personnes de même sexe et modifiant certaines dispositions du Code civil (1)*, widened the scope of Belgian marriage legislation to cover partners of the same-sex.

<sup>388</sup> *Loi du 23 novembre 1998 instaurant la cohabitation légale* made ‘statutory cohabitation contracts’ available to both same-sex and different-sex couples as from 1 January, 2000. This law provided couples with a narrow set of rights, as well as with an option to have their own legally binding agreements regarding their mutual responsibilities.

<sup>389</sup> *Zákon ze dne 26. ledna 2006 o registrovaném partnerství a o změně některých souvisejících zákonů* open to same-sex partners as from 1 July 2006 with the benefit of rights available through marriage. Nonetheless, same-sex registered partners are barred from the same rights when it comes to impact on citizenship, residence or work permit acquisition; financial compensation in case of the death of one of the partners, etc.

<sup>390</sup> *Lov om registreret partnerskab (nr. 372 af 1.6.1989)* introduced ‘registreret partnerskab’ (registered partnerships) open exclusively to same-sex partners as from 1 October 1989.

<sup>391</sup> *Laki rekisteröidystä parisuhteesta* introduced registered partnerships for same-sex partners only and grants a similar set of rights and responsibilities to those offered to different-sex partners through marriage. Registered partners enjoy the right of immigration of a foreign partner.

<sup>392</sup> *LOI no 99-944 du 15 novembre 1999 relative au pacte civil de solidarité* introduced a ‘pacte civil de solidarité’ (civil pact of solidarity, known as PACS) for both same-sex and different-sex alike. This form of registered partnership allows the partners to accede to some of the rights and responsibilities of marriage, although containing a lesser level of legal consequences.

<sup>393</sup> Certificat de vie commune ou de concubinage delivered by certain local townhalls.

Country	Same-sex marriage	Registered partnership	Unregistered Cohabitation	Registered Cohabitation	Not legally recognized
Germany		Life Partnerships 2000 <sup>(394)</sup>			
Greece				Registered Cohabitation <sup>(395)</sup>	
Hungary		Registered Partnership 2007 (entry into force 1 January 2009) <sup>(396)</sup>	Recognized 1996		
Ireland					No legal recognition <sup>(397)</sup> . Persons in registered partnerships are treated as being in 'durable relationships' <sup>(398)</sup> .
Country	Same-sex marriage	Registered partnership	Unregistered Cohabitation	Registered Cohabitation	Not legally recognized
Italy					No legal recognition.
Latvia					No legal recognition
Lithuania					No legal recognition

<sup>394</sup> *Gesetzes zur Beendigung der Diskriminierung gleichgeschlechtlicher Sexualität: Lebenspartnerschaften* (The Life Partnership Act) introduced registered partnerships for same-sex partners as from 1 August 2001. This law grants the same set of responsibilities that are granted through marriage, albeit more limited.

<sup>395</sup> On 17 November 2008 the Law 3719/2008 (FEK 241A/26-11-2008) was issued that recognizes as a form of registered partnership in Greece the 'Contract of free cohabitation' attested by a notary.

<sup>396</sup> *2007. évi CLXXXIV.tör vény a bejegyzett élettársi kapcsolatról* was approved by the Hungarian Parliament on 17 December 2007 and opened registered partnerships to both same-sex and different-sex partners to the full range of protections, responsibilities and benefits of marriage with some exceptions. The law would have entered into force on January 1, 2009, but on December 15, 2008 the Hungarian Constitutional Court declared it unconstitutional on the grounds that it duplicated the institution of marriage for different-sex couples. The Hungarian Parliament has announced that it shall propose a new Registered Partnership law.

<sup>397</sup> No legal recognition for same-sex partners yet. However, on 25<sup>th</sup> June 2008 the Government of Ireland published a draft proposal entitled *General Scheme of Civil Partnership Bill* for the introduction of Registered Partnership for same-sex partners only.

<sup>398</sup> The Irish Naturalisation and Immigration Service (INIS) will use some discretion to prove the existence of the durable relationship such as evidence of leases or joint bank accounts, etc.

Country	Same-sex marriage	Registered partnership	Unregistered Cohabitation	Registered Cohabitation	Not legally recognized
Luxembourg		Registered Partnership 2004 <sup>(399)</sup>			
Malta					No legal recognition
Netherlands	Marriage 2000 <sup>(400)</sup>	Registered Partnership 1997 <sup>(401)</sup>	Unregistered Cohabitation (1970)		
Poland					No legal recognition
Portugal			Unregistered Cohabitation 2001 <sup>(402)</sup>		Only limited recognition of 'Partnership'
Romania					No legal recognition
Slovakia					No legal recognition
Slovenia		Registered Partnership 2005 <sup>(403)</sup>			
Spain	Marriage 2005 <sup>(404)</sup>				

<sup>399</sup> Registered partnership (2004) *Loi du 9 juillet 2004 relative aux effets légaux de certains partenariats* provides for the registration of both same-sex and different-sex partnerships. Registered partners enjoy many of the rights of married couples.

<sup>400</sup> Wet van 21 december 2000 tot wijziging van Boek 1 van het Burgerlijk Wetboek in verband met de openstelling van het huwelijk voor personen van hetzelfde geslacht (Wet openstelling huwelijk) widened the scope of Dutch 'huwelijk' (marriage) legislation and states that 'marriage can be contracted by two persons of different sex or of the same sex'. This law provided the same rights and responsibilities as different-sex married partners. The Netherlands was the first country in the world to extend this right to same-sex partners.

<sup>401</sup> *Wet van 17 december 1997 tot aanpassing van wetgeving aan de invoering van het geregistreerd partnerschap in Boek 1 van het Burgerlijk Wetboek (Aanpassingswet geregistreerd partnerschap)* introduced 'geregistreerd partnerschap' (registered partnership) for both same-sex and different-sex couples as from 1 January 1998. This law provides virtually all rights and responsibilities as married partners, with two exceptions: no right to inter-country adoption, and no automatic presumption of paternity. Through a very simple procedure any registered partnership can be converted into a marriage, and vice versa.

<sup>402</sup> Lei No 7/2001 de 11 Maio 2001.

<sup>403</sup> Registered Partnership (2005) *Zakon o registraciji istospolne partnerske skupnosti (ZRIPS) Ur.l. RS, št. 65/2005* introduced a significantly weaker form of registered partnership that is open to same-sex partners only. It covers the right/obligation to support the socially weaker partner. It does not grant any rights in the area of social security (social and health insurance, pension rights and so on), or provide partners with the status of a next-of-kin to one another.

<sup>404</sup> Ley 13/2005 of 1.7.2005.

Country	Same-sex marriage	Registered partnership	Unregistered Cohabitation	Registered Cohabitation	Not legally recognized
Sweden		Registered Partnership 1994 <sup>(405)</sup>	Unregistered Cohabitation 1988		
UK		Registered Partnership 2004 <sup>(406)</sup>			

**SOURCE:** *ILGA-Europe – The European Region of the International Lesbian, Gay, Bisexual, Transgender and Intersex Association (ILGA)* <sup>(407)</sup>

Nearly half of the Member States (Hungary, Estonia, Finland, Latvia, Ireland, Germany, Slovenia, Austria, Lithuania, Poland, Greece, and France) do not currently have the legislation in place to accommodate the free movement rights of registered partners of Union citizens. Interestingly, the Lithuanian Law on Legal Status of Foreigners accepts the status of family members, who are legalised by the registered partnership and based on that, ensures free movement and other rights to registered partnership family members. Lithuanian national legislation does not have a valid law to legalise registered partnership since 24 February 2004 (the date of the publishing of the last project of the law). So the rights of family members who do not have registered partnership and rights to register a partnership in Lithuanian national law are not enforced, but the foreign registered partnerships are accepted if it concerns free movement.

Article 3(2) (b) states that without prejudice to any right to free movement and residence the persons concerned may have in their own right, the host Member State shall, in accordance with its national legislation, facilitate entry and residence for the partner with whom the Union citizen has a durable relationship, duly attested.

In a few Member States, partnerships are not recognised under Article 2(2)(b) but Member States try to address this by considering the partners as the household members under Article 3(2)(a) and therefore beneficiaries of ‘facilitated’ entry and residence rights conferred by the Directive. Such a situation exists in Estonia, Malta, Cyprus, Latvia, Hungary, and Finland. In general, however, very few countries pay attention to the household members and facilitating their free movement.

A peculiar situation existed in 2008 in Hungary. At the moment of the transposition Hungary did not recognise registered partnerships and Article 2(2)(b) was simply not transposed. Partners could only invoke their residence rights under Article 3(2)(a). However, the Hungarian Act has interpreted, Article 3(2)(a) in a very restrictive way, as amongst persons living under the same roof, facilitated entry and residence rights may only be granted to ‘persons who are members of the household of a Hungarian citizen for a period of at least one year, or have been members of

<sup>405</sup> Registered Partnership (1994) *Lag (1994:1117) om registrerat partnerskap* opened ‘registrerat partnerskap’ (registered partnership) to same-sex partners only and grants the full range of protections, responsibilities and benefits as are provided by marriage. Since 2000, non-Swedes legally resident in Sweden have been entitled to the right to register their partnership.

<sup>406</sup> Registered Partnership (2004) *The Civil Partnership Act 2004*, opened ‘civil partnerships’ exclusively to same-sex partners as of 5 December 2005. This Act gives same-sex partners the same rights and responsibilities as marriage. Among other rights, civil partners are entitled to social security and pension benefits. Note: The law does not give any specific rights to parties to unregistered same-sex partnerships.

<sup>407</sup> << [<< http://www.ilga-europe.org/Europe/Issues/Marriage-and-partnership/Marriage-and-partnership-rights-for-same-sex-partners-country-by-country >>](http://www.ilga-europe.org/Europe/Issues/Marriage-and-partnership/Marriage-and-partnership-rights-for-same-sex-partners-country-by-country) >>.

the household of an EEA national in the country from which they have come, for a period of at least one year'. Article (3)(2)(a) does not prescribe any minimum time for being a member of the same household and the Hungarian rule does not seem to comply. As of 1 January 2009, the Civil Code should have been amended by the law No CLXXXIV of 2007 that would recognise partnerships and therefore the transposing act would have to be amended. However, on 15 December 2008 the Hungarian Constitutional Court declared the law unconstitutional on the grounds that it duplicated the institution of marriage for different-sex couples. The Hungarian Parliament has announced that it will propose a new Registered Partnership law, which if introduced should result in compliance with the Directive.

Belgian legislation merged the situations of family member and registered partner both conferring the status of 'family members'. Arrêté Royal of 7 May 2008 recognises registered partnerships as equivalent to marriage. The partnership is considered a durable and stable relationship of at least one year, if the two partners are above 21 years old and each does not have any other durable relation with another person. Belgian law does not define the conditions to attest a durable relationship but instead provides a list of countries for which registered partnership are considered equivalent to marriage. These are Denmark, Germany, Finland, Iceland, Norway, United-Kingdom and Sweden. The process of updating this list contained in the Royal Decree will be burdensome as only another Royal Decree can be used for that purpose. This sort of approach leads to possible discrimination between Union citizens until the list is updated.

In the case of UK, partnerships are recognized by the Civil Partnership Act 2004. However it is only same-sex partnerships that fall under the scope of this Act. This situation is not clearly addressed in the transposing measure since the term 'civil partner' is not defined (other than by excluding fraudulent partnerships of convenience). As a result, it is unclear whether the partners in a heterosexual partnership registered in another Member State can be considered as 'family members' under Article 2(2) of the Directive. It results in partners of the same sex enjoying greater free movement rights in recognizing Member States than partners of different sexes.

Ireland does not provide for registered partnerships. Proposed new legislation (<sup>408</sup>) introduces registered partnerships in Ireland. At present, however, long term same sex partners, whether registered or not, are not experiencing real difficulties when applying for residence cards in Ireland.

Danish legislation (<sup>409</sup>) requires the marriage or registered partnership to be recognized by the Danish law and therefore apparently complies with the Directive. It is however stipulated that the marriage or the registered partnership has to be voluntary, i.e., there must be no doubt that it was entered into, according to the wishes of both partners or spouses, (which cannot be objected to) and it must have not been entered into solely for the purpose of obtaining a residence permit (which is also not objectionable). There is, however, also an age limit of 24, which may be regarded as a disproportionate requirement to prevent forced marriages and may hence not be in line with the Directive.

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<sup>408</sup> Civil Partnership Bill 2008.

<sup>409</sup> Consolidation of the Aliens Act, cf. Consolidation Act No. 1044 of 6 August 2007, with the amendments following from Act No. 264 of 23 April 2008, 1) Act No. 431 of 1 June 2008, Act No. 485 of 17 June 2008 and Act No. 486 of 17 June 2008.



In Finland (<sup>410</sup>), persons who have lived continuously for two years in the same household in a relationship like marriage, regardless of their sex, are comparable to a married couple (2 years is not required if the persons have a child in their joint custody or if there is some other important reason for it). The approach differs slightly from the Estonian and Latvian perspective, which considers household members relevant for the family reunification but keeps silent about registered or unregistered partnerships.

Currently Romania does not recognize (registered) partnerships and there are no draft laws planning to regulate the question. Consequently, Article 2(2) (b) of the Directive has not been transposed into Romanian law and the (registered) partner is not considered a family member. For the purpose of acquiring the right of residence, the Romanian transposing legislation considers the registered partner as equivalent to the partner (Article 2 (7) Ordinance 102/2005, as introduced by Ordinance 30/2006). In Romania, partners and household members of the Union citizen benefit from the rights of residence granted to the family members of the Union citizen according to Article 3(2) of Ordinance 102/2005.

French law (<sup>411</sup>) contemplates partnerships (PACS), which produces effects that are in many respects similar to marriage. According to the French rules, partners in both opposite and same sex partnerships need to establish that they are living under the same roof. Despite this strong national recognition and the flexibility proposed by Article 2(2)(b) (for registered partners) and Article 3(2)(a) (for household members, but also for other relatives not qualifying as family members), the implementing rules make the recognition of partnerships contracted in another Member State extremely difficult. Partners are in fact encouraged to have their union confirmed by PACS or they need to go through lengthy process of verification. This is clearly contrary to the spirit of the Directive.

Italian legislation does not contain provisions concerning registered partnerships. Therefore, those registered in other EU Member States might encounter problems in relation to recognition of their registered partner status in Italy.

Another problem common in many Member States is the presentation of the relevant evidence of the partnership when there is no official partnership contract. There are divergent approaches and practices with regard to evidence of partnerships. In Finland there is no specific guidance on how co-habitation should be demonstrated, but in practice a common lease agreement can be presented as one piece of evidence of the existence of a serious relationship. In Portugal and the UK, the problem of proving the partner relationship or membership of the same household is not governed by law, resulting in a large amount of discretion for the officials to decide. For example, in Portugal there are no rules on evidence of partnership, consequently, it is difficult to prove it, and in some cases necessary to obtain a court decision. In Spain, the law is quite open as to the documents to provide in order to attest to the partner relationship or membership of the same household. However, citizens have not complained about the scope of discretion for officials to decide and problems in this regard have not been detected (<sup>412</sup>).

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<sup>410</sup> Aliens Act 301/2004, Sections 37 (Family Members) and 153 (Residence of the Citizens of the European Union or comparable persons).

<sup>411</sup> Article 515-1 to 7 of the Code Civil.

<sup>412</sup> As per national expert's experience.

#### 4. PROBLEMS ENCOUNTERED BY THIRD COUNTRY NATIONAL FAMILY MEMBERS

The majority of the Articles of the Directive and the rights of free movement and residence contained therein are applicable to family members of a Union citizen regardless of nationality. Several difficulties have been identified in the implementation of the Directive with regard to the third country national family members. In several instances, additional requirements and unreasonable procedures that are not provided for in the Directive have been imposed on third country national family members of a Union citizen with the result of unnecessarily restricting the free movement of persons flowing from the EC Treaty. Concerns of non-compliance have been highlighted by the Judgment of the ECJ in the *Metock* case, the effects of which go beyond the spousal rights directly at issue in that case.

The practices and issues that have arisen in relation to the implementation of the provisions on third country national family members are sub-divided into four main sub-headings.

1. Problems arising from the status of third country nationals who are family members of Union citizens
2. Problems with the right of entry with visas
3. Misapplication of rights of retention residence
4. Restrictions imposed on employment

##### 4.1. Status of family member and residence rights

###### **Article 2 (2) of Directive 2004/38/EC**

*Family member' means:*

*(a) the spouse;*

*(b) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State;*

*(c) the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined in point (b);*

*(d) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b)*

###### **Article 7 (2) of Directive 2004/38/EC**

*The right of residence provided for in paragraph 1 shall extend to family members who are not nationals of a Member State, accompanying or joining the Union citizen in the host Member State, provided that such Union citizen satisfies the conditions referred to in paragraph 1(a), (b) or (c)*

Not all Member States have included all the categories of family members identified in Article 2 (2) in their implementing measures.

Hungary, has granted residence rights to restricted categories of third country national family members of a Union citizen studying and residing in Hungary. As a result, only the third country national spouse and dependent children of an EU student are entitled to reside in Hungary. This

provision (<sup>413</sup>) does not fully comply with the definition of family members set out in Articles 2 and 7(2)(d) of the Directive. The right of residence differs according to the status the person has.

In a similar transposition, Romanian national law has remained silent on the rights of residence of third country dependent direct relatives in the ascending line of an EU student (or his spouse), and with the right of residence of the direct descendants and the dependent direct relatives in the ascending line of the partner, in the territory of Romania. The different status of family members creates problems with the residence rights and other rights that have to be provided in order to implement the Directive.

#### **4.2. Entry, residence and visa requirements**

Entry and residence of Union citizens and their family members are covered by several Articles of the Directive. Article 5 contains the right for entry, Article 6 concerns residence rights for up to 3 months, Article 7 concerns residence rights for more than 3 months, retention of the right of residence (Article 14) by family members in the event of death or departure of the Union citizen (Article 11) or in the event of divorce, annulment of marriage or termination of registered partnership (Article 12), Article 18 concerns permanent residence rights, Article 20 covers permanent residence cards and Articles 20 (3) and 21 cover continuity of residence.

Most problems seem to be with the transposition of provisions on beneficiaries, right of entry, and right of residence after 3 months, residence cards, right of residence after the death or departure of the Union citizen from the host Member State, right of residence and recourse to social assistance, right of residence of senior citizens and continuity of residence.

##### **Article 5 (2) of Directive 2004/38/EC**

*Family members who are not nationals of a Member State shall only be required to have an entry visa in accordance with Regulation (EC) No 539/2001 or, where appropriate, with national law. For the purposes of this Directive, possession of the valid residence card referred to in Article 10 shall exempt such family members from the visa requirement. Member States shall grant such persons every facility to obtain the necessary visas. Such visas shall be issued free of charge as soon as possible and on the basis of an accelerated procedure.*

In Estonia, third country national family members applying for visas have been asked to pay the visa fee (<sup>414</sup>). This is contrary to Article 5(2) of the Directive. Third country nationals have faced problems in entering the country with a residence card issued by another Member State (according to Article 10 of the Directive). Also, in Portugal there was the case of a South African citizen married to a Portuguese citizen who wanted to travel to Portugal with her husband. The Portuguese Consulate in South Africa did not respect what is laid down in the Directive about the accelerated procedures for EU family members on visa applications (<sup>415</sup>). Thirdly, in Ireland, if appropriate, third country national family members of Union citizens are required to produce a visa: residence cards from other Member States are not accepted in lieu of a visa contrary to the Directive.

<sup>413</sup> Section 6 par. (3) of the Act No I of 2007 on the Entry and Residence of Persons with the Right of Free Movement and Residence.

<sup>414</sup> Reported in the Citizens Signpost Service database.

<sup>415</sup> According to national expert's knowledge some difficulties were reported referred to entry rights in some enquiries regarding third country national family members' (of Union citizens) entry rights.

**Article 9 (1) of Directive 2004/38/EC**

*Member States shall issue a residence card to family members of a Union citizen who are not nationals of a Member State, where the planned period of residence is for more than three months.*

**Article 9 (2) of Directive 2004/38/EC**

*The deadline for submitting the residence card application may not be less than three months from the date of arrival.*

**Article 25 (2) of Directive 2004/38/EC**

*Possession of a registration certificate as referred to in Article 8, of a document certifying permanent residence, of a certificate attesting submission of an application for a family member residence card, of a residence card or of a permanent residence card shall be issued free of charge or for a charge not exceeding that imposed on nationals for the issuing of similar documents.*

**Article 20 (1) of Directive 2004/38/EC**

*Member States shall issue family members who are not nationals of a Member State entitled to permanent residence with a permanent residence card within six months of the submission of the application. The permanent residence card shall be renewable automatically every ten years.*

Article 25 (2) of the Directive provides that residence documents must be issued free of charge or at a cost not exceeding that imposed on nationals for the issuing of similar documents. In France, this is not contained in the Code, although the information portal [service-public.fr](http://service-public.fr) indicates that the documents are free of charge<sup>416</sup>. Clarification is necessary. Also the principle that 'residence cards must be delivered as soon as possible' has not been transposed in the French legislation. The application for the residence card of the third country national family member has to be made within 2 months from arrival<sup>417</sup> which is contrary to the meaning of Article 9(2) of the Directive. This two months requirement also applies to those extending their permanent residence cards. The application for extension of the residence card has to be submitted 2 months before the expiry of the previous residence card, which seems to be an unreasonable deadline.

In Ireland, under Regulation 7(1) (a) of Statutory Instrument 656 of 2006, a family member must have been resident in Ireland for no less than three months before making an application for a residence card. This provision does not fully comply with Article 9(1) of the Directive which, in referring to a planned period of residence of more than three months, implies that application may be made before expiry of that period. It is impossible to obtain a residence card without a social security number (PPS). In order to obtain a PPS number, evidence of employment is required by some social security offices. This is inconsistent with the status of the family member. In general it is complicated to obtain the PPS number, however it should not be complicated. It becomes complicated if the social security office insists on evidence of employment but not generally otherwise. That also influences the acquisition of the residence card. Residence cards are frequently issued for a period of one year in Ireland rather than five

<sup>416</sup> Please see <<[www.service-public.fr](http://www.service-public.fr)>>, then choose > *Accueil particuliers* > *Europe* > *Citoyens européens en France* > *Citoyens européens : résider en France* >.

<sup>417</sup> Article R121-14, par. 1 of the Code de l'entrée et du séjour des étrangers et du droit d'asile.

years or the proposed period of residence as provided for both in the Directive and in the Irish implementing legislation.

**Article 6 (1) of Directive 2004/38/EC**

*Union citizens shall have the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport.*

**Article 6 (2) of Directive 2004/38/EC**

*The provisions of paragraph 1 shall also apply to family members in possession of a valid passport who are not nationals of a Member State, accompanying or joining the Union citizen.*

According to Article 6 of the Directive the Union citizen and his/her family member have a right to reside in a Member State up to 3 months without any conditions and formalities.

**Article 7 (1) (b) of Directive 2004/38/EC**

*All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State.*

In Italy, according to Article 9 (3) (b) of the Decree 30/2007, Union citizens who wish to register with the local registry office of their Italian place of residence, should demonstrate sufficient economic resources for themselves and their family members in accordance with the thresholds set out in by Article 29(3) (b) of the Italian Legislative decree of 25 July 1998, n. 286 which establishes that the citizen must be able to show the lawfulness of the origin of their economic resources. The requirement in Italy of presenting lawfulness of the income seems to be disproportionate with the meaning of the Directive which is about the self- sufficiency of the person concerned.

**Article 5 (2) of Directive 2004/38/EC**

*Family members who are not nationals of a Member State shall only be required to have an entry visa in accordance with Regulation (EC) No 539/2001 or, where appropriate, with national law. For the purposes of this Directive, possession of the valid residence card referred to in Article 10 shall exempt such family members from the visa requirement.*

UK authorities require all third country nationals to obtain an entry visa, including family members who have been issued with a residence card by other Member States. This entry visa takes the form of an “EEA family permit” (see Regulation 12 of Immigration (European Economic Area) Regulations 2006). Numerous complaints have been received by the Citizens Signpost Service in connection with this practice.

The Irish authorities have not consistently recognised residence cards issued by other Member States as a valid entry document in accordance with Article 5 of the Directive. This situation has been confirmed by complaints to the EUROJUS service of the failure by the Irish immigration authorities to accept a residence card from another Member State in lieu of a visa. In respect of Union citizens and their qualifying family members, there is a provision<sup>(418)</sup> that they may be refused entry into Ireland where their personal conduct is such that it would be contrary to public

<sup>418</sup> Regulation 4 (1) (b) of Statutory Instrument 656 of 2006.

policy or public security to grant permission to such a person to enter the State. These provisions fail to clarify that it is only where the person is a serious threat to public security or policy that they should be denied entry to the State.

Ireland also has a specific problem with the requirement of lawful residence in another Member State for the family member. The problem in Ireland was that many Union citizens had married non-EEA citizens and the non-EEA citizens had never lived in any other Member State of the EU prior to seeking entry into Ireland. Such applicants were refused residence cards in Ireland. However, this situation has been addressed by the Department of Justice in Ireland following the *Metock* decision of the ECJ on 25 July 2008. There is no longer a requirement that the non-EEA family member must have lived in another Member State prior to taking up residence in Ireland in order to obtain a residence card. Additionally, several Member States will have to amend their implementation acts to ensure conformity with the *Metock* judgment and to remove any remains of the Akrich principle which has been overturned by the ECJ.

### 4.3. Rights to retain residence

<b>Article 12 (1) of Directive 2004/38/EC</b>
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<i>Without prejudice to the second subparagraph, the Union citizen's death or departure from the host Member State shall not affect the right of residence of their family members who are nationals of a Member State.</i>
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<b>Article 12 (2) of Directive 2004/38/EC</b>
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<i>Without prejudice to the second subparagraph, the Union citizen's death shall not entail loss of the right of residence of their family members who are not nationals of a Member State and who have been residing in the host Member State as family members for at least one year before the Union citizen's death.</i>
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<b>Article 13 (1) of Directive 2004/38/EC</b>
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<i>Without prejudice to the second subparagraph, divorce, annulment of the Union citizen's marriage or termination of their registered partnership, as referred to in point 2(b) of Article 2 shall not affect the right of residence of their family members who are nationals of a Member State.</i>
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Articles 12 and 13 of the Directive set out the conditions regarding retention of the right of residence by a family member in the event of the death or departure of the Union citizen (Article 12) or divorce, annulment of the marriage or registered partnership (Article 13).

Additional hurdles exist for family members in the French implementation<sup>(419)</sup> of the Directive as they are required remained in France for at least one year as residents prior to the death or departure of the Union citizen.

In Hungary, family members, who have acquired their residence rights on the grounds of Article 3 (2) (a) may not retain their rights as family members after the death of the EEA national with whom they have lived together or in the case when the EEA national's residence right has been withdrawn or the EEA national has left the country permanently<sup>(420)</sup>. There is different

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<sup>419</sup> Article R121-7 to 9 of the Code de l'entrée et du séjour des étrangers et du droit d'asile.

<sup>420</sup> Section 8 of the Act No I of 2007 on the Entry and Residence of Persons with the Right of Free Movement and Residence deals with this question. Paragraph. (3) stated that 'The person referred to in

treatment between family members and it is related to the mere fact of how the right of residence was obtained. This may also be contrary to Article 12(2) which stipulates that the Union citizen's death shall not entail loss of the right of residence of their family members who are not nationals of a Member State and who have been residing in the host Member State as family members for at least one year before the Union citizen's death (<sup>421</sup>). It is also worth mentioning that members of the household admitted on the territory of Hungary (as defined in Article 3(2)), lose their residence rights after that the relationship with the EEA/Hungarian citizen has come to an end. This is a situation which is not mentioned in the Directive. (Section 8 (2) of the Act I of 2007 on the Entry and Residence of Persons with the Right of Free Movement and Residence states 'the right of residence of the person referred to in subsection (1) shall terminate when their relationship is terminated.')

In Romania the retention of the right of residence does not contemplate the situation of domestic violence, and consequently it does not mention the 'particularly difficult circumstances', as a possibility for the retention of the right of residence as provided by Article 13(2)(c) of the Directive. Such an omission may infringe the Directive in situations where a divorce occurs before the residence or duration of the marriage requirement is fulfilled. It grants the retention of the right to residence, if the divorce has occurred before the first year of residence of the third country national in Romania or the divorce occurred before the completion of the 3 years period from the conclusion of marriage. In these situations, if the divorce occurred before the mentioned periods by reasons of domestic violence, the third country national family member is not entitled to the retention of the right to stay in Romania.

#### 4.4. Burden on the social assistance system of a Member State

<b>Article 14 (1) of Directive 2004/38/EC</b>
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<i>Union citizens and their family members shall have the right of residence provided for in Article 6, as long as they do not become an unreasonable burden on the social assistance system of the host Member State.</i>
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<b>Article 14 (3) of Directive 2004/38/EC</b>
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<i>An expulsion measure shall not be the automatic consequence of a Union citizen's or his or her family member's recourse to the social assistance system of the host Member State.</i>
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Belgian implementation (<sup>422</sup>) of the Directive has reserved the right for authorities to terminate the right of residence until the third year of residence if the third country national family member falls under certain conditions i.e. the Union citizen's residence right has come to an end, the Union citizen has left Belgium, the Union citizen has died, divorced or marriage has been annulled or has behaved fraudulently. In the event that the citizen or family member becomes an

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Subsection (1) [family members defined as in Article 3.2.a] shall have the same legal status as the family member during their period of lawful residence, with the exception that such right of residence may not be retained on these grounds: a) in the event of the Hungarian citizen's death or if his citizenship is terminated; b) in the event of the EEA national's death or if his right of residence is withdrawn, or if the EEA national no longer exercises the right of residence.'

<sup>421</sup> If the family member concerned is a Union citizen, he/she can remain on the territory of Hungary in case he/she fulfils conditions set out in Article 7.1 a-c., but the status of non-EU national family members is not regulated. If they wish to remain in Hungary, they have to apply for a residence title in accordance with a separate legal act on admission of third country nationals to Hungary.

<sup>422</sup> Article 42 of the Foreigners Act.

unreasonable burden on the social security system he/she can be expelled but it is not stated that the expulsion order should not be automatic.

Romanian legislation does not transpose the Article 14(3) of the Directive. According to Article 24<sup>1</sup>.1 of Ordinance 102/2005, as modified by Ordinance 30/2006, Union citizens and their family members benefit from the right of residence as long as they do not become an excessive burden on the Romanian social security system. If they do become an excessive burden, according to Article 24<sup>1</sup> the Authority for Foreigners may take a ‘decision of leaving’ the Romanian territory. The persons concerned must leave the Romanian territory within 30 days of the communication of the order. In the event of non-compliance with this deadline, he/she shall be escorted to the border within 24 hours. The lack of transposition of Article 14(3) of the Directive means that an expulsion or a measure with equivalent effect as the decision of leaving the Romanian territory, seems to be the only alternative and the automatic consequence of recourse to the social assistance of Romania by the Union citizen or his/her family member.

#### **4.5. Access of third-country nationals to employment**

<b>Article 23 of Directive 2004/38/EC</b>
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<i>Irrespective of nationality, the family members of a Union citizen who have the right of residence or the right of permanent residence in a Member State shall be entitled to take up employment or self-employment there.</i>
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In Estonia third country national family members are not allowed to work or be engaged as self employed persons during the 3 month period which is considered to be the ‘right of stay’ period under Estonian legislation. Article 10 (6) of the Citizen of European Union Act provides that ‘a family member staying in Estonia on the basis of the right to stay is prohibited from employment or operation as a sole proprietor in Estonia’. The legislation forbids family members from working when they have not obtained the right of residence and the application for the residence right has to be submitted within 3 month period after arrival to Estonia. The family member also has to apply for a work permit which is another procedure that sometime can take many months. A similar situation is exists in Ireland (<sup>423</sup>). Irish Authorities insist that family members only have the right to take up employment in Ireland when they have received their residence cards. Potential employers will not employ persons without a residence card, leading to unemployment or forcing new immigrants onto the illegal employment market. This situation has been addressed to some extent by the issue by INIS of short term residence cards while the application for a five year residence card is being processed. This problem does not arise in relation to permanent residence cards.

To conclude this section, it is clear that the problems of third country nationals who are family members of Union citizens are very diverse. The Member States in which the exercise of rights of third country national family members contained in the Directive has been most problematic are Ireland, Italy and France. In this regard it is necessary to note that due to the *Metock* ruling, the laws in Ireland have had to be changed and Community laws were applied.

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<sup>423</sup> As evidenced by complaints to the Irish Immigrant Council and the EUROJUS Service.



## 5. EQUAL TREATMENT

### **Article 24 (1) of Directive 2004/38/EC**

*'Subject to such specific provisions as are expressly provided for in the Treaty and secondary law, all Union citizens residing on the basis of the Directive in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State 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 and who have the right of residence or permanent residence.'*

### **Recital 20 of Directive 2004/38/EC**

*In accordance with the prohibition of discrimination on grounds of nationality, all Union citizens and their family members residing in a Member States on the basis of this Directive should enjoy, in that Member State, equal treatment with nationals in areas covered by the Treaty, subject to such specific provisions as are expressly provided for in the Treaty and secondary law.*

### **Article 24 (2) of Directive 2004/38/EC**

*By way of derogation from paragraph 1, the host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence, or, where appropriate, the longer period provided for in Article 14.4(b), no shall it be obliged, prior to acquisition of the right of permanent residence, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families.*

Article 24 (1) means that those Union citizens and their third country national family members who have residence rights will have to be treated on an equal footing with nationals of the host Member State. Article 24(2), however, allows Member States to *temporarily* restrict entitlement to social assistance by beneficiaries of the right of residence and thus to derogate from the equal treatment principle in this respect. Member States are not obliged to include Union citizens and/or their family members in their social allowance assistance schemes during the following periods:

- the first three months of residence, or
- with regard to jobseekers, for longer periods (in accordance with the judgment of the ECJ in the *Antonissen* case (<sup>424</sup>) this means at least six months or a reasonable time while the Union citizen is able to prove to have genuine chances of being engaged or is able to provide evidence of continuing to seek employment),
- Until the acquisition of the permanent residence right – in this case, only the granting of maintenance aid for studies (student grants or student loans) can be suspended with regard to students or inactive persons. (Workers, self-employed persons, people retaining such status and family members of the said categories cannot be excluded from such maintenance aids).

As regards the implementation of the equal treatment principle by Member States, the large majority of countries observe equal treatment in theory – notwithstanding administrative practice or private entities which might not always guarantee that beneficiaries of the free movement right be treated on an equal footing with nationals of the host State. The following analysis will give an overview of the theory and practice of equal treatment revealed by the inquiry on conformity.

Equal treatment might be contemplated under national regimes in the following ways:

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<sup>424</sup> Case: C-292/89 *The Queen / Immigration Appeal Tribunal, ex parte Antonissen* [1991] ECR I-745.

- although there is no specific provision on equal treatment in the transposing measure, this results from the general principles of the legal system stemming from the relevant provision of the Constitution (for example, Germany, Finland, Poland, Greece and Romania);
- the transposing instrument refers to the equal treatment principle with regard to beneficiaries of the free movement right (for example, Austria and Malta);
- the equal treatment principle is ensured by the incorporation of a specific provision in the sector-specific rules, like provisions on family allowances, social benefits, allowances for disabled persons (for example, Belgium, Estonia and Hungary).

A number of countries have made use of the derogation under Article 24(2) of the Directive and have opted for restricting access to social benefits for certain categories of persons for a limited time. Thus, French legislation (<sup>425</sup>), does not allow job-seekers to benefit from social allowances (including the minimum revenue (*revenue minimum d'insertion*) until they find employment, and this changes their economic status. Similarly, in line with Article 24(2) of the Directive, Sweden (<sup>426</sup>) reserves the granting of study loans to those who have acquired permanent residence in the country. Further, according to Swedish law, a precondition for the grant of a study loan is that the foreigner in question must have a 'strong connection to Sweden' (<sup>427</sup>). In the administrative practice from the CSN (*Centrala Studiestödsnämnden*- the national authority for handling the Swedish financial aid for students) this means that third country nationals and Union citizens should have stayed or worked in Sweden for the last two years (<sup>428</sup>).

There are four main areas where restrictive approaches to the application of the principle of equal treatment have been identified:

1. Time-limits restricting access certain benefits or applying restrictions not listed in Article 24(2) of the Directive
2. The right of students to equal treatment.
3. Differential treatment of nationals of new Member States with regard to the conditions of enjoyment of residence rights and the acquisition of permanent residence rights
4. Alleged differential treatment of third country national family members or mixed households compared to family members who are Union citizens themselves or national counterparts

### **5.1. Time-limits restricting access certain benefits or applying restrictions not listed in Article 24(2) of the Directive**

Italian legislation seems to attach the possibility of access to certain social benefits (like access to social housing) to being resident in Italy for more than ten years or in the same region for more than five years (see Article 20(10) of Law Decree 112/2008 transposed into law by Law 6 August 2008, n.133, concerning social allowances (<sup>429</sup>) and Article 11(2) (g) of the same Law

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<sup>425</sup> Law nr 2007-290 of 5 March 2007 on the enforceable right to housing and different measures to enhance social cohesion, Article 63 in particular.

<sup>426</sup> See the Study Loan Act, Ch. 1 § 4.

<sup>427</sup> Law (1999:1395, chapter 1 § 4 and CSN web-site).

<sup>428</sup> Please see <<<http://www.csn.se/en/2.135>>>.

<sup>429</sup> Article 20 (10) of Law Decree 112/2008: Social allowance is granted to the entitled people provided that they have been lawfully and continuously residing in the national territory for at least ten years.

Decree concerning social housing (<sup>430</sup>). The legislation seems to have the intention of ensuring a link and attachment to the country. However, such excessive limitations in time go against the spirit of the Directive.

France seems to allow only economically active persons to access universal sickness cover ('Couverture Maladie Universelle' (<sup>431</sup>)), since it applies the requirement of a 'stable' and legal stay in France. A person is considered to meet the condition of 'stable stay' if exercising an economic activity, but in case of an economically inactive status (i.e. students, pensioners, and job-seekers) only the permanent residence gives right to access to the CMU. The legality of 'stable' stay is a valid ground, admissible under the Directive. However, the condition linked to the stability of stay seems to go against the general aim of the Directive. Circulaire No DSS/DACI/2007/418 (23 November 2007) of the Social Security Directorate, goes a bit further to clarify certain aspects regarding access to CMU (<sup>432</sup>). The amendments to French legislation concerning access to CMU are presented as being necessary for the implementation of the Directive, since CMU is based on the condition of stable and legal residence in France. In essence, the Directive was used as a reason for denying (after a transition period) access to CMU to foreign inactive Union citizens coming to France in the future or who have arrived recently, as well as to other categories of persons (students and inactive) unless they have acquired a permanent right of residence (<sup>433</sup>).

## 5.2. The right of students to equal treatment

In the UK, pursuant to Regulation 4 of the Education (Fees and Awards) Regulation 1997 as amended in 2006, students face further restrictions than what is foreseen by the Directive (<sup>434</sup>). In order for a foreigner (regardless of nationality) to benefit from the same level of tuition fees as host nationals, he must have resided in the EEA for a continuous period of at least three years prior to the start of the academic year. This restrictive approach appears contrary to the jurisprudence of the ECJ (for example in *Blaizot* reference (<sup>435</sup>) and in *Gravier* (<sup>436</sup>) the ECJ held that any provision concerning access to most forms of education had to be applied equally to nationals and non-nationals). Such a condition of prior residence effectively excludes Union citizens from enjoying equal treatment with nationals if they have spent any time outside the EEA in the three years prior to starting their studies. The right of students to have recourse to the National Health Service (NHS) for free is also discriminatory to the extent that they need to be

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<sup>430</sup> Article 11.2 (g) of Law Decree 112/2008: Social housing is granted to immigrants lawfully residing in the National territory and with low income provided that they have been residing for at least ten years in Italy or for at least five years in the same Region.

<sup>431</sup> Hereinafter: CMU.

<sup>432</sup> Please see:

<<[http://www.securite-sociale.fr/comprendre/europe/europe/0711123\\_circ\\_dss\\_cmu\\_ue.pdf](http://www.securite-sociale.fr/comprendre/europe/europe/0711123_circ_dss_cmu_ue.pdf)>>;

See the official information note here:

<<[http://www.securite-sociale.fr/comprendre/europe/europe/q\\_r\\_cmu\\_inactifs.htm](http://www.securite-sociale.fr/comprendre/europe/europe/q_r_cmu_inactifs.htm)>>.

<sup>433</sup> Taking into account the position of the European Commission (communicated to France so far only on Union citizens and members of their family who have acquired a right of permanent residence) France has dropped its initial intention to exclude from CMU also those who have acquired a permanent right of residence, which was flagrantly in violation of the Directive 2004/38/EC. The Commission is still examining if the remaining restrictions are compatible with the equal treatment principle enshrined in the Directive (not to mention other EU legislation in the area of social security).

<sup>434</sup> Please see the UK Country Report for a detailed overview of students and equal treatment in the UK.

<sup>435</sup> Case-24/86 *Vincent Blaizot v University of Liège and others* [1988] ECR 379.

<sup>436</sup> Case 293/83 *Françoise Gravier v City of Liège* [1985] ECR 593.

enrolled in a course or study involving at least 12 weeks of study. Other categories of beneficiaries of the free movement right do not face similar restrictions. Therefore, students are discriminated against other beneficiaries of the residence right as regards access to the NHS, a form of discrimination that also persists with regard to British nationals. The provisions of the Directive do not constitute a basis for this differentiation, since under Article 24(2), it is only possible for Member States to exclude students from other Member States of the European Union from maintenance aid until the acquisition of a permanent residence right.

### **5.3. Differential treatment of nationals of new Member States with regard to the conditions of enjoyment of residence rights and the acquisition of permanent residence rights**

Pursuant to Article 14(1) of the Directive, Union citizens and their family members benefit from the residence right so long as they do not become an unreasonable burden on the social assistance system of the host Member State. However, paragraph 3 of the same Article provides that recourse to social assistance may not lead to an automatic expulsion.

The practice of the UK<sup>(437)</sup> is questionable on this point with regard to access to social benefits by nationals from the new Member States. Recourse to social assistance by citizens from the new Member State puts an end to their residence right, which is contrary to the spirit of the Directive and establishes differential treatment between the EU 15 and EU 12 nationals, maintaining a different concept of ‘Union citizenship’<sup>(438)</sup>. This practice breaches Article 14(3) and runs contrary to the spirit of the Directive (particularly recital 16). It also has the *potential* to establish differential treatment between the EU-15 and EU-12 nationals.

### **5.4. Alleged differential treatment of third country national family members or mixed households compared to family members who are Union citizens themselves or national counterparts:**

In a number of cases, the conformity inquiry revealed in a number of cases that third country nationals who are family members of Union citizens suffer from a differential treatment than family members who are themselves Union citizens.

In France, for example, a ministerial *circulaire*<sup>(439)</sup> given to prefectures provided that that under the Directive and the implementing rules, issuing ‘the residence card, compulsory or not’, must not be subject to a ‘justification of domicile’<sup>(440)</sup>, whatever the reason of the residence.

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<sup>437</sup> According to Citizens Signpost Service cases, the UK authorities have taken against citizens who have recourse to the social welfare system, and in particular citizens of the new Member States. In some cases these citizens have received official communications stating that they no longer had the right to remain in the UK simply by virtue of the fact that they had recourse to the social welfare system (rather than because they had become an unreasonable burden).

<sup>438</sup> The problem may also be partly attributed to the absence of the word ‘unreasonable’ in Article 7 (1) of the Directive (Right of residence for more than 3 months) and Article 14.2 (Retention of right of residence - period of more than 3 months). There appears to be an inconsistency between those articles and recital 16 of the Directive, which states that ‘As long as the beneficiaries of the right of residence do not become an unreasonable burden on the social assistance system of the host Member State they should not be expelled’.

<sup>439</sup> Nr IMID0768184C of 12 October 2007.

<sup>440</sup> A ‘*justification de domicile*’ is factual evidence of living at a given address, e.g. through phone or electricity bills – it is very commonly used in France.

However, it refers to Union citizens only and does not mention third country national family members who are also concerned by the rule in the Directive. Therefore, it is possible that the problem persists for the latter.

If a Union citizen establishes residence in Estonia by themselves or with a Union citizen family member, he/she will not need to prove the availability of sufficient resources. The approach in the case of the family reunification of a third country national differs from this approach since if the Union citizen wishes to be accompanied by his/her third country national family member, he has to have sufficient resources according to Article 20 of the CEUA and health insurance in accordance with the Health Insurance Act. This differential treatment constitutes discrimination between families consisting of only Union citizens and families consisting of Union citizens and third country nationals. This also has the effect of rendering the exercise of free movement rights less attractive for 'mixed' couples/families.

Administrative formalities<sup>(441)</sup> generally take longer for third country nationals than for Union citizens in Luxembourg, Slovenia and Estonia. The most flagrant example of differential treatment can be found in Romania. Article 30 (3) of GEO 102/2005 as introduced by Law no. 500/2006, provides for the possibility of third country national family members to be taken in public custody in case of expulsion from Romania when they are found guilty of a crime by the Courts as set out in Article 30 (1). The public custody provision is not applicable to Union citizens in the same situation. This constitutes discriminatory treatment between Union citizens and their third country national family members.

## 6. GROUNDS FOR EXPULSION AND PROCEDURAL SAFEGUARDS

### **Article 27 (1) of Directive 2004/38/EC**

*Subject to the provisions of this Chapter, Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends.*

### **Article 27 (2) of Directive 2004/38/EC**

*Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures. The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.*

### **Article 27 (3) of Directive 2004/38/EC**

*In order to ascertain whether the person concerned represents a danger for public policy or public security, when issuing the registration certificate or, in the absence of a registration system, not later than three months from the date of arrival of the person concerned on its territory or from the date of reporting their presence within the territory, as provided for in Article 5(5), or when issuing the residence card, the host Member State may, should it consider this essential, request the Member State of origin and, if need be, other Member States to*

<sup>441</sup> That were assessed by the country experts and regulated by legislation.

*provide information concerning any previous police record the person concerned may have. Such enquiries shall not be made as a matter of routine. The Member State consulted shall give its reply within two months.*

**Article 27 (4) of Directive 2004/38/EC**

*The Member State which issued the passport or identity card shall allow the holder of the document who has been expelled on grounds of public policy, public security, or public health from another Member State to re-enter its territory without any formality even if the document is no longer valid or the nationality of the holder is in dispute.*

Articles 39(3), 46 and 55 ECT authorise Member States to restrict the free movement of persons on their territory on various grounds (i.e. on grounds of public policy, public security and public health). Articles 27-33 of the Directive allow restrictions on entry and residence rights based on the same grounds and establish detailed rules if they are applied by a Member State. Additionally, Article 6 of the European Convention of Human Rights protects the right to a fair trial in the event of an expulsion (<sup>442</sup>).

### **6.1. Public Interest Clause**

Pursuant to the general principles laid down in Article 27 of the Directive, the public interest exceptions cannot be invoked to serve economic ends. In addition, the public policy and public security exceptions cannot pursue general preventive aims. Therefore, such restrictions must be based on the following objective factors:

- the personal conduct of the individual (whereas previous criminal convictions in themselves cannot justify such measures);
- the personal conduct must represent a genuine, present and sufficiently serious threat; affecting a fundamental interest of society;

**Article 28 (1) of Directive 2004/38/EC**

*Before taking an expulsion decision on grounds of public policy or public security, the host Member State shall take account of considerations such as how long the individual concerned has resided on its territory, their age, state of health, family and economic situation, social and*

<sup>442</sup> Article 6 ECHR: Right to a fair trial: 1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

Everyone charged with a criminal offence has the following minimum rights:

- a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- b. to have adequate time and facilities for the preparation of his defence;
- c. to defend themselves in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

*cultural integration into the host Member State and the extent of their links with the country of origin.*

**Article 28 (2) of Directive 2004/38/EC**

*The host Member State may not take an expulsion decision against Union citizens or their family members, irrespective of nationality, who have the right of permanent residence on its territory, except on serious grounds of public policy or public security.*

**Article 28 (3) of Directive 2004/38/EC**

*An expulsion decision may not be taken against Union citizens, except if the decision is based on imperative grounds of public security, as defined by Member States, if they:*

- (a) Have resided in the host Member State for the previous ten years; or*
- (b) Are a minor, except if the expulsion is necessary for the best interests of the child, as provided for in the United Nations Convention on the Rights of the Child of 20 November 1989’.*

In order to ascertain whether the person may present the threat described above, Member States may cooperate by exchanging information, but not as a matter of routine. This is referred to in Article 27 (3). Before taking an expulsion order, Member States must take into account considerations such as the age, state of health, economic situation and social and cultural integration of the individual concerned, as well as links to the country of origin pursuant to Article 28 of the Directive.

In cases of imperative grounds of public policy or security, expulsion measures can not be taken against Union citizens or their family members (irrespective of their nationality) who are permanent residents (Union citizens who have resided in the host Member State for ten years or those who are minor). Restrictions of residence right on grounds of public health (Article 29 of the Directive) must be based solely on those diseases with epidemic potential or other infectious/contagious parasitic diseases which figure on the relevant WHO list or if they are otherwise subject of protection applying to nationals of the host Member State. With regard to diseases that might constitute grounds for expulsion, Member States may require the person to undergo medical treatment (free of charge and not systematic) within the first three months of residence. Diseases occurring after that period may not constitute grounds for expulsion.

Articles 30-33 of the Directive set out the procedural aspects of an expulsion order. If such a decision is taken, the person subject to expulsion must be notified in writing, informed precisely and in full about the grounds of the decision and about the legal or administrative remedies possible under national law. An appeal (administrative or judicial) will not necessarily suspend the enforcement of the decision, however the person should in principle be able to submit his defence in person. Pursuant to the jurisprudence of the ECJ in the *Shingara* (<sup>443</sup>) and *Radiom* (<sup>444</sup>) cases, the same procedural safeguards must apply to beneficiaries of the residence right as to nationals of the host Member States. In any case, the person will have one month from the date of notification of the decision on expulsion to leave the territory of the host State except for in duly substantiated cases of urgency.

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<sup>443</sup> Case: C-65/95 *The Queen / Secretary of State for the Home Department, ex parte Shingara and Radiom* [1997] ECR I-3343.

<sup>444</sup> Case C-111/95. *The Queen v Secretary of State for the Home Department, ex parte Mann Singh Shingara and ex parte Abbas Radiom* [1997] ECR I-3343.

The person may submit an application for lifting the exclusion order after a reasonable time and, in any event, after three years from enforcement of the expulsion. If a decision is to be enforced after two years from when it has been taken, before executing it, Member States must check whether the person still represents a genuine threat to public policy or public security.

The rules set out above which are laid down in Chapter VI of the Directive constitute real guarantees in order to avoid arbitrary expulsions, since such a measure strongly interferes with the privacy of the person concerned and is to be considered as the most serious means by which a Member State can prevent or put an end to the residence of ‘undesirable’ persons on its territory. However, it is also important to note, that despite the numerous references to it in the primary and secondary legislation, ‘public policy and ‘public security’ are not fully defined at Community level. The approach of the ECJ has been to control national measures on a case by case basis, preventing Member States from using their own (national) interpretation of ‘public policy’. As seen above, the public policy exception is the last and most serious limitation to be applied against the presence of a ‘foreigner’ which can under no circumstances pursue economic ends. Therefore, an expulsion measure could not be taken against someone, who for example fails to comply with administrative formalities or has recourse to social assistance, as a consequence of which the host Member State will consider them as undesirable.

As might be expected, there are divergences concerning the transposition of the public policy provisions and inconsistencies can be identified. These are set out below under the following headings:

1. The notion of public policy
2. Substantial guarantees against expulsion
3. A broad interpretation of reasons for expulsion
4. Procedural safeguards
5. Redress procedures
6. The duration of exclusion orders
7. Application of the public health clause

## **6.2. The notion of public policy**

As pointed out above, there is precise definition of ‘public policy’ in the Community context. However, the ECJ has laid down key elements of the definition which have now been incorporated into the text of the Directive. Although the notion of public policy is to be interpreted in line with the jurisprudence of the ECJ and the wording of the Directive, it seems that Member States prefer to apply more flexible and vague definitions.

Such is the case of the Hungarian transposing legislation (<sup>445</sup>), where the definition of public policy includes national security, public order and public health and the notion of national security becomes quite broad if read in conjunction with the Penal Code. In France, French

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<sup>445</sup> Section 33 of the Act I of 2007 on the Entry and Residence of Persons with the Right of Free Movement and Residence: ‘The right of free movement and residence of the persons to whom this Act applies may be restricted in compliance with the principle of proportionality and based exclusively on the personal conduct of the individual concerned, where such personal conduct represents a genuine, present and sufficiently serious threat affecting, in particular, public policy, public and national security or public health.’



legislation (<sup>446</sup>) recognises public order ‘l’ordre public’ as the only grounds for expulsion, whereas no specific reference to public security or to public health is made. In Greece, according to Article 22 (1) of PD 106/2007, reasons of the general and social good might justify expulsion, while in Italy imperative reasons of public security might be applied to prevent residence in the country according to Article 20 of Decree 30/2007. In Romania, according to Article 27(1) of Ordinance 102/2005 as introduced by Law 500/2006, a measure may be taken on the grounds of national security and public order with sanctions of up to 20 years of exclusion (Article 27(10)), the measure of expulsion may be taken exclusively for criminal offences according to the Criminal Code (Article 30 Ordinance 102/2005), while a removal decision from the Romanian territory may be taken on grounds of public health (Article 32(3) and on grounds of non-compliance with the conditions of exercising the right of residence (Article 24<sup>2</sup>.1).

With regard conformity issues mentioned above, it is important to note that national legislation should aim to provide the strongest possible guarantee against any arbitrary application of the public policy clause and restrict the margin of discretion of competent authorities to cases that are in line with both the Directive and the interpretation given by the ECJ.

### **6.3. Substantial guarantees against expulsion**

Pursuant to the general principles laid down in Article 27 of the Directive, the public policy exceptions cannot be invoked to serve economic ends, nor pursue general preventive aims. Therefore, such restrictions must be based on the personal conduct of the individual (and previous criminal convictions in themselves cannot justify such measures) representing a genuine, present and sufficiently serious threat affecting a fundamental interest of society.

A number of gaps have been identified with regard to these fundamental guarantees, namely lack of clear reference to exclude economic ends when imposing an expulsion order (Estonia and Hungary), lack of a reference to the exclusion of previous criminal convictions and general preventive aims (Hungary and Romania) and lack of a provision that recourse to social assistance might not automatically lead to expulsion (France and Romania). Furthermore, it seems to be possible that systematic checks can be carried out regarding the verification of economic conditions of residence in France and in Hungary and in Romania (Article 24<sup>1</sup>.3. of Ordinance 102/2005).

### **6.4. A broad interpretation of reasons for expulsion**

Articles 27 and 28 of the Directive clearly set out the conditions for expulsion. These are basically linked to constituting a genuine, real and serious threat to public order or public security. However, in a number of cases, Member States seem to go beyond the strict interpretation of these provisions, take Hungary and Germany (<sup>447</sup>) as examples where if the person does not undergo medical treatment (not specified whether during or after the first three months residence) and does not cooperate with the competent medical authorities in this regard.

In the case of Hungary, expulsion may only be ordered if the persons concerned have contracted the disease before they arrived in Hungary or during the first three months of their stay and they

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<sup>446</sup> Articles L121-4, L511-1, L511-4, L512-1 à L513-4, L521-1, L 521-2, L522-1 à L523-5 of the Code de l’entrée et du séjour des étrangers et du droit d’asile.

<sup>447</sup> §6, Gesetz über die Allgemeine Freizügigkeit von Unionsbürgern.

refuse to undergo medical treatment. According to Article 40 (1) of Act I of 2007 on the Entry and Residence of Persons with the Right of Free Movement and Residence: ‘The competent authority may - at the request of the public health authority - expel any EEA national or any family member for public health reasons who suffers from any infectious disease or contagious parasitic disease as specified in specific other legislation and considered to constitute a threat to public health, and who refuses to submit to the appropriate compulsory medical treatment, *‘with the exception if the infectious disease or contagious parasitic disease is contracted after three months following the date of entry.’*

- Automatic consideration of ‘save in duly substantiated cases of urgency’ when the further stay of the person is incompatible with the communal life (Italy):

In Italy, due to the non-literal transposition of Article 27 of the Directive by Article 20 of Decree 30/2007, there could be problems since the relevant Italian authorities could use Article 27 as the legal basis to adopt measures which restrict the free movement of persons in breach of the Directive. More specifically, the Italian relevant authorities could go beyond the limits contained in the Directive as regards the grounds for adoption of restrictive measures such as expulsion. This transposition could give rise to infringement proceedings against the Italian Government for incorrect transposition of the Directive.

- In case of imprisonment, after having served an prison sentence and in case of crimes committed outside the country that are so serious that they would allow for expulsion (Hungary, Estonia (<sup>448</sup>) and Denmark (<sup>449</sup>) respectively).

In Hungary there are two types of expulsions. The first is ordered by the immigration authority (regulated in the transpositions acts) and the other is ordered by the national court (regulated by the Criminal Code). The criminal court may also order expulsion as an ancillary punishment where the accused (who is a non-Hungarian national and who exercises their free movement rights in Hungary) has committed a serious crime for which the punishment prescribed by the Criminal Code is imprisonment of five years or longer. If the accused has been lawfully resident in Hungary for ten years or more, the expulsion can be ordered only if a crime is committed for which the punishment is imprisonment of ten years or more. If the Criminal court does not expel the accused from the territory of Hungary in its final judgment, the immigration authority does not have the right to order an expulsion either against the accused (<sup>450</sup>).

From the list above, in cases where expulsion takes place on economic grounds, these go against the aim and express provision of Article 27 (1) of the Directive, which precludes Member States from pursuing economic ends and considerations when preventing or putting an end to the presence of certain categories of persons. Other reasons can be interpreted as going further than the limits of the Directive by introducing additional conditions not foreseen under Community law.

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<sup>448</sup> In Estonia there is no specific legislation regarding expulsion after imprisonment of the Union citizen but it seems to become a practice. Interview conducted with CMB official August 2008.

<sup>449</sup> Law on Foreigners LBK nr 945 af 01/09/2006 (Udlændingeloven Kapitel 6, Chapter 6).

<sup>450</sup> Section 38 par. (2) and section 61 par. (6) and (7) of the Act No IV of 1978 on the Criminal Code.

## 6.5. Procedural safeguards

### **Article 30 (1) of Directive 2004/38/EC**

*The persons concerned shall be notified in writing of any decision taken under Article 27(1), in such a way that they are able to comprehend its content and the implications for them.*

### **Article 30 (2) of Directive 2004/38/EC**

*The persons concerned shall be informed, precisely and in full, of the public policy, public security or public health grounds on which the decision taken in their case is based, unless this is contrary to the interests of State security.*

### **Article 30 (3) of Directive 2004/38/EC**

*The notification shall specify the court or administrative authority with which the person concerned may lodge an appeal, the time limit for the appeal and, where applicable, the time allowed for the person to leave the territory of the Member State. Save in duly substantiated cases of urgency, the time allowed to leave the territory shall be not less than one month from the date of notification.*

### **Article 31 (1) of Directive 2004/38/EC**

*The persons concerned shall have access to judicial and, where appropriate, administrative redress procedures in the host Member State to appeal against or seek review of any decision taken against them on the grounds of public policy, public security or public health.*

### **Article 31 (2) of Directive 2004/38/EC**

*Where the application for appeal against or judicial review of the expulsion decision is accompanied by an application for an interim order to suspend enforcement of that decision, actual removal from the territory may not take place until such time as the decision on the interim order has been taken, except:*

- Where the expulsion decision is based on a previous judicial decision; or*
- Where the persons concerned have had previous access to judicial review; or*
- Where the expulsion decision is based on imperative grounds of public security under Article 28(3)'.<sup>451</sup>*

Pursuant to Articles 30-33 of the Directive, a person subject to expulsion shall be notified in writing, and informed precisely and fully about the grounds of the decision taken against them and about the legal or administrative remedies possible under national law. The examination of issues of conformity revealed that no procedural safeguards have been incorporated in the transposing instruments in Malta. It should be noted, however, that in Ireland there are some safeguards e.g. the subject is to be informed in writing. Furthermore, concerning the practice applied in France, 'the motivation' of the decision to expel could be contrary to the Directive. More specifically, in the event of an order to leave the territory (unless an imperious reason of public order is invoked, this is the most commonly used) the wording of the relevant Article seems to create an obligation of motivation only for Union citizens, and not for third country nationals, including family members of a migrant Union citizen (<sup>451</sup>). The information portal service-public.fr confirms this by explicitly stating: 'the obligation to leave the territory (for third country nationals) needs not be motivated' (whereas the motivation is clearly required in the

<sup>451</sup> Please see note 31.

description of the other two procedures). This seems to go against the aim pursued by the Directive and the rights conferred upon these persons.

## 6.6. Redress procedures

### **Article 31 (3) of Directive 2004/38/EC**

*The redress procedures shall allow for an examination of the legality of the decision, as well as of the facts and circumstances on which the proposed measure is based. They shall ensure that the decision is not disproportionate, particularly in view of the requirements laid down in Article 28.*

### **Article 31 (4) of Directive 2004/38/EC**

*Member States may exclude the individual concerned from their territory pending the redress procedure, but they may not prevent the individual from submitting their defence in person, except when their appearance may cause serious troubles to public policy or public security or when the appeal or judicial review concerns a denial of entry to the territory.*

Appeals suspend the execution of the expulsion order in Belgium, Greece and Malta; furthermore, requirements in relation to legal aid or representation have been identified in proceedings in Greece (where legal aid is provided) <sup>(452)</sup> and in Denmark (where foreigners need to be represented by a party, who might also be the closest relatives in the country).

There are concerns with regard to the independence of administrative authorities. For example, in Ireland a senior officer from the same Department decided upon the appeal. Although administrative redress is possible under Irish and Greek law <sup>(453)</sup>, the conformity study established that judicial review will be almost be inevitable in these Member States.

In Greece, if the decision is taken to contest the administrative decision for denial of the petition for issuing a registration certificate, a residence card or a permanent residence card, repeal is only possible under Greek law before the Greek ‘Council of State’. Judicial review can be costly and take some time, taking into account the necessity to comply with tight deadlines. It may be difficult for these deadlines to be met by Union citizens from other Member States or their family members.

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<sup>452</sup> Please see Law on Foreigners LBK nr 945 of 01/09/2006 (Udlændingeloven) Chapter 6.

<sup>453</sup> Administrative redress can always be asked from the Civil courts according to Article 105 of the Introductory Law of the Civil Code regarding the civil liability of the Greek Public Sector in case of illegal acts or omissions by the public services.

## 6.7. Duration of exclusion orders

### **Article 32 (1) of Directive 2004/38/EC**

*Persons excluded on grounds of public policy or public security may submit an application for lifting of the exclusion order after a reasonable period, depending on the circumstances, and in any event after three years from enforcement of the final exclusion order which has been validly adopted in accordance with Community law, by putting forward arguments to establish that there has been a material change in the circumstances which justified the decision ordering their exclusion. The Member State concerned shall reach a decision on this application within six months of its submission.*

### **Article 32 (2) of Directive 2004/38/EC**

*The persons referred to in paragraph 1 shall have no right of entry to the territory of the Member State concerned while their application is being considered.*

With regard to the duration of the exclusion orders made on grounds of public policy or public security, Articles 32 and 33 of the Directive provide for the right to apply for a revision of the exclusion order after a reasonable time, but in any event after three years of its execution.

If a decision is not executed for two years, the authorities need to revise the decision. Belgian<sup>(454)</sup> and Hungarian legislation offers more favourable treatment in this regard, as it is permissible to review the exclusion order after two years. (For Hungary see Article 41 (4) of Act I of 2007 which provides that ‘the reasons for exclusion if ordered in conjunction with expulsion shall be reviewed, on request, after *two years* from the date when the expulsion is carried out.’ Also see Article 47 (1) which provides that ‘EEA nationals and their family members who are subject to exclusion ordered in conjunction with expulsion may apply *within one year* from the date the expulsion was carried out for the exclusion to be lifted on grounds of changes in their state of health or family status in connection with which he/she is required to enter the territory of the Republic of Hungary’ and Article 47 (2) which provides that ‘the competent authority shall adopt a decision in connection with the aforesaid application *within three months*. If the competent authority cancels the exclusion measure it shall ensure that the exclusion is erased from the records’).

In other Members States, two types of non-conformities were identified. There are countries which failed to transpose Articles 32 and 33 of the Directive (France, the Czech Republic and Italy as regards the ‘two-year’ rule in Article 33); and there are countries that adopt a stricter approach as regards entry bans imposed on expelled citizens. Pursuant to Hungarian law<sup>(455)</sup>, there is provision for an automatic entry ban for up to five years with the expulsion order (although review might be requested after two years), whereas in Romania<sup>(456)</sup> this entry ban might vary from 1 to 10 years, renewable with the equal amount of time, allowing for a maximum exclusion of 20 years. However, the exclusion orders can be reviewed after the third year (in conformity with the Directive) or after half of the period of the expulsion order.

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<sup>454</sup> Article 46 bis of the Aliens Act.

<sup>455</sup> Section 41 par. (1) of the Act I of 2007 on the Entry and Residence of Persons with the Right of Free Movement and Residence: ‘An expulsion order shall also entail the exclusion of the person affected for a period of not less than one year and not more than five years. ‘Section 41 par. (4) ‘The reasons for exclusion if ordered in conjunction with expulsion shall be reviewed, on request, after two years from the date when the expulsion is carried out.’

<sup>456</sup> According to Article 27 (10) of Ordinance 102/2005, as introduced by Law 500/2006.

## 6.8. Application of the public health clause

### **Article 29 (1) of Directive 2004/38/EC**

*The only diseases justifying measures restricting freedom of movement shall be the diseases with epidemic potential as defined by the relevant instruments of the World Health Organisation and other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to nationals of the host Member State.*

### **Article 29 (2) of Directive 2004/38/EC**

*Diseases occurring after a three-month period from the date of arrival shall not constitute grounds for expulsion from the territory.*

### **Article 29 (3) of Directive 2004/38/EC**

*Where there are serious indications that it is necessary, Member States may, within three months of the date of arrival, require persons entitled to the right of residence to undergo, free of charge, a medical examination to certify that they are not suffering from any of the conditions referred to in paragraph 1. Such medical examinations may not be required as a matter of routine.*

There were two problems identified with regard to the transposition of Article 29 of the Directive.

This Article covers the diseases that are listed in the relevant WHO instrument or are subject to protection and prevention with regard to a Member State own nationals. Article 32 (3) of Ordinance 102/2005 specifies that a relevant Order shall make reference to the WHO list: however, this Order has not yet been adopted and there is no full transposition in this regard. Hungarian transposing legislation (<sup>457</sup>) includes HIV/AIDS on the list of diseases that might give rise to expulsion measures on grounds of public health. This non-conformity is further exacerbated by the wording of the transposing instrument which is too broad and does not clearly rule out the possibility with sufficient certainty that checks will be carried out after the first three months of residence.

## 7. MISCELLANEOUS PROBLEMS

This section is subdivided into two parts. The first identifies miscellaneous problems related to the transposition or the implementation of the Directive. The second provides an overview on the current situation on how the application of transitional measures impacts on the implementation of the Directive.

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<sup>457</sup> The Main Transposition Act (Act No I of 2007) does not contain provisions related to list of diseases, Both the act No I of 2007 and the Government Decree 113/2007 refer to a separate law: Decree of the Minister of Health No 32/2007 of 27 July 2007 on diseased to be declared during procedures for registration and for issuing residence documents for EU nationals and their family members and for third country nationals. Annex 1 to the Decree of the Minister of Health No 32/2007 lists the following diseases: tuberculosis, HIV infection, lues, typhoid or paratyphoid diseases, and hepatitis B. Although on the application form there is a sixth disease mentioned, leprosy.

## 7.1. More favourable treatment

Article 37 of the Directive allows Member States to maintain or introduce more favourable provisions with regard to the beneficiaries of the free movement and residence right than what is actually laid down in the Directive. It would be impossible to identify all cases of more favourable treatment (reverse discrimination) applicable under national legislations. However, it is possible to give the example of Estonia, where the transposing Act (<sup>458</sup>) foresees that beneficiaries of the free movement right to whom the Act applies need not verify entitlement to residence and stay in Estonia by economic means (i.e. being economically active or having sufficient resources) (<sup>459</sup>).

## 7.2. National jurisprudence

In Member States where transposition of the Directive was in time, national courts have started to develop jurisprudence on the application of the Directive and interpret the meaning of national law at the light of the Community provisions.

Jurisprudence on the application and interpretation of public policy provisions has already accepted the direct effect of Article 27 of the Directive in Romania (with regard to the grounds of expulsion of a Union citizen). In this context the Romanian High Court of Cassation and Justice (Inalta Curte de Casatie si Justitie) held that, as there was partial incompatibility between the internal Romanian norm (<sup>460</sup>) and the Community norm (Article 27 of Directive) in issues related to the freedom of movement within European Union, the principle of direct effect of Community law must be applicable (see Decision no. 5843 of 19/09/2007). Moreover, by Decision 4144 of 22 May 2007, the High Court highlighted the supremacy of the Article 27 of the Directive against the same Romanian norms (<sup>461</sup>). By Decision no. 2253 of 03/04/2008 the High Court held that, when dealing with a case concerning a conflict between the internal norm and Community norm, a national court must first identify the controversial norms and continue to apply the internal norm, *inter alia*, as long as is in conformity with the Community norm. Finally, by Decision No. 2119 of 31/03/2008, the High Court held that, as the national judge became after 1 January 2007 a Community judge, it has the obligation to directly apply the Community law (Article 27 of the Directive 2004/38/EC) whenever it finds that the national norm is incompatible with the Community norm, based on the principle of the direct effect and supremacy of the Community law. Accordingly, every national court must, when dealing with a case under its jurisdiction, to totally apply the Community law and to protect the rights which the Community law confers to the citizens and is consequently obliged not to apply any internal norms, anterior or posterior entering into force of the Community law, which is in conflict with the Community law (<sup>462</sup>).

In Greece, concerning the application of Article 40 of the Directive, the Criminal Court of Second Instance of *Heraklion* held that Article 40 of the Directive constituted an obligation for Greece to transpose the Directive, including Articles 27-33, which had not been done correctly. Therefore, the court relied on the material and procedural safeguards set out in the Directive and repealed the deportation of a Bulgarian citizen from Greek territory.

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<sup>458</sup> The Citizen of the European Union Act.

<sup>459</sup> Article 7 right of stay is granted by having valid travel document or ID card. Right of temporary stay is granted after registration in the population registry by art 13 of the Citizen of European Union Act.

<sup>460</sup> Article 38 of Law nr. 248/2005.

<sup>461</sup> Article 38 of Law nr. 248/2005.

<sup>462</sup> For further details please see <<<http://www.scj.ro/SC%20jurisprudenta.asp>>>.

Another example of the interest of national courts in applying community law is the important judgement of the ECJ in the *Metock* case (see below), which was the result of a preliminary ruling provided for by Article 234 of the ECT. In Denmark following the *Metock* Case (C-127/08), a new law has been introduced into the Law on Foreigners on 2 October 2008, by Law 984 applicable as of 5 October 2008.

In Belgium, the 'Cour du travail de Liège' ruled on 21 November 2005 that the refusal by the national administration to grant access to social assistance for EU nationals during the first three months of their stay was illegal because the Directive was not yet transposed in the national legislation. In a second case, the Belgian Constitutional Court referred a case to the ECJ regarding a national provision imposing a *numerus clausus* on admission to Belgian universities. Decree of 16 June 2006 of the Communauté française (Wallonia) introduces the notion of resident student and non-resident student and fixes quotas for this latter category in order to better regulate the number of foreign students following specific studies in Belgium. The same Decree also distinguishes between foreign students already legally residing in Belgium and those who come to Belgium to study. The preliminary ruling has not yet been delivered in these cases.

There were two court rulings in France that already examined the conformity of national transposing legislation with Community law. On 19 May 2008 on referral from an NGO SOS Racisme, the Conseil d'Etat in case nr 305670 repealed Article R121-14, par. 1 which imposes a 2 months delay for third country national family members of a Union citizen to apply for a residence card, on the grounds that it is in breach of Article 9 of the Directive. This Article provides that this delay may not be less than three months. To date however, Article R121-14, par. 1 has not been revised accordingly, however, the annulment of the decree, even if it has not yet been reflected in a revised text of the Code, implies that the provisions of the Code will cease to be applicable. On the same day, the same court partly annulled in case Circulaire NOR/INT/D/06/00115/C of 22 December 2006 'sur les modalités d'admission au séjour et d'éloignement des ressortissants roumains et bulgares à partir du 1er janvier 2007' those parts that created special conditions for Bulgarian and Romanian citizens for their 'right to stay' and for their obligation to leave the territory.

In Ireland, the *Metock & Others v Minister for Justice Equality and Law Reform* (<sup>463</sup>) was referred to the ECJ for preliminary ruling, whereas the judgment was delivered on 25th July 2008. Pursuant to the ECJ's ruling, the provision of secondary legislation requiring that a non-EEA spouse of an EEA national should have lived in another Member State of the EU prior to applying for a residence card in Ireland was declared contrary to EU law. This decision has resulted in an amendment to Article 3 of Statutory Instrument. 656 of 2006 and a well publicised call from the Department of Justice to all those affected by the *Metock* decision to submit their details to the Department for review of their situation in relation to their right to obtain a residence card in Ireland. The third case (*Gogolova and Amoatong v Minister for Justice Equality and Law Reform* (<sup>464</sup>)) is pending outcome of Article 234 reference in *Metock*.

Similarly in the UK there are around a hundred cases reported that refer to the application of the Directive, amongst which the most important cases relate to the condition of prior residence for

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<sup>463</sup> 2008 IEHC 77.

<sup>464</sup> 2008 IEHC 131.



third-country family members. So far the UK courts have not declared this condition to be incompatible with the Directive (<sup>465</sup>).

In Sweden, approximately 50 cases have been filed with the Migration Court of Sweden since April 2006. The majority of cases concern 'family reunification' and the 'notion of Union citizen'. On 13 August 2008 the Court of Appeal of the Migrationsdomstol (Migrationsöverdomstolen) ruled on an important case on the residence rights and family ties.<sup>466</sup> The decision concerned a couple who had not lived together in another EU country before living together in Sweden. The man was a third country national who had not applied for a residence right before entering the territory of Sweden but lived for one year and nine months in Sweden with his partner. The partner became pregnant and the man requested a permanent resident right "for family reasons" (see Chapter 5 a of the Aliens Act 2005:716). The Court of Appeal of the Migration Board considered that the residence right for more than three months should have been applied before the entry into Sweden because the couple had not lived together in any other EU country except in Sweden. Furthermore, if the citizen intended to claim family reunification, he/she should have applied for that before entering the country. Also, although the third country national lived for one year and nine months in Sweden with his partner this was not considered as a family tie entitling them to apply for a 'permanent resident permit'. The Court of Appeal of the Migration Board decided however in this case, to allow the third country national to request a permanent resident permit from Sweden, without having to leave the country and ask for a residence right from his home country.

### **7.3. INTERACTION OF THE TRANSITIONAL ARRANGEMENTS WITH THE IMPLEMENTATION OF THE DIRECTIVE**

Transitional arrangements (<sup>467</sup>) concern the free movement of workers coming from the new EU Member States (<sup>468</sup>). They allow for the continued application of national rules or those resulting from international bilateral agreements governing access to the labour market of the given country up to a limited period. Such national measures might take the form of continuing to require a work permit in order to accede the labour market (i.e. verification of the actual needs of the labour market), or even to impose further restrictions as regards the number of workers to be allowed in certain sectors ('quotas'). Transitional arrangements shall be agreed upon at the signature of the Accession treaties thus allowing legally a temporary derogation from the application of Community rules, in this case, in the field of free movement of workers. However,

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<sup>465</sup> Some cases dealing with family members: KG (Sri Lanka) & Anor v Secretary of State for the Home Department [2008] EWCA Civ 13 (25 January 2008); KG (Sri Lanka) & Anor v Secretary of State for the Home Department [2008] EWCA Civ 664 (21 May 2008); YB (Ivory Coast) v Secretary of State for the Home Department [2008] UKAIT 00062 (11 July 2008); cases related to deportation of Union citizens and third country national family members: MG and VC (Ireland) v Secretary of State for the Home Department [2006] UKAIT 00053 (03 July 2006); Bulale v Secretary of State for the Home Department [2008] EWCA Civ 806 (11 July 2008).

<sup>466</sup> MIG 2007:53. Please see: <http://www.migrationsverket.se/lifos/dok.do?mode=index&dokn=20123>

<sup>467</sup> Transitional arrangements reflect the restrictions on access to the labour markets of nationals from the New Member States. During a maximum period of seven-years (divided into a scheme of '2+3+2' years), EU-15 Member States have been allowed to continue applying their national rules (i.e. the previously applied work permit system) instead of the full application of community rules on the free movement of workers.

<sup>468</sup> Transitional arrangements cover the so-called 'A8' countries: meaning the eight accession States of 1 May 2004 (all except Cyprus and Malta) as well as Bulgaria and Romania which joined the EU on 1 January 2007.

Member States may not introduce more stringent measures as regards taking up employment in the given country that were in place the day prior to accession ('stand still clause'). In return, the Accession treaties authorise newly acceding States to have recourse to the application of 'reciprocal measures' implying the restrictions of the free movement of workers of the nationals of those EU 15 States that apply restrictions *vis-à-vis* the nationals of the newly acceding country. Pursuant to the 'Community preference principle', even if access to the labour market is temporarily restricted, Member States applying transitional measures shall give preference to Union Citizens (nationals, EU-15 and than EU-12, where applicable) to third country national workers.

Transitional measures and consequently limitations on the free movement principle concern workers; the provision of services and the right of establishment are not affected. Workers, who were legally present at the territory of the given Member State prior to accession of their respective countries and had a work contract of at least 12 months, shall be exempted from the application of transitional measures, as a consequence of which, further employment in the country will not be governed by Community rules on free movement. Such is the case of those workers as well, who are admitted to the labour market for at least 12 consecutive months after the accession. Transitional arrangements also introduce similar restrictive conditions for family members of the worker, however, for a more limited period of time. Pursuant to the Accession Treaties of the newly acceding Member States, family members of the migrant worker may have free access to the labour market of the given Member State after 18 months of legal residence with the worker or the third year upon accession, whichever date is earlier.

Transitional measures are applied for a maximum period of seven years divided into three phases (2+3+2) requiring revision of the measures applied and notification to the Commission on the intention to maintain the application for the consecutive phases. During the third phase, only real and serious disturbances of a given sector of the labour market or of a region may justify the maintaining of such measures. Pursuant to the above, transitional periods must end for the 2004 enlargement countries (Cyprus and Malta are not covered, therefore the group is labelled as 'A8' or 'Accession 8') on 30 April 2011 and with regard to Bulgaria and Romania on 31 December 2013.

### **The current situation with the system of restrictions**

- *Restrictions (the requirement of a work authorisation or permit) are maintained with regard to 'A8' nationals in Austria, Germany, Denmark and Belgium; whereas the UK imposes the obligation to register at each time a new employment is taken up. (Applying registration systems or continuing to issue work permits for monitoring purposes during the transitional period was allowed for by the Accession Treaties).*
- *Restrictions (the requirement of a work authorisation or permit) concerning the employment of Bulgarian and Romanian nationals are applied by Austria, Germany, Denmark, Belgium (<sup>469</sup>), France, Ireland, Greece, Italy, Luxembourg (<sup>470</sup>), Malta, the Netherlands, Portugal and the United Kingdom.*

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<sup>469</sup> Concerning transitional measures, note also that a Royal Decree adopted on 24 December 2008 and published on 31 December 2008 extended for Bulgaria and Romania the transitional measures until 1 January 2012. However, the administration considers that this act does not preclude the possibility to drop before this deadline the measures (need of a work permit simplified, even if simplified for some sectors). <<[http://www.ejustice.just.fgov.be/doc/rech\\_f.htm](http://www.ejustice.just.fgov.be/doc/rech_f.htm)>>.

<sup>470</sup> Work permit issues are however treated more flexibly for Romanian and Bulgarian nationals with regard to some employment sectors such as agriculture and Horeca (accommodation and catering working areas).

There are restrictions concerning the employment of Bulgarian und Romanian citizens in *Germany* and in *Austria*. In Germany this is regulated by § 284 SGB<sup>(471)</sup> and in Austria by § 32a AuslBG<sup>(472)</sup>. Germany does not have any quotas concerning access to the labor market, Austria<sup>(473)</sup> has quotas but these do not affect Romanian and Bulgarian citizens.

In Italy through the adoption of two joint Memorandums (n. 2 of 28 December 2006 and n. 1 of 4 January 2008) the Italian Ministries of Interior and Social Security, in accordance with Article 18 of the ECT, opted for the application of transitional measures as far as the access to the Italian labour market of the Romanian and Bulgarian employees is concerned. No quotas were applied apart from in the agriculture, tourism, construction, engineering, domestic care and seasonal employment sectors. Access to other labour markets for employees is subject to the compliance by employers with the relevant procedure. According to such a procedure, in order to show the status of employee, any Romanian or Bulgarian worker is asked to show the following documents: salary, the receipt of the social contribution costs paid to the Italian relevant social security institutions<sup>(474)</sup>, the work contract, the communication to the relevant Italian office of the engagement<sup>(475)</sup>. Furthermore, the workers falling within the mentioned category will also be asked to show the *work permit* issued by the Italian Migration Office. According to the above-mentioned Memorandums the transitional measures expire on 31 December 2008.

- *Quotas*: besides the work permit requirement, some countries limit the number of new Member State nationals allowed on their labour market by applying quotas, namely Austria, Greece, and the United Kingdom.
- *Reciprocal measures* are applied by Hungary and Romania.

On 17 December 2008, the Irish Government announced its decision that, from 1 January 2009, it would continue to restrict access to the Irish labor market for nationals of Bulgaria and Romania. This decision will be kept under review and will be assessed comprehensively before the end of 2011. Accordingly, Bulgarian and Romanian nationals will continue to require an employment permit to take up employment in Ireland and the position will continue to be subject to the current requirement for a labor market test. However, these employment permit requirements apply only to the first continuous twelve months of employment in the State. At the end of this twelve month period a Bulgarian or Romanian national will be free to work in Ireland without any further need for an employment permit. Employers will be expected to satisfy their labor market requirements from within the European Economic Area (EEA) in the first instance and if this is not possible it will be necessary for them to give preference to Bulgarian and Romanian nationals ahead of non-EEA nationals.

Spain has not requested for an extension of the transitional period. As of 1 January 2009, the transitional period for Bulgarian and Romanian nationals has come to an end<sup>(476)</sup>.

Significant changes have been introduced in Hungary. From 1 January 2009, in accordance with amendment adopted on 29 December 2008 to Government Decree 355/2007 of 23 December 2007 on transitional measures applied to persons with the right of free movement and residence, EEA nationals and their family members may take up an employment in Hungary without having

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<sup>471</sup> Sozialgesetzbuch III.

<sup>472</sup> Ausländerbeschäftigungsgesetz.

<sup>473</sup> The Austrian quota system is regulated by §§ 12a, 13 AuslBG.

<sup>474</sup> INPS and INAIL.

<sup>475</sup> CIP.

<sup>476</sup> Please see, in this regard Press Release IP/09/19.

to apply for work permit. The employers are only required to register such employees with the competent local employment service.

Approximately six months after Romania's accession at European Union, the Romanian Government adopted a Memorandum (unpublished) which establishes the liberalisation of the Romanian labour market for EU/EEA citizens.

### **Simplified, facilitated or in some way more favourable conditions are applied to workers of the new Member States**

- Simplified work permit is possible only in a number of sectors that reveal a shortage in the labour force and which have been clearly listed by relevant binding legal instruments: Belgium (<sup>477</sup>), Luxembourg and France (<sup>478</sup>).

### **More favourable treatment of family members of the worker (who are themselves a 'new' Member State national or third country national)**

Access to the labour market by family members is facilitated in Greece, where according to Circular of the Ministry of Employment and Social Protection with reference number 30269/9-2-2007, Greece applies only the 18 month rule of legal residence or the completion of a 12 months legal employment condition, whichever date is earlier, ceasing to include the possibility not to grant free access to labour market until the 3<sup>rd</sup> year following Accession.

### **More restrictive approach to free movement of workers influencing the residence right of the individuals concerned**

The conformity study revealed a number of inconsistencies with regard to the application of the Transitional Arrangement in France to Bulgarian and Romanian nationals. These non-conformities concern the following cases:

- Although the transitional measures should affect employed workers only, residence cards are maintained, in France, for Bulgarian and Romanian citizens if they wish to exercise a professional activity in general, even on a self-employed basis or as service providers established elsewhere who wish to temporarily offer services in France. They are obliged to request the card at the same time that they request a work permit for employed work or apply to register as self-employed workers. It will be delivered to employed workers only after they have obtained the work permit (<sup>479</sup>).

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<sup>477</sup> Royal Decree of 24 April 2006.

<<<http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2006/04/28/97667.pdf>>> and Royal Decree of 19 December 2006,

<<<http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2006/12/28/102268.pdf>>>.

<sup>478</sup> Article L121-1, L121-2, R121-10 et R121-16 of the Code de l'entrée et du séjour des étrangers et du droit d'asile; Ordonnance nr 2008-507 of 30 May 2008 implementing Directive 2005/36/EC; Arrêté of 21 June 2007 listing diplomas at least equivalent to a master; Arrêté of 10 October 2007 determining the list of documents to submit when applying for a work permit; Arrêté of 18 January 2008 listing sectors of employment with a facilitated procedure for the deliverance of work permits for Union citizens subject to transitional measures.

<sup>479</sup> Article L121-2, R121-16 and R122-1 and 2 of the Code de l'entrée et du séjour des étrangers et du droit d'asile.

- Bulgarian and Romanian permanent residents need to provide a residence card to pursue paid employment; and France maintains 'residence cards' for Bulgarian and Romanian nationals (instead of residence documents under the Directive), which is the same card for third country nationals. Unfortunately, such approach helps to distort the perception of who qualifies as a 'European' citizen and delays the integration process.

## CHAPTER V

### **ADMINISTRATIVE SERVICE IN RELATION TO DIRECTIVE 2004/38/EC IN THE 10 MEMBER STATES SELECTED FOR IN-DEPTH ANALYSIS**

#### **1. Implementation of Article 34 of the Directive requiring Member States to disseminate information on all aspects of Directive**

<b>Article 34 of Directive 2004/38/EC</b>
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<i>Member States shall disseminate information concerning the rights and obligations of Union citizens and their family members on the subjects covered by this Directive, particularly by means of awareness-raising campaigns conducted through national and local media and other means of communication.</i>
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Article 34 of the Directive sets out the obligation for Member States to disseminate information on the rights and obligations of Union citizens and their family members who benefit from the right to free movement and residence on the territory of other Member States. The Directive leaves the choice of the means of implementation up to Member States, but places emphasis on the obligation and the importance of awareness-raising campaigns through the media or other means of communication.

It can be stated that in the national transposing measures reference is *not* made to the obligation and to the means by which public services should disseminate information. Member States prefer to disseminate information on a continuous basis (mainly by means of Internet) instead of awareness raising campaigns that would be limited in time but also more focused and intensive. The number of complaints received by the CSS and as reported by the national experts that relate to misunderstandings and failures to be provided with information is evidence of the inadequacy of such an approach.

Internet services (<sup>480</sup>) are broadly spread in a vast majority of Member States. Possible difficulties in the availability of information services were identified in Cyprus, Greece (where there is no central information portal) and in Romania where because the information is mostly in Romanian, it is necessary to be proficient in Romanian to understand the administrative information (<sup>481</sup>). National experts reported that information available on-line is very helpful and contains detailed information in many Member States (e.g. France, Italy, Sweden, the United Kingdom and Poland), whereas concerns were raised in other Member States (Belgium, Bulgaria, the Czech Republic, Cyprus, Greece, Ireland and Germany) with regard to difficulties in obtaining specialised information on laws and procedures or with regard to the poor quality of the information available (by ‘poor information’ experts highlighted that information is not systematically updated, is not easy to understand or is ‘superficial’).

With the exception of two Member States (Bulgaria and Hungary), information brochures and leaflets were found to be translated into at least one foreign language (mainly English). In some countries (e.g. Estonia) brochures are even available in languages of third countries.

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<sup>480</sup> Please see Annex 3 for the list of national websites where information on exercise of free movement rights is made available to citizens.

<sup>481</sup> Oficial Roman pentru Imigrari (Romanian Office for Immigrations), website: <<<http://aps.mai.gov.ro>>>.

As regards application forms and official documentation, with the exception of Cyprus, Poland and Slovenia, Member States tend to ensure application forms are available in several languages – the choice being mainly aligned to the language of the country whose nationals are present in a large number on the territory of the host Member State. In Slovenia, all foreigners have the right to an interpreter; however the costs of the procedure should be borne by the party as specified for each procedure by the law.

Concerning the core part of the information effort, i.e. the content, poor practices as well as the level of competence of the personnel have been reported in Ireland, Romania (<sup>482</sup>), the Czech Republic (<sup>483</sup>) and Finland (<sup>484</sup>). As encountered by the Irish national expert in her capacity as EUROJUS, reports from the EUROJUS service in Ireland confirm that where specific questions are posed in relation to the application of Directive, staff are frequently unable to deal with such questions. For example, a question was recently raised by the EUROJUS service in relation to the reason why a third country national family member of a Union citizen was given a residence card for only six months rather than for five years. The member of staff on the Helpline was unable to provide any assistance and instead invited the EUROJUS to write to INIS with the query.

Limited linguistic abilities often hinder the initiative to disseminate information for example in France, Italy and Romania. In order to establish a well-informed and fully prepared information service on the rights and obligations of beneficiaries of the free movement rights, some Member States for example, Belgium and Luxembourg (<sup>485</sup>) organise internal trainings for the personnel and issue them with relevant manuals and guidelines. In Belgium, training for NGOs active in the field of citizens' rights was also organised (<sup>486</sup>).

Some Member States struggle with limited infrastructure or personnel in order to make the necessary information available for Union citizens and their family members (In Bulgaria there is limited access to the Internet, in Greece there is no central information portal, in Spain there is a lack of human resources (<sup>487</sup>) and in Sweden, queries might be dealt with within unreasonable time-frames). The uneven flow of information due to the multiplication of competent authorities might also constitute a hindrance on correct reporting, documentation or monitoring (e.g. Greece and Finland). Consequently, it might even make it more difficult for the citizen to identify the

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<sup>482</sup> The Romanian experts have contacted personnel from the Romanian Office for Immigration, central headquarter of Bucharest who, even with a competent general background concerning the transposition and application of the Directive, was nonetheless unwilling to listen to the experts' observation related to the problematic issues of the transposition of Directive in Romania; to the observations suggested by experts it was replied that everything was fine with the transposition and application on the ground of the Directive in Romania and the experts were simply invited to read the Government Ordinance 102/2005 in order to figure it out.

<sup>483</sup> This is based on the Czech expert's Citizen's Signpost Service experience and on Declaration of Czech Non-governmental organisations regarding the impending changes to the amendment of the Czech Foreign and Asylum Acts.

<sup>484</sup> The national expert has come across several Citizen's Signpost Service enquiries where the information given by the authorities to the clients has been inaccurate and deduced from this that they may not be isolated incidents.

<sup>485</sup> According to the information provided by the Ministry of Foreign Affairs during a meeting with the expert for the Grand-Duchy of Luxembourg on 9 July 2008. See also answer by Delegate Minister Nicolas Schmit on 19 December 2008 (reference 2008-2009/2057-03) to a written question (number 2957, 3 November 2008) by Aly Jaerling, member of the Luxembourg Parliament.

<sup>486</sup> See Belgian Table of Correspondence, Article 34 of the Directive.

<sup>487</sup> The Citizens Signpost service usually deals with complaints of Union citizens regarding the lack of resources of the Spanish authorities, the long waiting lines, etc.

competent authority to be addressed. Administrative procedures might be extremely complex and keeping a track of the changing legislation appears to be a difficult task. In this field, citizens' advice bureaux and NGO's can play a very important complementary role. This is the approach of for example Belgium, where NGO's are considered to be the source of information for the citizens in addition to the information provided on the official website. Belgian NGO's are officially involved in the dissemination of information (<sup>488</sup>).

## **2. Accessibility and 'user-friendliness' of administrative services related to the Directive**

The assessment of the accessibility and user friendliness of the administrative services related to the Directive is subjective; it depends on the viewpoint of the person who assessed the service as well as the official interviewed on a specific day.

The administrative service, the competence of the personnel and willingness to cooperate for the study significantly differed in time and locations across any given Member State. It is likely that a role is played by the degree of motivation of the service providers which can sometimes be very personal. Only 10 Member States selected for more detailed examination are discussed below and the information provided is only indicative in character.

### **Administrative service for citizens**

The general state of administrative services, user friendliness, accessibility of services and the competence of the personnel in this field is very diverse. Most of the Member States have specialised websites and telephone lines to call, in order to get the information about the Union citizens' rights and the procedures for registration. Accessibility of the services is rated as 'good' in Estonia and Romania, 'satisfactory' in Hungary, Sweden and the UK, and 'poor' in Belgium, France, Greece and Ireland. As an example, the French expert mentions that there is 'no serious telephone line' or information available through email for the Union citizens. Only general information is provided but it lacks a customised approach to specific problems.

The unsuitable opening times of the offices where the service is provided has been identified as a problem on many occasions (e.g. Belgium, the UK, Ireland, France, and Hungary). As mentioned by the Hungarian expert, sometimes the location of offices to register or to apply for the relevant documents is not suitable as they situated only in the larger cities and opening hours are very restricted. Long waiting times are also mentioned in the reports on France and Sweden. Websites containing information that is out of date confuses Union citizens as identified in Belgium (Wallonia). The Estonian expert also mentions that there is no alternative information provider apart from the state office. The lack of information from officials is not covered by other means and there is no NGO dealing with the rights of Union citizens.

### **User-friendliness of documents**

Italy, Romania and France have assessed the 'user-friendliness' of documents as 'very good'. Estonia and Hungary consider the user-friendliness and access to services as 'good' whereas the user friendliness of the documents was assessed as 'satisfactory' in Greece, Sweden, and the United Kingdom and 'poor' in Ireland and Italy. Most of the experts (including experts reporting on Member States other than the 10 selected for detailed examination) have highlighted

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<sup>488</sup> Answer by mail from the Office des Étrangers.



numerous problems and evaluated the services for Union citizens and their family members as ‘satisfactory’ or ‘poor’.

### **The competence of personnel**

The competence of the personnel is also mentioned on various instances as ‘satisfactory’ (Estonia, Greece, Hungary and the UK) or even ‘poor’ (Greece, Ireland, Italy (in territorial offices) and Romania). As mentioned by the Greek and Italian experts, employees of the regions or smaller villages are not very familiar with EU or national legislation as it is being updated very frequently and is very complex. French and Estonian experts mention that officials communicate contradictory information to citizens.

### **Language problems**

The main problem mentioned is the lack of information in different languages than the official language of the Member State (noted in Romania, Sweden and Italy). Moreover, lack of linguistic competence by officials dealing with foreigners is mentioned in many cases, although in Hungary, good practice is noted as interpreters can be asked for.

In order to set out these problems more clearly, please see the table below:

<b>TABLE 4 - Evaluation of administrative services for citizens in 10 selected Member States: user-friendliness, accessibility of the services and competence of the personnel</b>				
<b>Country</b>	<b>Very good</b>	<b>Good</b>	<b>Satisfactory</b>	<b>Poor</b>
<b>Belgium</b>			- Competence of personnel is satisfactory.	- User-friendliness of documents - Accessibility of the services - Reduced opening hours (that coincide with regular working hours) - Difficult to find the necessary information online. It is also not updated - No consolidated version of the legislation in place - English version of the forms are not available - Citizens from new Member States have to use different counters than those from EU-15
<b>Estonia</b>		- Accessibility of services - User friendliness - Documents to be filled in are available in Estonian, English and Russian - Officials can provide assistance to fill in the documents - Applications can be submitted also by post	- Competence of the personnel satisfactory.	
<b>France</b>	- Documents are very user-friendly.	- Application forms downloaded from the internet are only available in French.	- It is frequently the case that citizens may be told conflicting information from different services.	- Services are insufficiently accessible (especially at the prefectures), - Not possibility to arrange a meeting - Long waiting lines - Reduced opening hours
<b>France</b>				- No 'serious' telephone number or e-mail - Information (mostly standardised, not sufficient to avoid going to the prefecture for information)

<b>Country</b>	<b>Very good</b>	<b>Good</b>	<b>Satisfactory</b>	<b>Poor</b>
<b>Greece</b>			<ul style="list-style-type: none"> <li>- User-friendliness of documents,</li> <li>- Too many documents are required</li> <li>- First-line personnel is composed of police officers and administrative employees of the regional authorities who are not very familiar with the legislation that is being updated frequently.</li> </ul>	<ul style="list-style-type: none"> <li>- Documents usually available only in Greek.</li> </ul>
<b>Hungary</b>	<ul style="list-style-type: none"> <li>- Officers working for customer services speak foreign languages and can provide citizens with information in English, French or German and if necessary an interpreter can be asked for</li> <li>- The competent authority runs a free service on its website where officers, mainly lawyers give information and advice to citizens, but this service is only accessible in the Hungarian language.</li> </ul>	<ul style="list-style-type: none"> <li>- Documents are user-friendly.</li> </ul>	<ul style="list-style-type: none"> <li>-Accessibility of services</li> <li>-General information can be received by phone non-stop (but it is only automated information system)</li> <li>- Officers reply to phone enquiries during opening hours but they may direct enquirers towards information available through Internet</li> <li>- Citizens are encouraged to arrange appointments through the Internet. This may be inconvenient for some people.</li> </ul>	<ul style="list-style-type: none"> <li>- Opening hours are restricted and not sufficient</li> <li>- Applications must be submitted personally</li> <li>- Citizens cannot avoid going to customers officers in person although these offices are only located in bigger cities.</li> </ul>

Country	Very good	Good	Satisfactory	Poor
Ireland			<ul style="list-style-type: none"> <li>- Telephone call hours are limited to between 10.00 and 12.30, Monday to Friday although the website refers only to Monday, Wednesdays and Fridays (calls will not be dealt with outside these hours)</li> <li>- Websites are moderately informative and not easy to find.</li> </ul>	<ul style="list-style-type: none"> <li>- User-friendliness of documents</li> <li>- Competence of the personnel</li> <li>- Accessibility</li> <li>- Contact details for the Irish Naturalisation and Immigration Service are limited to a lo-call number which is of no use if the applicant wishes to obtain information from outside Ireland as the number will not dial. It is also a number which seldom results in actual connection with a helpline operator</li> <li>- There is no contact by email</li> <li>- Staff are slow to answer and the applicant will face long telephone delays and may even be advised that the lines are too busy and they 'should call back later'. This brings further delays.</li> <li>- Even if the caller does manage to speak with a person on the helpline, the knowledge of that person is extremely limited,</li> <li>- Frequently, personnel will advise that the citizen submits an email which will be passed to a relevant person in EU Treaty Rights Section who will revert to the applicant. Frequently, following dispatch of the email, nothing further is ever heard from the EU Treaty Rights Section.</li> </ul>

Country	Very good	Good	Satisfactory	Poor
Italy	- User-friendliness of documents			- Documentation is not translated to the main foreign languages - Personnel at the police headquarters are most likely unable to speak foreign languages
Romania	- User friendliness of the documents (all the documents, including the registration certificate for Union citizens, as well as the permanent residence card for non Union citizens) are in Romanian, English and French and are easily understandable.	- Concerning the accessibility of services. On the website of the Ministry's competent office, Oficiul Român pentru Imigrări <sup>489</sup> ) there is general guidance on how to apply for registering residence in Romania and for permanent residence and its possible to download all the necessary documents, - All the 43 territorial immigration offices competent for the 43 Romanian administrative regions are easily located (including address, telephones, the public transportation in order to get the office, time table working hours, the officer responsible with the office and audiences' timetable), - All the territorial offices have opening hours all-day-long - Information is accessible only in Romanian language.	- Concerning the competences of the personnel, the Romanian Office for Immigration from Bucharest was competent with a good understanding of the Directive and application of it. The knowledge is satisfactory - It is possible to contact the central and territorial offices on the phone.	- In the territorial offices it is difficult to communicate in English (in some cases the telephone was hung up if call was made in English), - With very few exceptions, when calling, the conclusion was that it is necessary to go directly to the office for further explanations, - There is a general lack of willingness to help if it is necessary to speak in a foreign language (whereas situation improves dramatically if Romanian is spoken), - In a few local offices, after continuous periods of trying to contact the office by telephone, there was no answer.

<sup>489</sup> Romanian Office for Immigrations.

Country	Very good	Good	Satisfactory	Poor
Sweden		<ul style="list-style-type: none"> <li>- The Migationsverket's (<sup>490</sup>) web-site is clear and user friendly</li> <li>- All topics are covered in several languages and not only EU Member States' languages</li> <li>- Necessary forms are all on the web-site and ready to be filled in and sent</li> <li>- Telephone numbers are available often these are on-line for longer periods</li> <li>- The Migration Board is training personnel to answer some questions.</li> </ul>	<ul style="list-style-type: none"> <li>- Opening time is from Monday to Friday, 8.00 am -16.00 pm,</li> <li>- Responses from the personnel are usually polite, however they are not always competent in free movement matters</li> <li>- Much depends on the person on the phone</li> </ul>	<ul style="list-style-type: none"> <li>- The main difficulty is to fill in the forms (manly documents needs to be annexed e.g. education certificates)</li> <li>-Completing forms, sending documents and receiving a response is quite a lengthy process.</li> <li>- Migrationsverket's web-site states that the time to wait for the answer can be between 1 to 7 months, 'or longer'</li> </ul>
The United Kingdom			<ul style="list-style-type: none"> <li>- User-friendliness of documents, accessibility of the services,</li> <li>- Competences of the personnel</li> <li>- The Home Office's website is relatively user-friendly</li> <li>- Problems identified as regards the delays in processing registration documentation</li> <li>- Quite significant amounts of supporting documents that must be provided (particularly in respect of</li> </ul>	
			<ul style="list-style-type: none"> <li>applications for residence cards by third country national family members),</li> <li>- Consular staff in British embassies are not sufficiently informed of the rights of third country national family members.</li> </ul>	

<sup>490</sup> Central Office for Migration.

Accessibility and willingness of national administrations to provide the information for the study was rated 'good' by four countries (Estonia, Greece, Hungary and Sweden), whereas Italy and Belgium (Wallonia) were the only countries rated 'very good'. Four countries (Belgium (Flanders), France, the UK, Romania and Ireland) were rated 'poor.' National experts highlighted the difficulty in gathering information during the summer holidays. In some cases despite several reminders, the experts did not get the information (UK, Sweden, and Malta) that was requested.

A good example that can be provided of accessibility of the central administrative services is whether national experts could obtain the Tables of Correspondence (ToC). For the purpose of the study, national experts for Bulgaria, Denmark, Latvia, Lithuania, Slovakia, Slovenia and Sweden found the national authorities reluctant to provide them with the ToC.

The table below provides more details on cooperation with national administration:

	<b>TABLE 5 - Evaluation of accessibility and willingness of national administration to provide the information for the study in ten selected Member States</b>
<b>Country</b>	<b>Evaluation</b>
<b>Belgium</b>	<b>In Wallonia: Very good.</b> National expert experienced no difficulties in obtaining information, not even for internal guidelines for administrative services <b>In Flanders: Poor.</b> National expert contacted the information service of the authorities during the holidays and he was informed that he would receive the requested information from the different public authorities early September. He received a couple of documents; however some were drafted by NGO's. Only a few documents came from the government in Flanders.
<b>Estonia</b>	<b>Good.</b> Officials were quite cooperative although the deadlines were not respected for reasons such as holidays, business trips and sickness.
<b>France</b>	<b>Poor.</b> Officials were contacted several times and no response was obtained.
<b>Greece</b>	<b>Good.</b> The national administration (both the relevant central authorities of the Ministry of Interior, Immigration Department of the Regions and the Greek Police Force Headquarters), were very willing to discuss the provisions of the law and their implementation and to provide reference to all published documents. There were some difficulties (especially with the Police agents) in relation to internal documents which were considered as confidential. The lack of a registry on a central basis regarding the handling of the questions received on the implementation of the Presidential Decree was also identified. Questions are answered on a case by case basis without being registered in a central, relevant record.
<b>Hungary</b>	<b>Good.</b> The Ministry of Justice and Law Enforcement (the competent body for legislative process for drafting new legal acts and for monitoring the implementation of legal measures), and the Office of Immigration and Naturalisation (the competent national authority in residence matters) were contacted by telephone and email. These enquiries were answered. Both bodies showed willingness to cooperate. Gaps in communication were due to summer holidays and Ministry department dealing with questions relating to EU residence rights being re-structured during the summer (previous staff left the Ministry and new contacts had to be built up).
<b>Ireland</b>	<b>Poor.</b> In the time provided to complete this questionnaire, the national expert tried to contact the Department of Justice helpline on five separate occasions. On one of these, she spoke with an operator who subsequently provided her with an interesting but incorrect document which she requested. When she subsequently tried to telephone (on five separate occasions), she could not obtain a response from an operator as the lines were too busy.
<b>Italy</b>	<b>Very Good.</b> The National Expert could obtain all the documents and all the information that helped him to answer the questionnaire. This was due to the level of cooperation of the Italian Department for the European affairs of the Presidency of the Council.



Country	Evaluation
<b>Romania</b>	<b>Poor.</b> It was quite difficult to obtain appointments with the competent authorities, because there was no response from the many telephone numbers and e-mails listed on various Ministries' website. National experts called and e-mailed several times before having someone answer (in one case – The Police Border Control – the functionaries replied that it was not in their competence and the national experts were forwarded to other various offices so many times that were seriously tempted to renounce). The personnel that the national experts had appointments with (including the Romanian Office for Immigration) were unwilling to listen their observation concerning the transposition of Directive, simply stating that despite the evidence or observations made by experts, there were no problems with the transposition of the Directive and application on the ground. The experts were directed to read the Government Ordinance in order to understand matters.
<b>Sweden</b>	<b>Good.</b> No specific problems were encountered in order to obtain the necessary documents. Sweden is a country where much use is made of the internet, therefore one can receive prompt replies by e-mail. Communication over the telephone can be more problematic. Some procedures can be quite time-consuming; in particular, when a number or a document is missing it becomes an administrative query which is quite a long process.
<b>The United Kingdom</b>	<b>Satisfactory.</b> The National Expert contacted the UK Home Office by email to obtain clarification on the implementation of the Directive and confirmation of certain areas of uncertainty. Only with a very significant delay, the UK authorities eventually responded to the request.

## **CHAPTER VI**

### **THE ROLE OF THE COMMISSION WITH REGARD TO THE IMPLEMENTATION OF DIRECTIVE 2004/38/EC**

In order to present a comprehensive picture of application of the Directive, it is not only necessary to examine the situation in and role of the Member States, but also the role of the European Commission.

In the light Article 211 ECT, the Commission should ensure that the provisions of the Treaty and the measures taken by the Institutions pursuant thereto are fully and correctly applied. According to Article 226 ECT, in case of a failure by a Member State to correctly apply Community law, a reasoned opinion should be issued and the case may be brought before the ECJ.

This comparative study on the application of Directive 2004/38/EC raises questions about the role of the Commission, as does the Institution's own report presented on 10 December 2008<sup>(491)</sup>. It would be interesting to see the publication of the whole study. It is necessary to note that the approach of this study is more selective – concentrating on ten Member States – whereas the Commission's report is based on a much more comprehensive study covering the EU-27. In a 12-page text, the Commission has succeeded in summarising the overall situation and comparing the performance of Member States – Article by Article of the Directive. Moreover, the annex containing graphs and numbers attached to the Commission's report gives the reader a good overview. The report is backed up by unpublished technical detail.

The problems identified are similarly the same as this comparative study. The Commission states that 'the overall transposition of Directive 2004/38/EC is rather disappointing. Not one Member State has transposed the Directive effectively and correctly in its entirety. Not one Article of the Directive has been transposed effectively and correctly by all Member States'. The annex on the state of play of transposition shows – as does this study – that some Member States have even found it possible to provide more favourable treatment for citizens than the Directive. According to the Commission, only 63% of the Directive's transposition can be considered as correct and complete; this is low by single market scoreboard standards. In the remaining 37%, 16% represents incorrect and incomplete transposition and it is also found in this comparative study that there are some articles that are not transposed at all, or are transposed in an ambiguous way. The Commission's report points out that the Commission has received 1,800 individual complaints, 40 parliamentary questions and 33 petitions.

The report provides summary information on the Commission's own role in monitoring the transposition of the Directive (heading 2 of the report). It is stated that between June 2006 and February 2007, infringement proceedings were initiated against 19 Member States for their failure to communicate the text of the provisions of national law adopted to transpose the Directive<sup>(492)</sup>, most often tantamount to the delay in transposition. These proceedings were dropped as Member States adopted the transposition measures<sup>(493)</sup>. On the substance, the

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<sup>491</sup> Report from the Commission to the European Parliament and the Council on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2008) 840/3.

<sup>492</sup> All Member States except Denmark, Ireland, the Netherlands, Austria, Slovenia, Slovakia, Bulgaria and Romania.

<sup>493</sup> European Commission, Fifth Report on Citizenship of the Union (1 May 2004 – 30 June 2007), Brussels, 15.2.2008 COM (2008) 85 final, p. 5, states '19 infringement procedures were opened for non-

Commission has registered 115 complaints and opened five infringement cases for incorrect application. Of course, in addition there have been many more national complaints and court cases. In the preparation of this comparative study, it has not been possible to obtain information about which Member States are involved in the complaints, or to what extent the Commission has been able on its own initiative or in response to complaints to improve the application of the Directive by Member States. For example, it is not known what proportion of the 1,800 complaints related to problems with the legal transposition of the Directive, the way it is applied by the administration or one-off misunderstandings between citizens and officials. In heading 5 of its report, the Commission does however outline a number of steps which should be taken in the future – and which in reality should have been taken.

This study shows that the Institution should have the same political will to ensure that European law is correctly applied as it does to see it adopted in the first place by the European Parliament and Council. At the political level, the Commission failed to impress on the Member States the need to respect not just the letter, but also the spirit of the Directive. At the technical level in the Commission, transposition had been seen as unlikely to cause major problems since the Directive simply consolidates and repeals nine existing directives, which have been in force in Member States for several years. This assumption seriously underestimated the political pressures in Member States stemming from the debates on free movement and enlargement and immigration, but also changes in other areas such as the recognition of partnerships. The spirit of ‘*civis europaeus sum*’ ought to have been impressed by the Commission on Member States. However, only a minority of Member States took on board the concept of citizenship of the Union in the titles of their laws, in their approach to implementation whereas the majority have implemented the Directive through new and amended legislation on free movement of persons, the ‘aliens’ or ‘foreigners’ acts. Some Member States have even amended their general immigration law for the purpose of the Directive (<sup>494</sup>). The primary aim – of the new law becoming the first ‘Citizenship’ Directive has not been achieved across the Union.

Linked to this was the aim of better regulation and simplification to make it easier for Union citizens and their family members to move around the Union. However, because of the late, confused and contradictory way that the Directive has been applied, for citizens moving around the Union, simplification is the exception rather than the rule. For example the advantages in the reduction of ‘red tape’ stemming from the abolition of residence cards have not been apparent or been seen as steps forward. Member States chose very different solutions for the application of the Directive, some through a ‘copy and paste’ approach, some by a single legislative act, others by amending several national laws. This problem was further compounded by some Member States revising the legislation several times and the interaction between the implementation of the Directive and other legislative initiatives. One can only conclude that there has been an absence of political will by the Commission to convey the concept of European citizenship and better, simpler legislation to the Member States in their approach to implementing the Directive.

The Commission has also lacked the resources necessary to deal with the scale of the problem of implementing this Directive, and thus had to prioritise and deal with the most serious problems. The Commission appears to have been most active and made most progress in areas where there

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communication of national implementing measures: in June 2007 15 of them were open, 4 of which had been referred to the ECJ.

According to the speech of Commissioner Barrot in the European Parliament on 16 June 2008 only 5 cases for non-communication were open: Belgium, the Czech Republic, Italy (because of the Security package), Luxembourg (failure to transpose the Directive), the UK (because of the coverage of Gibraltar).

<sup>494</sup> Denmark, Malta, the Netherlands, Slovenia and Sweden.

have been significant numbers of complaints, linked to public debate and interventions by the European Parliament and individual MEPs:

- The situation of the Roma and the Security package ('Pacchetto sicurezza') in Italy has led to several interventions by the Commission as well as delegations of the European Parliament visiting Rome and endless negotiations.
- Complaints from non-active British residents in France supported by associations <sup>(495)</sup> and MEPs that they were being denied sickness cover, led the French government to reconsider amending legislation to restrict access to universal sickness cover ('CMU'). The complaints led the Government to soften the impact of the new measure, linked to the implementation of the Directive, so that it will not apply to those already resident, but after a transitional period to those newly arrived or coming to France in the future until they have acquired permanent residence.

There are two other areas where problems were already apparent before the transposition of the Directive and where the Commission should have been more active. The Commission itself recognises that these are priorities in heading 4 of its report:

- Due to the late transposition of the Directive in a majority of Member States, European citizens and the authorities have been unclear as to whether a residence card was still required. Interpretations differed across different services, so that whilst residence cards were in practice required in some countries to access a broad spectrum of services and entitlements, they were also difficult to obtain. The 'registration certificate' is supposed to replace the residence card, but is considered a 'weak' document providing insufficient data. As a result, Union citizens are witnessing a proliferation of additional ID and residence cards. Here, preventive action by the Commission would have been desirable, because this is a weakness of the Directive.
- In this comparative study and in the Commission's own report, there are numerous violations of the principle of family reunion, which has always been recognised as fundamental to the exercise of Union citizens' free movement rights, and in particular to recognise the status of third country national family members. In those cases, the Commission should have been more pro-active before the *Metock* ruling of 25 July 2008, which as the Commission's report itself points out has led to controversy not only in Ireland, but also in Denmark and to calls among Member States for revision of the Directive.

The problem though is that the well-publicised cases are only the *tip of the iceberg*; there are other problems with implementation in the Member States concerned, but the same ones can occur in more subtle, less overt form elsewhere <sup>(496)</sup>. Nor is it easy to set priorities, i.e. apparently minor problems over the status of residence permits, time limits, definition of sufficient resources etc. have less dramatic impact than expulsion orders, but affect large numbers of people. Where the Commission has acted, it has tended to do so in response to external pressures and to concentrate on one major problem or Member State at a time. Given

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<sup>495</sup> Association of British citizens create for this purpose and ECAS which formed the complaint to the Commission.

<sup>496</sup> It would be naïve to consider the problem of right of residence for the Roma as European citizens being limited to Italy.

the scale of the problems with the implementation of the Directive, the Commission needed both the political will and the resources to pursue at the same time and far earlier a variety of problems across significant numbers of Member States – at the same time. The description of the problems in the Commission’s own report demonstrates this – in nearly all instances incorrect transposition concerns significant groups rather than single Member States.

The authors of this comparative study have regretfully concluded that the Commission has not done enough to secure full and timely compliance. It is ultimately for the Commission to explain its position (as the Commission may have done more than meets the eye), but a number of points can be made here.

First, the Commission did not properly ‘prepare’ the Member States for transposition. It could have followed the approach taken in the Services Directive, where it engaged in extensive assistance and communication efforts in order to ‘address problems at an early stage’<sup>(497)</sup> and where no effort seems to have been spared to engage all the stakeholders to secure the success of the Directive. Also with respect to administrative practices – that always prove very resistant to a new legislation and at the same time crucial for effective transposition – technical support, detailed guidelines and training should have been provided. The Commission seems to have hardly engaged with governments and other stakeholders in relation to the Citizenship Directive. Only two meetings with Member States experts were held, shortly after the adoption of the Directive with Member States at that time it was also ‘quite early to review implementation and make an assessment’<sup>(498)</sup>. Concerning the guidelines, unlike the ‘Handbook on implementation of the Services Directive’<sup>(499)</sup> the ‘Guide on how to get the best out of the Directive 2004/38/EC’<sup>(500)</sup> is an information effort directed at citizens rather than detailed handbook for practitioners.

Apart from different tools available to different DG’s of the European Commission, one may wonder whether the Commission’s extensive assistance in case of the Services Directive is linked to its commercial implications and for that reason the assistance is somewhat scarce for the Citizenship Directive.

It is only now, that the Commission foresees in its steps to be taken the issuing of guidelines in the first half of 2009 to Member States<sup>(501)</sup>, but even at this late stage, the intention is not to cover all issues that proved problematic in the transposition and application of the Directive. It was only in September 2008 that the Commission created a group of experts for Member States. The question of assistance is the question of resources yet an imbalance between citizenship and Services Directives - two equally broad pieces of legislation is striking. It is regrettable that the

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<sup>497</sup> Handbook on implementation of the Services Directive, European Commission, DG MARKT, 2007.

<sup>498</sup> Commission Staff Working Document, Annex to the Communication de la Commission au Conseil et au Parlement Européen {COM (2006) 333 final} – 2005 Implementation scoreboard, Brussels, p. 10, Brussels, 28.6.2006, SEC (2006) 813 The document explicitly refers to ‘Compliance /application’ (p. 10): ‘it is too early to review implementation of Directive 2004/38, as transposition at national level is not due before 30 April 2006’.

<sup>499</sup> ‘Handbook on implementation of the Services Directive’, European Commission, DG MARKT, 2007.

<sup>500</sup> ‘Guide on how to get the best out of Directive 2004/38/EC: Right of Union Citizens and their family members to move and reside freely within the Union’, Directorate - General Justice, Freedom and Security European Commission. Available online at:

<<[http://ec.europa.eu/commission\\_barroso/barrot/archive/guide\\_2004\\_38\\_ec\\_en.pdf](http://ec.europa.eu/commission_barroso/barrot/archive/guide_2004_38_ec_en.pdf)>>.

<sup>501</sup> Report from the Commission to the European Parliament and the Council on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2008) 840/3, p.10.

same effort expended for the Services Directive has not been expended for a Directive so central to the life of Union citizens.

Secondly, the preparation phase for the Citizenship Directive being virtually non-existent, it comes as no surprise that the errors and delays in transposition are numerous with consequent infringement procedures. Although the Commission has taken a number of enforcement actions under Article 226 ECT, they are used only for the 'biggest-calibre' infringements. With regard to 'smaller calibre' problems, the Commission first employs a gentler approach and the formal infringement procedure is in fact the very last resort (to be used only after many letters have been exchanged unsuccessfully). In general, the Commission prefers a diplomatic approach to solve the problems, if possible, first through bilateral contacts and dialogue because of the long duration of the infringement procedures – on average they take about 26 months. However, the Commission should be more transparent and provide at least an account of its informal and formal interventions.

Thirdly, the Commission has failed properly to handle the large number of complaints from Union citizens in relation to transposition of the Directive. Commission officials claim to be overstretched in dealing with such a high number of complaints. No policy feedback report is made on them or on the cases that come through the Citizens' Signpost Service or SOLVIT. The failure to properly deal with complaints reflects badly on the Commission especially when it has invited these complaints. The management of the complaints also reflects the scarce human and financial resources at the disposal of the Commission.

Fourthly, the Commission could provide more information about its role in enforcement. Whilst it is understandable that the detail of negotiations with Member States if published could jeopardise the Commission's powers to investigate and start infringement procedures, the recent report could have provided more information. The Commission has considerable freedom to decide as to whether or not it will act on complaints. The 'quid pro quo' of such discretionary power should be more accountability to complainants and the general public. It is known against which 5 Member States infringement procedures have been launched but it remains obscure what results have been achieved through the more diplomatic informal approach toward other Member States.

In this context, it is unfortunate that the Commission delayed producing its own report due on 30 April 2008 under Article 39 of the Directive. The delay has apparently been caused by the problems in Italy (identified in detail in the current report) and delays in the implementation of the Directive in Luxembourg. Indeed, it would have been preferable to have published on time and exposed the problems in transposition, rather than have the report delayed.

All of these factors have doubtless been exacerbated by the lack of human and financial resources and the coincidence with the EU enlargements in 2004 and 2007. Whereas nothing could be done about the dates, more resources would be indeed helpful in order to ensure implementation of such a large piece of legislation both within the Commission and in the national governments.

The European Parliament could make the following recommendations to the Commission:

### **A comprehensive approach to enforcement**

On the basis of its own report and the finding that not one Article of the Directive has been transposed effectively by all Member States, a comprehensive approach is necessary to bring implementation in line with the Directive's objectives. The Commission is right in heading 4 to single out the 'core rights' of Union citizens related to entry and residence of third country national family members and the residence requirements. However, these are by no means the only issues highlighted by this comparative study and the Commission's own report. Similarly, the guidelines to be issued by the Commission should also be comprehensive and not just focus on 'problematic areas' such as expulsions and abuse. Such an approach requires human and financial resources. Furthermore, the Commission should be asked to accompany a strategy for better enforcement of the Directive with a timetable.

### **A right combination of persuasion and infringement procedures against Member States**

It is a welcome step forward that the Commission is now engaging with Member States and assisting them with the implementation of the Directive both through meetings and by issuing guidelines. But is this likely to be enough where Member States have already adopted and put in place laws and practices which are contrary to the Directive? In line with its own report, the Commission should combine persuasion of Member States with infringement procedures covering all aspects of the Directive and all Member States named under the specific headings.

### **An approach to Member States to regain the spirit of a Citizenship Directive, easy to understand and apply to facilitative free movement**

As already noted, the application of this Directive suffers from a paradox. At the outset of this study, it was designed as an initiative to clarify free movement rights and bring together in a single text existing directives aimed at particular groups in society. This meant though, especially bearing in mind the case law of the ECJ, that the new Directive covered a wide scope. Whilst a number of Member States have implemented the Directive in a way which reflects its original intentions, the majority have not, often amending several existing laws. The Commission should now set out to convince all Member States, in turn, to consolidate their implementing legislation in a single and easily understandable text.

### **An awareness campaign for European citizens**

Among the steps to be taken, the Commission rightly identifies 'awareness campaigns to inform citizens of their rights under the Directive' as required under Article 34 of the Directive. In this comparative study, the quality of information services available, largely through the Internet, has been shown to vary, in particular in the extent that different language versions are available. Similar variations exist in the quality of administrative services to citizens 'on the move'. Although this Directive was singled out as a priority for the Commission's communication policy in 2008, there is no real sign that apart from the guide for citizens, any extra measures have been taken. Here, the main responsibility lies with the Member States, but none have launched 'awareness campaigns'. For the Czech Presidency of the Council with its slogan 'A Europe without barriers' this should be a priority issue.

Finally, the Commission should provide more information from the study on which its communication is based and a more detailed account of its informal requests and formal

procedures in relation to member states. The follow-up measures should be supported by a timetable and action plan.



## **CHAPTER VII**

### **CONCLUSIONS**

The aim of this study was to provide a detailed and objective comparative analysis of the national transposing acts and of the current state of application at administrative level of the Directive 2004/38/EC. Throughout this research, we bore in mind the importance of this new piece of legislation. The issues at stake – free movement rights and European citizenship are the cornerstone of the European project. The transposition and application of the Directive is therefore scrutinized against the ambition of unhindered movement of Union citizens and their family members as enshrined in the Treaty and developed by case law and secondary legislation over the past 50 years.

The Directive was thus adopted to perform two main objectives which are closely related. Firstly, it was drafted to consolidate and strengthen European legislation in relation to free movement of persons and to offer Union citizens a single legal reference as opposed to a dispersed and chaotic cluster of legislative measures. Secondly, the Directive was adopted to clarify and streamline the free movement rights of Union citizens in the Member States. The need for legislative action was clearly marked in the recommendations of the High-Level Panel chaired by Simone Veil, regular reports on application of sector-specific Directives<sup>502</sup> and citizens' questions and complaints coming through SOLVIT and Citizens' Signpost Service. The Directive proposal was praised by all the stakeholders yet it was also a difficult political compromise. The free movement right is intimately intertwined with migration (especially taking into account third country national family members) that remains the mark of national sovereignty, a soft spot for the populists and a problem area for many Member States. Furthermore, the Directive was transposed during possibly the 'worst' possible period – in parallel to the enlargements of 2004 and 2007. It is very important to keep in mind that the implementation of the Citizenship Directive coincides with the largest enlargement wave the Union has experienced and as a result, the Directive has had to co-exist with transitional arrangements. The latter clearly hampers free movement rights and, above all, adds to the confusion.

Ironically enough, it seems that public authorities in the Member States, which are usually fervent advocates for the simplification of Community legislation, have chosen to transpose this particular piece of legislation incompletely and often incorrectly. Sometimes they used the Directive as an excuse for introducing tighter controls and more restrictions. Rare are the States that adopted a 'copy and paste' approach and the majority preferred to produce their own version of the original text. To some extent such an approach is inevitable with a Directive that, unlike a regulation, leaves a considerable room for manoeuvre for the Member States.

The most visible breaches of the Directive, namely the security package sponsored by the Italian government and the residence requirements for third country national married to Union citizens in Ireland (revoked by the *Metock* case) are just the tip of the iceberg in terms of the non-conformities implemented in national law. These non-conformities are presented in Chapter IV. Should they remain in place, the new Directive will not fulfil its objective of streamlining the free movement rights and as for the exercise of simplification and consolidation; it will remain the 'emperor's new clothes'.

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<sup>502</sup> The sector-specific Directives regulated free movement rights of workers and self-employed, service providers and receivers, students etc.

The comparative table in Chapter II already shows many problems in simple transposition of the Act. 15 out of 27 Member States were late or extremely late to meet the deadline of 30 April 2006 for the transposition. In many countries a highly complex array of several transposing measures and amendments to previous laws shows that there is a need for the consolidation of legislation in countries where transposition results from the adoption or modification of several laws. There is a need to ensure coherence between the texts in order that Union citizens are able to easily identify the competent authority and the relevant requirements they need to comply with.

The list of national provisions that can interfere with provisions of the Directive is also worrying. This does not discredit the Member States that transposed the Directive on time, enacted or maintained measures wider in scope than the Directive, and/or provide for even more favourable treatment foreseen for Union citizens or their family members.

### **Entry and residence rights**

We start the analysis of the transposition and application with the right of entry and of residence, which could be considered as the foundation of the Directive. It is the section of the Directive which is most closely linked to the EC Treaty and it is arguably the most crucial part of the Directive in the everyday life of Union citizens. It is interesting to note that the study has identified a number of inconsistencies throughout the Member States. The inconsistencies identified range from oppressive questioning by border guards to difficulties in securing permanent residence rights. The study identified the widespread breaches committed in relation to the three month period prior to registration. Another cause of concern is the disproportionate penal sanctions imposed on Union citizens who fail to respect national implementing laws. Lastly, the current status of the various residence cards that proliferate in the absence of previous residence card replaced by the certificate is highly confusing to Union citizens. On this last issue, the Commission should take an initiative.

### **Sufficient resources**

The information provided in Chapter IV section 2 of this study shows that the threshold requirement of sufficient resources has been implemented in different manners by the Member States. This was allowed for in the Directive which leaves a margin of interpretation to the Member States. Some Member States have failed to give an indication of what constitutes sufficient resources according to the Directive. Such uncertainty and omissions will clearly obstruct the free movement of Union citizens. Guidelines are required.

### **Equal treatment**

Likewise, with regard to the equal treatment principle, many Member States failed to ensure the implementation of Article 24 of the Directive in a clear manner by including an express provision in the main transposing measure or by adding an equal treatment clause to the sector-specific laws. We believe that even if a Member State has recourse to the application of Article 24(2) allowing temporary restrictions on access to certain social benefits, the transposition will be clearly limiting its application to those beneficiaries and to those periods that are covered by this Article in order to avoid any restrictive or vague interpretation of the limitations.

### **Third country national family members**

The treatment of third country national family members remain, by far, the most problematic area as this is the boundary of free movement rights and the immigration. Transposing measures were meant to clearly and unequivocally ensure that there is different treatment between the rules applicable to third country nationals and those third country nationals who are family members of the Union citizen. Member States tend to check the family relation in a meticulous and therefore time-consuming manner. Similarly, some issue visas that are no different to those given to other third country nationals.

### **Other issues**

It can be noted that there have been many national provisions introduced by the transposing instruments that clearly do not conform to the Directive or are against the very spirit for the Directive and clearly hamper daily life of many Union citizens. Two areas are worth highlighting here:

- The extent to which Member States recognise partners as family members varies considerably and is not just a simple reflection of whether or not registered partnerships are recognised in their national law.
- There are also those provisions which will touch upon a very limited number of people, e.g. some over restrictive expulsion procedures and limited right of appeal against them, but which are crucial for safeguarding the very principles of European citizenship. It transpires that Member States should align their notion of public policy, public security and public health to what is established by the Directive and to the interpretations that flows from the jurisprudence of the ECJ.

### **Information requirement**

In order to comply with Article 34 of the Directive, Member States are called to disseminate information about the Directive very widely. So far the actions have been mainly limited to putting the relevant information on-line which is insufficient. Delayed and uncertain transposition has hampered information efforts considerably. In an ideal world targeted information campaigns should be organised to enable a larger number of persons to be aware of their free movement rights. Information leaflets, brochures and forms should be translated into at least one foreign language and preferably in the languages used by the most significant number of migrants in a particular Member State. It cannot be said that any Member State has really launched an awareness campaign as required by the Directive.

The last chapter of this study was devoted to the role of the Commission in relation to the correct implementation of the Directive in Member States. The general conclusion is that the Commission has not behaved pro-actively and the main actions performed in the role of the 'guardian of the Treaty' related to late transposition or non-communication. This chapter makes a number of proposals to strengthen the Commission's role, as its own report of 10 December 2008 on application of the Directive also recognises.

We submit this report to the European Parliament on the eve of the elections when citizens will be called to vote. If and how they will vote depends to an extent on whether they consider themselves European citizens enjoying the rights conferred on them by the Treaty and the Directive.

## **ANNEXES**

- Annex 1**      **List of national websites where the texts of relevant national legislation can be found**
- Annex 2**      **Tables of Correspondences received from national authorities or drafted by the national experts**
- Annex 3**      **National websites providing the information to citizens as referred to in Article 34 of the Directive**
- Annex 4**      **Names and location of all administrative offices, departments and authorities, whose practices have been analysed**
- Annex 5**      **Bibliography**

**ANNEX 1: List of national websites where the texts of relevant national legislation can be found**

Country	National websites with legislation:
<b>Austria</b>	‘Bundesgesetz über die Niederlassung und den Aufenthalt in Österreich.’ This special law is part of a law package. It is named “Fremdenrechtspaket 2005”: << <a href="http://www.parlament.gv.at/PG/DE/XXII/I/I_00952/fname_040775.pdf">http://www.parlament.gv.at/PG/DE/XXII/I/I_00952/fname_040775.pdf</a> >>.
<b>Belgium</b>	<p><i>Official Journal</i> Archive – Foreigners Act: <a href="http://staatsbladclip.zita.be/staatsblad/wetten/2007/06/01/wet-2007000541.html">http://staatsbladclip.zita.be/staatsblad/wetten/2007/06/01/wet-2007000541.html</a></p> <p>Main Transposing Law: &lt;&lt;<a href="http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2007/05/10/104556.pdf">http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2007/05/10/104556.pdf</a>&gt;&gt;.</p> <p>Decree concerning the definition of the registered partnership: &lt;&lt;<a href="http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2008/05/13/109358.pdf">http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2008/05/13/109358.pdf</a>&gt;&gt;.</p> <p>Second Decree concerning administrative formalities: &lt;&lt;<a href="http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2008/05/13/109359.pdf">http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2008/05/13/109359.pdf</a>&gt;&gt;.</p> <p>Consolidated versions (unofficial) of the Act of 1980 and of the Royal Decree of 1980, the Office des Étrangers: &lt;&lt;<a href="http://www.dofi.fgov.be/fr/1024/frame.htm">http://www.dofi.fgov.be/fr/1024/frame.htm</a>&gt;&gt;.</p> <p>Royal Decree adopted on 24 December 2008 on the extension of transitional measures until 1 January 2012: &lt;&lt;<a href="http://www.ejustice.just.fgov.be/doc/rech_f.htm">http://www.ejustice.just.fgov.be/doc/rech_f.htm</a>&gt;&gt;.</p>
<b>Bulgaria</b>	<p>Law for Entering, Residing and Leaving the Republic of Bulgaria of European Union Citizens and Members of their Families: &lt;&lt;<a href="http://www.ambsofia.um.dk/NR/ronlyres/848007D5-E457-49D7-877A-6EEF5A234D85/0/LAWFORENTERINGBG.doc">www.ambsofia.um.dk/NR/ronlyres/848007D5-E457-49D7-877A-6EEF5A234D85/0/LAWFORENTERINGBG.doc</a>&gt;&gt;.</p> <p>Please, also see a summary of the Directive prepared by a Bulgarian law firm, available at: &lt;&lt;<a href="http://delchev-lawfirm.com/uploads/Legal%20Alert%20-%20Entry%20and%20Stay%20of%20EU%20citizens%20and%20Their%20Family%20Members%20in%20Bulgaria%20Act-en.pdf">http://delchev-lawfirm.com/uploads/Legal%20Alert%20-%20Entry%20and%20Stay%20of%20EU%20citizens%20and%20Their%20Family%20Members%20in%20Bulgaria%20Act-en.pdf</a>&gt;&gt;.</p>
<b>Cyprus</b>	Cyprus Legal Portal – documents available upon registration: << <a href="http://www.leginet.eu">www.leginet.eu</a> >>.
<b>Czech Republic</b>	Act No 161/2006 Coll. which amends the Residence of Aliens Act No.326/1999: << <a href="http://www.msmt.cz/uploads/soubory/zakony/zakon161_2006.pdf">http://www.msmt.cz/uploads/soubory/zakony/zakon161_2006.pdf</a> >>.
<b>Denmark</b>	<p>Consolidation Act No. 945 of 1 September 2006: &lt;&lt;<a href="http://www.nyidanmark.dk/resources.ashx/Resources/Lovstof/Love/UK/aliens_act_945_eng.pdf">http://www.nyidanmark.dk/resources.ashx/Resources/Lovstof/Love/UK/aliens_act_945_eng.pdf</a>&gt;&gt;.</p> <p>&lt;&lt;<a href="https://www.retsinformation.dk/Forms/R0710.aspx?id=115636">https://www.retsinformation.dk/Forms/R0710.aspx?id=115636</a>&gt;&gt;.</p>

Country	National websites with legislation:
<b>Estonia</b>	<p>Citizen of the European Union Act (CEUA):            &lt;&lt;<a href="https://www.riigiteataja.ee/ert/act.jsp?id=1034665">https://www.riigiteataja.ee/ert/act.jsp?id=1034665</a>&gt;&gt;.</p> <p>Obligation to Leave and Prohibition on Entry Act:            &lt;&lt;<a href="https://www.riigiteataja.ee/ert/act.jsp?id=76376">https://www.riigiteataja.ee/ert/act.jsp?id=76376</a>&gt;&gt;.</p> <p>State Borders Act:            &lt;&lt;<a href="https://www.riigiteataja.ee/ert/act.jsp?id=31960&amp;replstring=33">https://www.riigiteataja.ee/ert/act.jsp?id=31960&amp;replstring=33</a> &gt;&gt;.</p> <p>Identity Documents Act:            &lt;&lt;<a href="https://www.riigiteataja.ee/ert/act.jsp?id=77253">https://www.riigiteataja.ee/ert/act.jsp?id=77253</a>&gt;&gt;.</p> <p>Rules for Prolonging, Issuing and Application of the Residence for the EU Resident and his Family Member (Government Regulation of the Republic of Estonia No. 166):            &lt;&lt;<a href="https://www.riigiteataja.ee/ert/act.jsp?id=1052818">https://www.riigiteataja.ee/ert/act.jsp?id=1052818</a>&gt;&gt;.</p> <p>State Fees Act:            &lt;&lt; <a href="https://www.riigiteataja.ee/ert/act.jsp?id=12765603">https://www.riigiteataja.ee/ert/act.jsp?id=12765603</a> &gt;&gt;.</p> <p>Administrative Procedure Act:            &lt;&lt;<a href="https://www.riigiteataja.ee/ert/act.jsp?id=27131">https://www.riigiteataja.ee/ert/act.jsp?id=27131</a>&gt;&gt;.</p> <p>Insurance Amount and Sufficient Resources to issue visa's Act:            &lt;&lt;<a href="https://www.riigiteataja.ee/ert/act.jsp?id=745237">https://www.riigiteataja.ee/ert/act.jsp?id=745237</a>&gt;&gt;.</p> <p>Government Regulation No 126 from 2003 on the Legal Income:            &lt;&lt;<a href="http://www.mig.ee/index.php/mg/est/elamisload/legaalse_sissetuleku_toend">http://www.mig.ee/index.php/mg/est/elamisload/legaalse_sissetuleku_toend</a>&gt;&gt;.</p>
<b>Finland</b>	<p>The Finnish Foreigners Act (English translation):            &lt;&lt;<a href="http://www.finlex.fi/fi/laki/kaannokset/2004/en20040301.pdf">http://www.finlex.fi/fi/laki/kaannokset/2004/en20040301.pdf</a>&gt;&gt;.</p>
<b>France</b>	<p>The <i>Code de l'entrée et du séjour des étrangers et du droit d'asile</i> entered in force on 1 March 2005 – see latest consolidated version of 5 January 2009 at:            &lt;&lt;<a href="http://www.legifrance.gouv.fr/affichCode.do;jsessionid=D55F1C486DC4142913F6593764776E0D.tpdjo04v_3?cidTexte=LEGITEXT000006070158&amp;dateTexte=20090128">http://www.legifrance.gouv.fr/affichCode.do;jsessionid=D55F1C486DC4142913F6593764776E0D.tpdjo04v_3?cidTexte=LEGITEXT000006070158&amp;dateTexte=20090128</a>&gt;&gt;.</p> <p>Law Nr 2006-911 of 24 July 2006 on Immigration and Integration            &lt;&lt;<a href="http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=6B901AE4A834D57228CEFCB64734A0E.tpdjo15v_3?cidTexte=JORFTEXT000000266495&amp;dateTexte=20060726">http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=6B901AE4A834D57228CEFCB64734A0E.tpdjo15v_3?cidTexte=JORFTEXT000000266495&amp;dateTexte=20060726</a>&gt;&gt;.</p> <p>Consolidate version of the Code on entry and stay of aliens and on the right of asylum ('Provisions on entry and stay of EU citizens and their family members which amends the Code de l'entrée et du séjour des étrangers et du droit d'asile):            &lt;&lt;<a href="http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070158&amp;dateTexte=20080701">http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070158&amp;dateTexte=20080701</a>&gt;&gt;.</p>

Country	National websites with legislation:
<b>France</b>	<p>Decree nr 2007-371 of 21 March 2007 on the right to stay in France of EU citizens, of nationals of other EEA member states and Switzerland and of their family members</p> <p>&lt;&lt;<a href="http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=39BC7EE9D426A01A200745DAF6A6BF89.tpdjo10v_1?cidTexte=JORFTEXT000000822461&amp;idArticle=&amp;dateTexte=20070323">http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=39BC7EE9D426A01A200745DAF6A6BF89.tpdjo10v_1?cidTexte=JORFTEXT000000822461&amp;idArticle=&amp;dateTexte=20070323</a>&gt;&gt;.</p>
<b>Germany</b>	<p>Law on the General Freedom of Movement of European Union Citizens:</p> <p>&lt;&lt;<a href="http://bundesrecht.juris.de/freiz_gg_eu_2004/index.html">http://bundesrecht.juris.de/freiz_gg_eu_2004/index.html</a>&gt;&gt;.</p>
<b>Greece</b>	<p>Presidential Decree 106/2007 on free movement and residence in Greece of EU citizens and the members of their families:</p> <p>&lt;&lt;<a href="http://www.ypes.gr/allodapoi/content/gr/proedrika/PD_OD_2004-38.doc">http://www.ypes.gr/allodapoi/content/gr/proedrika/PD_OD_2004-38.doc</a>&gt;&gt;.</p> <p>Administrative rules - Circular No 10:</p> <p>&lt;&lt;<a href="http://www.ypes.gr/allodapoi/content/GR/egiklio/egiklios10_08.doc">http://www.ypes.gr/allodapoi/content/GR/egiklio/egiklios10_08.doc</a>&gt;&gt;.</p>
<b>Hungary</b>	<p>Act I of 2007 on the Admission and Residence of Persons with the Right of Free Movement and Residence:</p> <p>&lt;&lt;<a href="http://www.nhh.hu/dokumentum.php?cid=11691">www.nhh.hu/dokumentum.php?cid=11691</a>&gt;&gt;.</p> <p>Website of the <i>Official Hungarian Gazette</i>:</p> <p>&lt;&lt;<a href="http://www.kozlonykiado.hu">http://www.kozlonykiado.hu</a>&gt;&gt;.</p>
<b>Ireland</b>	<p>Statutory Instrument 656 of 2006 – European Communities (Free Movement of Persons) (No. 2) Regulations 2006 of 18 December 2006 as amended:</p> <p>&lt;&lt;<a href="http://www.inis.gov.ie/en/INIS/SI656of2006.pdf/Files/SI656of2006.pdf">http://www.inis.gov.ie/en/INIS/SI656of2006.pdf/Files/SI656of2006.pdf</a>&gt;&gt;.</p> <p>Statutory Instrument 656 of 2006 is amended by Statutory Instrument 310 of 2008 European Communities (Free Movement of Persons) (Amendment) Regulations 2008 dated 31<sup>st</sup> July 2008:</p> <p>&lt;&lt;<a href="http://www.inis.gov.ie/en/INIS/SI%20310%20of%202008.pdf/Files/SI%20310%20of%202008.pdf">http://www.inis.gov.ie/en/INIS/SI%20310%20of%202008.pdf/Files/SI%20310%20of%202008.pdf</a>&gt;&gt;.</p>
<b>Italy</b>	<p>Legislative Decree of 6th February 2007, n. 30: “Transposition of Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States</p> <p>&lt;&lt;<a href="http://www.parlamento.it/leggi/deleghe/07030dl.htm">http://www.parlamento.it/leggi/deleghe/07030dl.htm</a>&gt;&gt;.</p> <p>Amendments and integrations to the Legislative Decree of 6th February 2007, n. 30, transposing Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States</p> <p>&lt;&lt;<a href="http://www.parlamento.it/leggi/deleghe/08032dl.htm">http://www.parlamento.it/leggi/deleghe/08032dl.htm</a>&gt;&gt;.</p>

Country	National websites with legislation:
Latvia	<p>Regulation of the Cabinet of Ministers No 586 from 18.07.2006: Procedures for Entry and Residence in Latvia for Citizens of the EU, European Economic Area States and the Swiss Confederation, and their family members:            &lt;&lt;<a href="http://www.am.gov.lv/lv/KonsularaInformacija/4517/ES">http://www.am.gov.lv/lv/KonsularaInformacija/4517/ES</a>&gt;&gt;.</p> <p>Regulation of the Cabinet of Ministers No 310 from 01.07.2001: Procedure for Crossing the State Border of the Republic of Latvia by Persons:            &lt;&lt;<a href="http://www.likumi.lv/doc.php?id=26169&amp;from=off">http://www.likumi.lv/doc.php?id=26169&amp;from=off</a>&gt;&gt;.</p> <p>Law on Personal Identification Documents:            &lt;&lt;<a href="http://www.ic.iem.gov.lv/files/likumi/personu_apliecinosu_dokumentu_likums.pdf">http://www.ic.iem.gov.lv/files/likumi/personu_apliecinosu_dokumentu_likums.pdf</a>&gt;&gt;.</p>
Lithuania	<p>All the legal information and legislation can be found on the official website of the Lithuanian Parliament (<i>Seimas</i>): &lt;&lt;<a href="http://www.lrs.lt">www.lrs.lt</a>&gt;&gt;. Some of the legislation is translated into English, however only the minor part.            Address: Gedimino pr. 53, LT-01109 Vilnius, Lithuania</p> <p>Republic of Lithuania Law on Consular Fees No I-509 (last amendment No. X-1300, 18 October 2007):            &lt;&lt;<a href="http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=308182&amp;p_query=&amp;p_tr2">http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=308182&amp;p_query=&amp;p_tr2</a>&gt;&gt;.</p> <p>Republic of Lithuania Law on Declaration of the Place of Residence No. VIII-840 (last amendment No. X-961):            &lt;&lt;<a href="http://www.vrm.lt/fileadmin/Padaliniu_failai/Gyventoju_registro_tarnyba/Ist_gyv_viet_deklaravimo_01.pdf">http://www.vrm.lt/fileadmin/Padaliniu_failai/Gyventoju_registro_tarnyba/Ist_gyv_viet_deklaravimo_01.pdf</a>&gt;&gt;.</p> <p>Republic of Lithuania Law on the Legal Status of Foreigners No. IX-2206 (last amendment No. X-1142):            &lt;&lt;<a href="http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=232378">http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=232378</a>&gt;&gt;.</p>
Luxembourg	<p>Grand-Duke regulation of 4 July 2007 amending the Grand Duke regulation of 12 May 1972 on foreign workers employment on the territory of Luxembourg (“First Regulation”)            &lt;&lt;<a href="http://www.legilux.public.lu/leg/a/archives/2007/0112/a112.pdf">http://www.legilux.public.lu/leg/a/archives/2007/0112/a112.pdf</a>&gt;&gt;.</p> <p>Grand Duke regulation of 21 December 2007 amending the Grand Duke regulation of 28 March 1972 on rights of entry and residence for certain foreigners concerned by international conventions.            &lt;&lt;<a href="http://www.legilux.public.lu/leg/a/archives/2007/0245/a245.pdf">http://www.legilux.public.lu/leg/a/archives/2007/0245/a245.pdf</a>&gt;&gt;.</p>
Malta	<p>Free Movement of European Union Nationals and their Family Members Order 2007 (Legal Notice 191 of 2007)            &lt;&lt;<a href="http://www.doi.gov.mt/EN/legalnotices/2007/07/LN%20191.pdf">http://www.doi.gov.mt/EN/legalnotices/2007/07/LN%20191.pdf</a>&gt;&gt;.</p> <p>Immigration Act (Chapter 217 Laws of Malta)            &lt;&lt;<a href="http://docs.justice.gov.mt/lom/legislation/english/leg/vol_5/chapt217.pdf">http://docs.justice.gov.mt/lom/legislation/english/leg/vol_5/chapt217.pdf</a>&gt;&gt;.</p>



<b>Country</b>	<b>National websites with legislation:</b>
<b>Malta</b>	<p>Passports (Amendment) Regulations” (Legal Notice 59/01)            &lt;&lt;<a href="http://docs.justice.gov.mt/lom/legislation/english/subleg/61/02.pdf">http://docs.justice.gov.mt/lom/legislation/english/subleg/61/02.pdf</a>&gt;&gt;.</p> <p>Identity Card Act (Chapter 258)            &lt;&lt;<a href="http://docs.justice.gov.mt/lom/legislation/english/leg/vol_6/chapt258.pdf">http://docs.justice.gov.mt/lom/legislation/english/leg/vol_6/chapt258.pdf</a>&gt;&gt;.</p>
<b>The Netherlands</b>	<p>Information Portal on national legislation:            &lt;&lt;<a href="http://rijksbegroting.minfin.nl/2006/begrotingsverantwoording/jaarverslag.kst105359_8.html">http://rijksbegroting.minfin.nl/2006/begrotingsverantwoording/jaarverslag.kst105359_8.html</a>&gt;&gt;.</p> <p>Decree of 23 November 2000 implementing the Foreigners Act 2000 together with the Foreigners Decree 2006:            &lt;&lt;<a href="http://www.ulb.ac.be/assoc/odysseus/Vb2000.doc">http://www.ulb.ac.be/assoc/odysseus/Vb2000.doc</a>&gt;&gt;.</p>
<b>Poland</b>	<p>Act of 14 July 2006 on the terms and conditions of entry into and the stay in the territory of the Republic of Poland of the citizens of the EU Member States and members of their families:            &lt;&lt;<a href="http://www.abc.com.pl/serwis/du/2006/1043.htm">http://www.abc.com.pl/serwis/du/2006/1043.htm</a>&gt;&gt;.</p> <p>English version of the Act of 14 July 2006 available at:            &lt;&lt;<a href="http://www.udsc.gov.pl/LAW_265.html">http://www.udsc.gov.pl/LAW_265.html</a>&gt;&gt;.</p> <p>Ministerial Ordinances:            &lt;&lt;<a href="http://www.udsc.gov.pl/">http://www.udsc.gov.pl/</a>&gt;&gt;.</p>
<b>Portugal</b>	<p>Law 37/2006 of 9 August 2006 which regulates the exercise of free movement and residence of the European Union citizens and their family members within the national territory and transposes into national law Directive 2004/38/EC of the European Parliament and Council of 29 April 2004.</p> <p>Law available at:            &lt;&lt;<a href="http://www.acime.gov.pt/docs/Legislacao/LPortuguesa/Entrada/Lei_37_2006_Cidadaos_UE.pdf">http://www.acime.gov.pt/docs/Legislacao/LPortuguesa/Entrada/Lei_37_2006_Cidadaos_UE.pdf</a>&gt;&gt;.</p> <p>Government Decree 1637/2006:            &lt;&lt;<a href="http://www.sef.pt/portal/v10/PT/aspx/legislacao/legislacao_detalhe.aspx?id_linha=4591#0">http://www.sef.pt/portal/v10/PT/aspx/legislacao/legislacao_detalhe.aspx?id_linha=4591#0</a>&gt;&gt;.</p>
<b>Romania</b>	<p>Government Emergency Ordinance No. 102 with regard to free movement of citizens of the Member States of the European Union and the European Economic Area on the Romanian territory:            &lt;&lt;<a href="http://www.cdep.ro/pls/legis/legis_pck.http_act?ida=58085">http://www.cdep.ro/pls/legis/legis_pck.http_act?ida=58085</a>&gt;&gt;.</p> <p>Law No 260 approving, with modifications and completions, Government Emergency Ordinance No. 102/2005:            &lt;&lt;<a href="http://www.cdep.ro/pls/legis/legis_pck.http_act?ida=59593">http://www.cdep.ro/pls/legis/legis_pck.http_act?ida=59593</a>&gt;&gt;.</p>

Country	National websites with legislation:
<b>Romania</b>	<p>Government Ordinance No. 30 amending and supplementing Government Emergency Ordinance No.102/2005:            &lt;&lt;<a href="http://ori.mira.gov.ro/pagini/cetateni_ue_see/OG%2030.pdf">http://ori.mira.gov.ro/pagini/cetateni_ue_see/OG%2030.pdf</a>&gt;&gt;.</p> <p>Law No 500 approving Government Ordinance No.30/2006 that amended Government Emergency Ordinance no.102/2005:            &lt;&lt;<a href="http://www.cdep.ro/pls/legis/legis_pck.http_act?an=2006&amp;nr=500">http://www.cdep.ro/pls/legis/legis_pck.http_act?an=2006&amp;nr=500</a>&gt;&gt;.</p>
<b>Slovakia</b>	<p>Collection of the National Laws of Slovakia:            &lt;&lt;<a href="http://www.zbierka.sk/zz/predpisy/default.aspx?Text=2004%2f38%2fES">http://www.zbierka.sk/zz/predpisy/default.aspx?Text=2004%2f38%2fES</a>&gt;&gt;.</p>
<b>Slovenia</b>	<p>The national expert accessed all the stated acts via data base <a href="http://www.ius-software.si/">IUS-INFO</a>.            &lt;&lt;<a href="http://www.ius-software.si/">http://www.ius-software.si/</a>&gt;&gt;. Please note the database is not available to the general public.</p> <p>Additional database of legislation (English translation):            &lt;&lt;<a href="http://evroterm.gov.si/index.php?jezik=angl">http://evroterm.gov.si/index.php?jezik=angl</a>&gt;&gt;.</p>
<b>Spain</b>	<p>Royal Decree 240/2007, of 16 February (Spanish Official Gazette number 51 of 2007):            &lt;&lt;<a href="http://extranjeros.mtin.es/es/normativa_jurisprudencia/Nacional/RDCOMUNITARIOS.pdf">http://extranjeros.mtin.es/es/normativa_jurisprudencia/Nacional/RDCOMUNITARIOS.pdf</a>&gt;&gt;.</p> <p>Order of 16 February implementing Royal Decree 240/2007:            &lt;&lt;<a href="http://extranjeros.mtin.es/es/normativa_jurisprudencia/Nacional/Instruccion03-2007.pdf">http://extranjeros.mtin.es/es/normativa_jurisprudencia/Nacional/Instruccion03-2007.pdf</a>&gt;&gt;.</p>
<b>Sweden</b>	<p>Please consult the website of the Parliament:            &lt;&lt;<a href="http://www.riksdagen.se/webnav/index/">http://www.riksdagen.se/webnav/index/</a>&gt;&gt;.</p>
<b>The United Kingdom</b>	<p>The Immigration (European Economic Area) Regulations 2006 (UK) (Statutory Instrument 2006 No 1003)            &lt;&lt;<a href="http://www.opsi.gov.uk/si/si2006/20061003.htm">http://www.opsi.gov.uk/si/si2006/20061003.htm</a>&gt;&gt;.</p> <p>Immigration Control (Amendment) Bill 2008 (Gibraltar)            &lt;&lt;<a href="http://www.gibraltarlaws.gov.gi/bills/bills2008/2008B12.pdf">http://www.gibraltarlaws.gov.gi/bills/bills2008/2008B12.pdf</a>&gt;&gt;.</p>

**ANNEX 2: Tables of Correspondence received from national authorities or drafted by the national experts**

Country	
Austria	Yes - in a PDF file (will be difficult to copy into Word file)
Belgium	Yes - for both Flanders and Wallonia
<b>Bulgaria</b>	<b>No</b>
Cyprus	Yes
Czech Republic	Yes
<b>Denmark</b>	<b>No</b>
Estonia	Yes
Finland	Yes
France	Yes
Germany	Yes
Greece	Yes
Hungary	Yes
Ireland	Yes
Italy	Yes
<b>Latvia</b>	<b>No</b>
<b>Lithuania</b>	<b>No</b>
<b>Luxembourg</b>	<b>No – the authorities have not yet drafted the ToC after the newest law was adopted</b>
Malta	Yes
The Netherlands	Yes
Poland	Yes
Portugal	Yes
Romania	Yes
<b>Slovakia</b>	<b>No</b>
<b>Slovenia</b>	<b>No</b>
Spain	Yes
<b>Sweden</b>	<b>No</b>
UK	Yes – in a PDF file (unable to copy into this file)

We are missing several ToC as the national expert couldn't obtain them – We are waiting for the EC to send them (they are checking the procedures now)

**ANNEX 3: National websites providing the information to citizens as referred to in Article 34 of the Directive**

Country	National websites providing information for citizens
<b>Austria</b>	The Austrian Internet Portal is called “Help” and can be accessed at: << <a href="http://www.help.gv.at">www.help.gv.at</a> >>.
<b>Belgium-Flanders</b>	General Information (Flanders) Website: << <a href="http://www.vmc.be">http://www.vmc.be</a> >>.
<b>Wallonia</b>	The Foreigners’ Office Website: << <a href="http://www.dofi.fgov.be/ft/1024/frame.htm">http://www.dofi.fgov.be/ft/1024/frame.htm</a> >>.
<b>Bulgaria</b>	The stay and residence of foreign citizens is governed by the Law for the Foreigners in the Republic of Bulgaria: << <a href="http://www.mvr.bg/NR/ronlyres/8C3CCC42-3E72-4CBB-900A-E8CB6DE82CAD/0/ZVPNRBGESChTS_EN.pdf">http://www.mvr.bg/NR/ronlyres/8C3CCC42-3E72-4CBB-900A-E8CB6DE82CAD/0/ZVPNRBGESChTS_EN.pdf</a> >>.  The Ministry of Interior: Website: << <a href="http://www.mvr.bg">www.mvr.bg</a> >>.
<b>Cyprus</b>	The Ministry of Interior: << <a href="http://moi.gov.cy/">http://moi.gov.cy/</a> >>.
<b>Czech Republic</b>	General Information Portal: << <a href="http://portal.gov.cz/wps/portal/_s.155/701/_s.155/708/place?uzel=551&amp;POSTUP_ID=553">http://portal.gov.cz/wps/portal/_s.155/701/_s.155/708/place?uzel=551&amp;POSTUP_ID=553</a> >>.  Procedures how to apply for a temporary and a permanent residence permit: << <a href="http://www.domavcr.cz/rady-pro-zivot-v-ceske-republice/pobyt-v-cr/83">http://www.domavcr.cz/rady-pro-zivot-v-ceske-republice/pobyt-v-cr/83</a> >> Forms: << <a href="http://www.mvcr.cz/clanek/formulare.aspx?q=Y2hudW09NQ%3d%3d">http://www.mvcr.cz/clanek/formulare.aspx?q=Y2hudW09NQ%3d%3d</a> >>
<b>Denmark</b>	<a href="http://www.statsforvaltning.dk">Regional State Administration</a> – application for proof of registration or residence card; provides the citizen with a list of the required documents as well as information about expected processing times: << <a href="http://www.statsforvaltning.dk">www.statsforvaltning.dk</a> >>.  General Information Portal: << <a href="http://www.nyidanmark.dk/da-dk">http://www.nyidanmark.dk/da-dk</a> >>.  Explanation on administrative formalities: << <a href="http://www.nyidanmark.dk/en-us/coming_to_dk/eu_and_nordic_citizens/eu_eea_citizens.htmA">http://www.nyidanmark.dk/en-us/coming_to_dk/eu_and_nordic_citizens/eu_eea_citizens.htmA</a> >>.

<b>Country</b>	<b>National websites providing information for citizens</b>
	<p>Special transitional rules applied for <a href="#">employees from the new EU countries</a>: Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia (Cyprus and Malta were not included in this list). See website on work permits: &lt;&lt;<a href="http://www.nyidanmark.dk/en-us/coming_to_dk/work/salaried_work.htm">http://www.nyidanmark.dk/en-us/coming_to_dk/work/salaried_work.htm</a>&gt;&gt;.</p> <p><a href="#">Nordic citizens</a>, i.e. citizens of Finland, Iceland, Norway and Sweden, are free to reside and work in Denmark.</p>
<b>Estonia</b>	<p>Website of the Border Control: &lt;&lt;<a href="http://www.pv.ee">www.pv.ee</a>&gt;&gt;.</p> <p>Customer Service Centre, Citizenship and Migration Board: &lt;&lt;<a href="http://www.mig.ee">www.mig.ee</a>&gt;&gt; (concerning rules and application forms).</p> <p>Government Regulation applied to all third country nationals that want to settle in Estonia, but not to EU citizens. Regulation is available at: &lt;&lt;<a href="http://www.mig.ee/index.php/mg/est/elamisload/legaalse_sissetuleku_toend">http://www.mig.ee/index.php/mg/est/elamisload/legaalse_sissetuleku_toend</a>&gt;&gt;.</p> <p>Information on registration in the Estonian Population Registry: &lt;&lt;<a href="http://www.andmevara.ee/?id=10357">http://www.andmevara.ee/?id=10357</a>&gt;&gt;.</p> <p>Electronic Visa Application Form available at: &lt;&lt;<a href="https://eelviisataotlus.vm.ee/est/page/0/158s6suepuoqa0yggrqmiy9kq2ehw6d43bn0u849sjptaezhwgt54sflks7gw2ayf1idwiw6yf635dpbxk6fqhr00p6mh7bnykr">https://eelviisataotlus.vm.ee/est/page/0/158s6suepuoqa0yggrqmiy9kq2ehw6d43bn0u849sjptaezhwgt54sflks7gw2ayf1idwiw6yf635dpbxk6fqhr00p6mh7bnykr</a>&gt;&gt;.</p>
<b>Finland</b>	<p>Registration requirements – the procedure/forms are accessible at: &lt;&lt;<a href="http://www.poliisi.fi/poliisi/home.nsf/pages/A7ECC324C72F8FB7C2256EF4002E78D4">http://www.poliisi.fi/poliisi/home.nsf/pages/A7ECC324C72F8FB7C2256EF4002E78D4</a>&gt;&gt; and &lt;&lt;<a href="http://www.poliisi.fi/poliisi/home.nsf/pages/919055EC0A195671C2256DF9002A0352?opendocument">http://www.poliisi.fi/poliisi/home.nsf/pages/919055EC0A195671C2256DF9002A0352?opendocument</a>&gt;&gt;.</p> <p>Finnish Foreign Ministry (regarding the entry in Finland): &lt;&lt;<a href="http://formin.finland.fi/public/default.aspx?nodeid=15716&amp;contentlan=2&amp;culture=en-US">http://formin.finland.fi/public/default.aspx?nodeid=15716&amp;contentlan=2&amp;culture=en-US</a>&gt;&gt;.</p> <p>Finnish Immigration Service (regarding the rights of residence): &lt;&lt;<a href="http://www.migri.fi/netcomm/Default.asp?language=EN">http://www.migri.fi/netcomm/Default.asp?language=EN</a>&gt;&gt;.</p> <p>Finnish Immigration Service (regarding indicative guidelines on sufficient resources): &lt;&lt;<a href="http://www.migri.fi/netcomm/content.asp?path=8,2472,2612&amp;language=EN">www.migri.fi/netcomm/content.asp?path=8,2472,2612&amp;language=EN</a>&gt;&gt;.</p>
<b>France</b>	<p>General Information Portal: &lt;&lt;<a href="http://www.service-public.fr">www.service-public.fr</a>&gt;&gt;.</p>

<b>Country</b>	<b>National websites providing information for citizens</b>
<b>Germany</b>	<p>The Federal Ministry of Justice:            &lt;&lt;<a href="http://bundesrecht.juris.de">http://bundesrecht.juris.de</a>&gt;&gt;.</p> <p>Handout by the Federal Ministry of Interior:            &lt;&lt;<a href="http://www.bmi.bund.de/Internet/Content/Common/Anlagen/Themen/ZuwanderungIntegration/DatenundFakten/Vorlaeufige_Anwendunshinweise_AufenthG_FreizuegG.templateId=raw.property=publicationFile.pdf/Vorlaeufige_Anwendunshinweise_AufenthG_FreizuegG.pdf">http://www.bmi.bund.de/Internet/Content/Common/Anlagen/Themen/ZuwanderungIntegration/DatenundFakten/Vorlaeufige_Anwendunshinweise_AufenthG_FreizuegG.templateId=raw.property=publicationFile.pdf/Vorlaeufige_Anwendunshinweise_AufenthG_FreizuegG.pdf</a>&gt;&gt;.</p>
<b>Greece</b>	<p>EU and foreign citizens usually address their requests to the relevant Departments of Police stations of the place they reside and ask for the issue of certificate of residence or residence cards according to Order with reference number A.Π. 9100/1-502740/17.8.2007</p> <p>More information can be obtained from the website of the Greek Police Force at:            &lt;&lt;<a allodapoi="" content="" default.htm"="" gr="" href="http://www.astynomia.gr/index.php?option=ozo_content&amp;perform=view&amp;id=140&amp;Itemid=133&amp;lang=&gt;&gt;.&lt;/a&gt;&lt;/p&gt; &lt;p&gt;Moreover, useful information can be obtained from the Regions of the Country and the Ministry of Interior at the following website:&lt;br/&gt;           &lt;&lt;&lt;a href=" http:="" www.yypes.gr="">http://www.yypes.gr/allodapoi/content/gr/default.htm</a>&gt;&gt;.</p> <p>Additional information can also be derived from the service of KEP of the Ministry of Interior at:            &lt;&lt;<a href="http://www.kep.gov.gr/portal/page/portal/MyNewPortal/CitizenGuide/CitizenGuideC1/CitizenGuideC2?PARAM1=3&amp;lng=EL">http://www.kep.gov.gr/portal/page/portal/MyNewPortal/CitizenGuide/CitizenGuideC1/CitizenGuideC2?PARAM1=3&amp;lng=EL</a>&gt;&gt;.</p> <p>Website of the Ministry of Justice:            &lt;&lt;<a href="http://www.ministryofjustice.gr">http://www.ministryofjustice.gr</a>&gt;&gt;.</p> <p>Information on sufficient resources and the general economic status of the citizen:            &lt;&lt;<a href="http://www.synigoros.gr/allodapoi/docs/OikonomikaAnexartitaAtoma.pdf">http://www.synigoros.gr/allodapoi/docs/OikonomikaAnexartitaAtoma.pdf</a>&gt;&gt;.</p> <p>List on the interpretation of legislation applicable to immigrants (regarding sufficient resources, expulsion):            &lt;&lt;<a href="http://hosting01.vivodinet.gr/unhcr/protect/Grlaw/GreekJur/DEPORTATION%20OOF%20ALIENS%20AND%20REFUGEES.pdf">http://hosting01.vivodinet.gr/unhcr/protect/Grlaw/GreekJur/DEPORTATION%20OOF%20ALIENS%20AND%20REFUGEES.pdf</a>&gt;&gt;.</p>
<b>Hungary</b>	<p>General Information Portal:            &lt;&lt;<a href="http://www.mfa.gov.hu/kulkepviselet/US/en/en_Konzuliinfo/entry_for_long_stay.htm">http://www.mfa.gov.hu/kulkepviselet/US/en/en_Konzuliinfo/entry_for_long_stay.htm</a>&gt;&gt;.</p> <p>The Ministry of Justice and Law Enforcement:            &lt;&lt;<a href="http://www.irm.gov.hu">www.irm.gov.hu</a>&gt;&gt;.</p>
<b>Ireland</b>	<p>Website of the Department of Justice:            &lt;&lt;<a href="http://www.justice.ie">www.justice.ie</a>&gt;&gt;.</p> <p>The Irish Immigration and Naturalisation Service:            &lt;&lt;<a href="http://www.inis.gov.ie">www.inis.gov.ie</a>&gt;&gt;.</p>

<b>Country</b>	<b>National websites providing information for citizens</b>
<b>Italy</b>	<p>General Information Websites:            &lt;&lt;<a href="http://www.poliziadistato.it/pds/ps/immigrazione/cittadini_ue.html">http://www.poliziadistato.it/pds/ps/immigrazione/cittadini_ue.html</a>&gt;&gt; and            &lt;&lt;<a href="http://www.pubblica.istruzione.it/buongiorno_europa/lisbona.shtml">http://www.pubblica.istruzione.it/buongiorno_europa/lisbona.shtml</a>&gt;&gt;.</p> <p>Ministry of the Interior:            Website:&lt;&lt;<a href="http://www.interno.it/mininterno/export/sites/default/it/assets/files/15/0991_circ._n._1_prot_52_del_04.01.08.pdf">http://www.interno.it/mininterno/export/sites/default/it/assets/files/15/0991_circ._n._1_prot_52_del_04.01.08.pdf</a>&gt;&gt;.</p>
<b>Latvia</b>	<p>Ministry of the Interior:            Website: &lt;&lt;<a href="http://www.iem.gov.lv">http://www.iem.gov.lv</a>&gt;&gt;.</p> <p>Citizenship and Immigration Department:            &lt;&lt;<a href="http://www.pid.gov.lv">http://www.pid.gov.lv</a>&gt;&gt;.</p>
<b>Lithuania</b>	<p>State Border Guard Service at the Ministry of the Interior:            &lt;&lt;<a href="http://www.pasienis.lt/eng/nbspdDocuments_mandatory_for_crossing_the/215">http://www.pasienis.lt/eng/nbspdDocuments_mandatory_for_crossing_the/215</a>&gt;&gt;.</p>
<b>Luxembourg</b>	<p>Foreign Office:            &lt;&lt;<a href="http://www.mae.lu">http://www.mae.lu</a>&gt;&gt;.</p> <p>City of Luxembourg:            &lt;&lt;<a href="http://www.vdl.lu/Vivre+%C3%A0+Luxembourg-p-641222/Bierger_Center-p-637891/Changement+d_adresse-EGOTEC-vnhdqdreigieub88em4fjtil6-p-638351.html">http://www.vdl.lu/Vivre+%C3%A0+Luxembourg-p-641222/Bierger_Center-p-637891/Changement+d_adresse-EGOTEC-vnhdqdreigieub88em4fjtil6-p-638351.html</a>&gt;&gt;.</p> <p>The forms to be filled by European citizens:            &lt;&lt;<a href="http://www.mae.lu/images/biblio/biblio-195-3_enbkk_3589_9229_9754.pdf">http://www.mae.lu/images/biblio/biblio-195-3_enbkk_3589_9229_9754.pdf</a>&gt;&gt;,            and their family members: &lt;&lt;<a href="http://www.mae.lu/images/biblio/biblio-195-45_qbnhx_8928_4657_7828.pdf">http://www.mae.lu/images/biblio/biblio-195-45_qbnhx_8928_4657_7828.pdf</a>&gt;&gt;.</p> <p>In the case of the third nationals, the administrative formalities are longer than for the European citizens.            See indication on the following website:            &lt;&lt;<a href="http://www.vdl.lu/Vivre+%C3%A0+Luxembourg-p-641222/Bierger_Center-p-637891/Changement+d_adresse-EGOTEC-vnhdqdreigieub88em4fjtil6-p-638351.html">http://www.vdl.lu/Vivre+%C3%A0+Luxembourg-p-641222/Bierger_Center-p-637891/Changement+d_adresse-EGOTEC-vnhdqdreigieub88em4fjtil6-p-638351.html</a>&gt;&gt;.</p>
<b>Malta</b>	<p>Government Portal:            &lt;&lt;<a href="http://www.gov.mt">http://www.gov.mt</a>&gt;&gt;.</p> <p>Website of the Ministry of Justice and Home Affairs:            &lt;&lt;<a href="http://www.mjha.gov.mt">http://www.mjha.gov.mt</a>&gt;&gt;.</p>
<b>Netherlands</b>	<p>The Immigration and Naturalisation Services (the “IND”):            &lt;&lt;<a href="http://www.postbus51.nl/nl/home/themas/rechtspraak-en-veiligheid/soorten-recht/strafrecht/boetes/hoe-hoog-zijn-de-geldboetes-in-nederland.html">http://www.postbus51.nl/nl/home/themas/rechtspraak-en-veiligheid/soorten-recht/strafrecht/boetes/hoe-hoog-zijn-de-geldboetes-in-nederland.html</a>&gt;&gt;.</p> <p>Vreemdelingencirculaire 2000 (2006/30):            &lt;&lt;<a href="http://cmr.jur.ru.nl/CMR/VC/VC00/Vc.2000.TBV.2006.30.PDF">http://cmr.jur.ru.nl/CMR/VC/VC00/Vc.2000.TBV.2006.30.PDF</a>&gt;&gt;.</p>

Country	National websites providing information for citizens
Poland	<p>Instruction on entry and stay directed at the general public is available in English, German and French:            &lt;&lt;<a href="http://www.udsc.gov.pl/INSTRUCTION,TO,THE,NATIONALS,OF,THE,EUROPEAN,UNION,MEMBER,STATES,AND,THEIR,FAMILY,MEMBERS,274.html">http://www.udsc.gov.pl/INSTRUCTION,TO,THE,NATIONALS,OF,THE,EUROPEAN,UNION,MEMBER,STATES,AND,THEIR,FAMILY,MEMBERS,274.html</a>&gt;&gt;.</p> <p>Information on temporary and permanent residence rights (available in Polish only): &lt;&lt;<a href="http://www.uw.lodz.pl/bip.php3?str=263">http://www.uw.lodz.pl/bip.php3?str=263</a>&gt;&gt;.</p> <p>Websites of many <i>Voivodship</i> offices also have useful information. The Voivodship office is ultimately the body to which an EU citizen would apply for a certificate or permits for his/her family members. Each <i>Voivodship</i> (which is a Regional Government/Office) has its own independent website. There are 16 of them. Links for all 16 are available at:            &lt;&lt;<a href="http://www.mswia.gov.pl/portal/pl/9/3333/Administracja_rzadowa_w_terenie.html">http://www.mswia.gov.pl/portal/pl/9/3333/Administracja_rzadowa_w_terenie.html</a>&gt;&gt;.</p> <p>Information on practice regulating entry and stay is available also on the websites of most Polish Consulates located in the EU.</p>
Portugal	<p>SEF – Serviço de Estrangeiros e Fronteiras:            &lt;&lt;<a href="http://www.sef.pt/portal/v10/PT/asp/page.aspx">http://www.sef.pt/portal/v10/PT/asp/page.aspx</a>&gt;&gt;.</p> <p>Below please see the contact details of the two Town Halls where citizens can get registered and the website for all existing municipalities in Portugal:</p> <p>Câmara Municipal de Lisboa (Lisbon Town Hall):</p> <p>Edifício Central do Município            Morada: Campo Grande, 25            1749-099 Lisboa            Centro de Atendimento ao Muncípio (Townfolk department)            Tel: 808 20 32 32            Fax: 808 20 31 31            Email: <a href="mailto:municipio@cm-lisboa.pt">municipio@cm-lisboa.pt</a>            Website: &lt;&lt;<a href="http://www.cm-lisboa.pt/">http://www.cm-lisboa.pt/</a>&gt;&gt;.</p> <p>Câmara Municipal do Porto (Porto Town Hall):</p> <p>Praça General Humberto Delgado            4049-001 Porto            Tel. 222 097 000            Fax 222 097 100            Email: <a href="mailto:geral@cm-porto.pt">geral@cm-porto.pt</a>            Website: &lt;&lt;<a href="http://www.cm-porto.pt/">http://www.cm-porto.pt/</a>&gt;&gt;.</p>



<b>Country</b>	<b>National websites providing information for citizens</b>
	<p><b>Gabinete do Município (Townfolk department)</b></p> <p>Praça General Humberto Delgado, 266 4000-286 Porto Tel: 222 090 400 Fax: 22 209 70 01 E-mail: <a href="mailto:gabinete.municipe@cm-porto.pt">gabinete.municipe@cm-porto.pt</a></p> <p>Directory of all municipalities in the country available at:  &lt;&lt;<a href="http://www.ciberjunta.com/municipios.html">http://www.ciberjunta.com/municipios.html</a>&gt;&gt;.</p>
<b>Romania</b>	<p>Romanian Office for Immigrations (Oficiul Român pentru Imigrări): Website : &lt;&lt;<a href="http://ori.mira.gov.ro/">http://ori.mira.gov.ro/</a>&gt;&gt;.</p>
<b>Slovakia</b>	<p>The Ministry of Interior:</p> <p>Website: &lt;&lt;<a href="http://www.minv.sk/">http://www.minv.sk/</a>&gt;&gt;.</p> <p>It is possible to send a request to the Department of the Border and Foreigner Police at: &lt;&lt;<a href="http://www.minv.sk/?uhcp-mv-sr">http://www.minv.sk/?uhcp-mv-sr</a>&gt;&gt;. The relevant section for forwarding a request is ‘Posli spravu’.</p> <p>At the above website there is also a part ‘Informacie pre cudzincov’ (Information for Foreigners) at &lt;&lt;<a href="http://www.minv.sk/?vizova-info-typy-viz-1">http://www.minv.sk/?vizova-info-typy-viz-1</a>&gt;&gt;. It contains information on ‘Visa’, ‘Residence’, ‘Schengen area’, etc. Most of that information is in Slovak language, only some parts are in another language.</p> <p>‘Ustredny portal verejnej spravy’ (Central Portal of the Public Administration) : &lt;&lt;<a href="http://www.portal.gov.sk">www.portal.gov.sk</a>&gt;&gt;.</p> <p>The specific link for foreigners can be found at: &lt;&lt;<a href="http://www.portal.gov.sk/Portal/sk/Default.aspx?CatID=17&amp;etype=1&amp;eventid=488">http://www.portal.gov.sk/Portal/sk/Default.aspx?CatID=17&amp;etype=1&amp;eventid=488</a>&gt;&gt; (The title of this part is ‘Nationality and Residence of Foreigners’).</p>
<b>Slovenia</b>	<p>The State Portal of Slovenia (extensive information on entry and residence rights for foreigners in English), available at: &lt;&lt;<a href="http://e-uprava.gov.si/e-uprava/en/zivljenjskeSituacijeStran.euprava?dogodek.id=12492">http://e-uprava.gov.si/e-uprava/en/zivljenjskeSituacijeStran.euprava?dogodek.id=12492</a>&gt;&gt;.</p> <p>An online Help Service (available through the State Portal website). E-mail: <a href="mailto:e-uprava@gov.si">e-uprava@gov.si</a></p>
<b>Spain</b>	<p>A Leaflet of the Ministry of Social Affairs contains information on EU citizens residence rights: &lt;&lt;<a href="http://extranjeros.mtas.es/es/InformacionInteres/FolletosInformativos/archivos/VERSION_ESPANOL.pdf">http://extranjeros.mtas.es/es/InformacionInteres/FolletosInformativos/archivos/VERSION_ESPANOL.pdf</a>&gt;&gt;.</p>

Country	National websites providing information for citizens
Sweden	<p>The Immigration Service:            &lt;&lt;<a href="http://www.migrationsverket.se/">http://www.migrationsverket.se/</a>&gt;&gt;.</p> <p>Website of the Administration (regarding the issuing of ID cards):            &lt;&lt;<a href="http://www.polisen.se/inter/nodeid=10230&amp;pageversion=1.html">http://www.polisen.se/inter/nodeid=10230&amp;pageversion=1.html</a>&gt;&gt;.</p>
UK	<p>The Home Office:            &lt;&lt;<a href="http://www.ind.homeoffice.gov.uk/eucitizens/">http://www.ind.homeoffice.gov.uk/eucitizens/</a>&gt;&gt;.            &lt;&lt;<a href="http://www.ukvisas.gov.uk/en/howtoapply/infos/infl8eeaswissnationals">http://www.ukvisas.gov.uk/en/howtoapply/infos/infl8eeaswissnationals</a>&gt;&gt;.</p> <p>Websites relating to EC residence rights</p> <p><i>EU Citizens Residency Applications:</i>            &lt;&lt;<a href="http://www.ukba.homeoffice.gov.uk/eucitizens/applyingundereuropeanlaw/">http://www.ukba.homeoffice.gov.uk/eucitizens/applyingundereuropeanlaw/</a>&gt;&gt;.</p> <p><i>A10 Worker Registration Scheme Applications:</i>            &lt;&lt;<a href="http://www.ukba.homeoffice.gov.uk/workingintheuk/eea/wrs/">http://www.ukba.homeoffice.gov.uk/workingintheuk/eea/wrs/</a>&gt;&gt;.</p> <p><i>Bulgarian and Romanian Worker Authorisation Scheme:</i>            &lt;&lt;<a href="http://www.ukba.homeoffice.gov.uk/eucitizens/bulgarianandromaniannationals/">http://www.ukba.homeoffice.gov.uk/eucitizens/bulgarianandromaniannationals/</a>&gt;&gt;.</p>

**ANNEX 4: Names and location of all administrative offices, departments and authorities, whose practices have been analysed**

<b>Country</b>	
<b>Austria</b>	<p>There are no centralized authorities that are responsible for foreigners' matters. For the purposes of this study, some contacts were made with the Federal Ministries of Interior and Economics (which are responsible for European topics).</p> <p>Contact details:</p> <p>Bundesministerium für Inneres (Austrian Federal Ministry of the Interior)  Herrengasse 7  Postfach 100  A-1014 Wien  Tel.: +43 1 531 26-0  Fax: +43 1 53126 108613  E-Mail: <a href="mailto:post@bmi.gv.at">post@bmi.gv.at</a></p> <p>Bundesministerium für Wirtschaft und Arbeit (Austrian Federal Ministry of Economics and Labour )  Stubenring 1  A-1011 Wien  Tel.: +43 1 71100-0  E-Mail: <a href="mailto:service@bmwa.gv.at">service@bmwa.gv.at</a></p> <p>Local Foreigner Authorities (<i>Landeshauptmanns</i> Office or the <i>Magistrat</i>) – responsible for citizens' residence registration.</p>
<b>Belgium</b>	<p>Federal level:  l'Office des étrangers, which is a dedicated "Agency" of the Ministry of Interior  World Trade Center, tour II  Chaussée d'Anvers 59B  1000 BRUXELLES  Tél: 02/793 80 00  Website: &lt;&lt;<a href="http://www.dofi.fgov.be/fr/1024/frame.htm">http://www.dofi.fgov.be/fr/1024/frame.htm</a>&gt;&gt;.</p> <p>Flanders:  Mr. Geert Tiri  FOD Binnenlandse Zaken,  Dienst Vreemdelingenzaken, Studiebureau, Antwerpsesteenweg 59B,  1000 Brussels,  Tel.: 02 7939224,  Fax: 02 2746608,  <a href="mailto:geert.tiri@dofi.fgov.be">geert.tiri@dofi.fgov.be</a>,  Website: &lt;&lt;<a href="http://dofi.fgov.be">http://dofi.fgov.be</a>&gt;&gt;.</p>

<p><b>Bulgaria</b></p>	<p>The National Service ‘Police’ is the authority responsible for issuing residence cards/certificates. The police structure dealing with the stay and residence of EU nationals in Bulgaria is the Migration Directorate.</p> <p>All information and all forms are available only in person in the office of the Police (<sup>1</sup>). EU citizens can arrange their documents in Sofia and in the regional police units in the towns where they live. The system, therefore, does not leave choice to EU citizens but to hire a lawyer or use a friend in Bulgaria who can help them dealing with the administrative requirements and translate for them as well.</p> <p>Contact Information:  <b>National Police Service – Migration Directorate.</b>  48 ‘Kn. Maria Luiza’ (бул. ‘Кн. Мария Луиза’ No48)  Sofia, 1020 Blvd  E-mail: <a href="mailto:migration@mvr.bg">migration@mvr.bg</a>;  Tel. + 359 (2) 9822752.  It works from 8:45 am till 5.00 pm, Monday – Friday.</p> <p><b>Ministry of Interior</b>  Sofia 1000  29, Shesti Septemvri Str.  Tel. +35929825000  Website: &lt;&lt;<a href="http://www.mvr.bg/contactus.htm">http://www.mvr.bg/contactus.htm</a>&gt;&gt;. Please note, under the section covering EU citizens rights related to Directive 2004/38/EC, the Ministry actually describes the rights of third country nationals in Bulgaria.</p>
<p><b>Cyprus</b></p>	<p>Not provided</p>
<p><b>Czech Republic</b></p>	<p>The Ministry of Internal Affairs  (Ministerstvo vnitra České republiky).  Contacts: Mr Richard Kingham and Mrs. Marta Novotna.  Their email addresses are: <a href="mailto:Kingham@mvcz.cz">Kingham@mvcz.cz</a> and <a href="mailto:Novotna@mvcz.cz">Novotna@mvcz.cz</a>  The address of the Ministry:</p> <p>Nad Štolou 3,  170 34 Praha 7,  Tel: +420 974 811 111,  Fax: +420 974 833 582,  Website: &lt;&lt;<a href="http://www.mvcz.cz/">http://www.mvcz.cz/</a>&gt;&gt;.</p>
<p><b>Denmark</b></p>	<p>The <a href="#">Regional State Administration</a>.  Website: &lt;&lt;<a href="http://www.statsforvaltning.dk">www.statsforvaltning.dk</a>&gt;&gt;.</p> <p>The Ministry of Refugee, Immigration and Integration Affairs  Tel: +45 33 92 33 80  E-mail: <a href="mailto:inm@inm.dk">inm@inm.dk</a></p> <p>The Danish Immigration Service  Tel: +45 35 36 66 00</p>

	<p>E-mail: <a href="mailto:us@us.dk">us@us.dk</a>          Udlændingestyrelsen. (<i>Authority for Foreigners</i>). Hall (Commune) (“<i>Statsamt</i>”). Statsamt (Commune Authority).</p>
<b>Estonia</b>	<p>General Information on Rules and Application Forms          Website: &lt;&lt;<a href="http://www.mig.ee">www.mig.ee</a>&gt;&gt;.</p> <p>Information can also be obtained from the telephone: 666 2722, (Mon- Fri 8.00-18.00).          Fax: 666 2721 and E-mail: <a href="mailto:kma.info@mig.ee">kma.info@mig.ee</a> .</p> <p>The Office for EU citizens:          Address:          Vilmsi 59, 10147 Tallinn, open from Mon-Fri 9.00-18.00;          Closed every 4<sup>th</sup> Thursday.          An Application by post has to be sent to:          Taotlus Kodakondsus- ja Migratsiooniamet Sõle 61a 10313          Tallinn</p>
<b>Finland</b>	<p>Immigration Service and Police websites, but the information on their websites might be too scattered for forming a complete picture.</p> <p><b>Finnish Border Guard:</b>          Border Guard Headquarters          P.O. Box 3 (Korkeavuorenkatu 21) FIN-00131 Helsinki          Phone: 071 872 1000          Fax: 071 872 1009          &lt;&lt;<a href="http://www.raja.fi/">http://www.raja.fi/</a>&gt;&gt;          E-mail: <a href="mailto:rajavartiolaitos@raja.fi">rajavartiolaitos@raja.fi</a>.</p> <p><b>Finnish Immigration Service</b>          Lautatarhankatu 10          00581 HELSINKI          Phone: 071 873 0431          Fax: 071 873 0730          &lt;&lt;<a href="http://www.migri.fi/netcomm/default.asp">http://www.migri.fi/netcomm/default.asp</a>&gt;&gt;.          E-mail: <a href="mailto:maahanmuuttovirasto@migri.fi">maahanmuuttovirasto@migri.fi</a>.</p> <p><b>Ministry of the Interior</b>          PO Box 26          FI-00023 Government          Kirkkokatu 12, Helsinki          Phone: 09 16001          Fax: 09 160 44635          &lt;&lt;<a href="http://www.intermin.fi/intermin/home.nsf/pages/505501AF64DDE8EB00256A860055E28E?opendocument">http://www.intermin.fi/intermin/home.nsf/pages/505501AF64DDE8EB00256A860055E28E?opendocument</a>&gt;&gt;.          E-mail: <a href="mailto:givenname.surname@intermin.fi">givenname.surname@intermin.fi</a></p> <p>Police Administration:          Website: &lt;&lt;<a href="http://www.poliisi.fi/poliisi/home.nsf/pages/index_eng">http://www.poliisi.fi/poliisi/home.nsf/pages/index_eng</a>&gt;&gt;.          Supreme Police Command</p>

	<p>The Ministry of the Interior's Police Department  PO Box 26  FI-00023 Government  Phone (Switchboard): 09 16001; Fax: 09 160 44635.</p>
<b>France</b>	<p>Ministère de l'immigration, de l'intégration, de l'identité nationale et du développement solidaire  Direction de l'immigration  Sous-direction du séjour et du travail  (Sub-director : Mr Blaison, tel ; +33 1 40 56 52 42)  Bureau du droit communautaire et des régimes particuliers (Ms Nadia Marot, tél. +33 1 40 56 40 05)</p> <p>Secrétariat général aux affaires européennes  * Secteur Libre circulation des personnes (Ms Karen Rochet, tél. +33 1 44 87 10 87) – on content  * Secteur Parlement européen (Ms Juliette Clavière, tél. +33 1 44 87 10 50) – for support to enquiries  <i>Prefectures and Mairies</i></p>
<b>Germany</b>	<p>There are no centralized authorities that are responsible for foreigners' matters. For the purposes of this study, some contacts were made with the federal ministries of interior and economics (which are responsible for European topics).</p> <p>Contact details of the German Ministries:</p> <p>Bundesministerium des Inneren  (German Federal Ministry of the Interior)  Dienstszitz Berlin  Alt-Moabit 101 D  D-10559 Berlin  Tel: +49 (0) 30 18 681 0  Fax: +49 (0) 30 18 681 2926  E-mail: poststelle@bmi.bund.de</p> <p>Bundesministerium für Wirtschaft und Technologie (German Federal Ministry Federal Ministry of Economics and Technology)  Dienstszitz Berlin  Scharnhorststr. 34-37  D-10115 Berlin  Tel: +49 (0) 30 18 615 0  Fax: +49 (0) 30 18 615 7010</p>
<b>Greece</b>	<p>The Immigration Departments of Police stations:  &lt;&lt;<a href="http://www.astynomia.gr/index.php?option=ozo_content&amp;perform=view&amp;id=140&amp;Itemid=133&amp;lang">http://www.astynomia.gr/index.php?option=ozo_content&amp;perform=view&amp;id=140&amp;Itemid=133&amp;lang</a>&gt;&gt;. They are the competent national authorities for EU nationals and their EU family members.</p> <p>Third country citizens, family members of EU citizens are addressing their requests regarding residence rights to the authorities of the Municipality of their place of residence.</p>

	<p>General information can be obtained by the Ministry of Interior at:  &lt;&lt;<a href="http://www.ypes.gr/allodapoi/content/gr/default.htm">http://www.ypes.gr/allodapoi/content/gr/default.htm</a>&gt;&gt;.</p> <p>Useful information and guidance also provided by:  The Ministry of Interior, Directorate General of Immigration Policy and Social Inclusion, Directorate of Immigration Policy  Department of legislative co-ordination and control  Address: 2 Evangelistrias str,  10563, Athens  Greece  Tel.: 210 3741219  E-mail: <a href="mailto:metanastefsi@ypes.gr">metanastefsi@ypes.gr</a></p> <p>The Service of KEP (Centres for the Citizens) of the Ministry of Interiors provides also detailed information at:  &lt;&lt;<a href="http://www.kep.gov.gr/portal/page/portal/MyNewPortal/CitizenGuide/CitizenGuideC1/CitizenGuideC2?PARAM1=3&amp;lng=EL">http://www.kep.gov.gr/portal/page/portal/MyNewPortal/CitizenGuide/CitizenGuideC1/CitizenGuideC2?PARAM1=3&amp;lng=EL</a>&gt;&gt;.</p>
<p><b>Hungary</b></p>	<p>Bevándorlási és Állampolgársági Hivatal  (Immigration and Nationality Office)  Address: 1117 Budapest, Budafoki út 60.  Postal Address: 1903 Bp., Pf 314  Tel.: 36-1-463 91 00  Fax: 36-1-463 91 69  Idegenrendészeti Igazgatóság  (Aliens Policing Directorate)  Tel.: 36-1-463 91 37  E-mail: <a href="mailto:idegenrend@bah.b-m.hu">idegenrend@bah.b-m.hu</a>; <a href="mailto:bah.titkarsag@bah.b-m.hu">bah.titkarsag@bah.b-m.hu</a>  Website: &lt;&lt;<a href="http://www.bmbah.hu">www.bmbah.hu</a>&gt;&gt;.</p> <p>Two Customer Offices were contacted:  I. sz. Ügyfélszolgálati Iroda (Customer office No 1 in Budapest)  Address: 1117 Budapest, Budafoki út 60. - Sztregova köz  Tel.: 36-1-463 91 00</p> <p>Észak-alföldi Regionális Igazgatóság  (Regional Directorate of Northern Lowland )  Address: 4033 Debrecen, Sámsoni út 149.  Tel.: 36-52-503-840</p> <p>Igazságügyi és Rendészeti Minisztérium  (Ministry of Justice and Law Enforcement)  Európai Unió Jogi Főosztály  (Legal Department for EU Affairs)  Migrációs Igazgatási Osztály  (Migration Directorate Department)  Address: 1055 Budapest, Kossuth Lajos tér 4.  Tel.: 36-1-441-3003  Website: &lt;&lt;<a href="http://www.irm.gov.hu">www.irm.gov.hu</a>&gt;&gt;.</p>

	<p>Külügyminisztérium (Ministry of Foreign Affairs) Konzuli Szolgálat: (Consular Services) Address: 1027 Budapest, Nagy Imre tér 4. Tel.: 36-1-458-1000 Fax: 36-1-201-7932 E-mail: <a href="mailto:iroda.konz@kum.hu">iroda.konz@kum.hu</a> Website: &lt;&lt;<a href="http://www.mfa.gov.hu">www.mfa.gov.hu</a>&gt;&gt;.</p>
<b>Ireland</b>	<p>Irish Naturalisation &amp; Immigration Service</p> <p>Address: 13/14 Burgh Quay, Dublin 2, Lo-call number: 1890 551 500. Website: &lt;&lt;<a href="http://www.inis.gov.ie/">http://www.inis.gov.ie/</a>&gt;&gt;.</p> <p>The contact details for INIS provided on the website are limited to a lo-call number which is of no use if the applicant wishes to obtain information from outside Ireland as the number will not dial. Telephone call hours are limited to between 10am and 12.30pm, Monday to Friday although the website refers only to Mondays, Wednesdays and Fridays. The caller may wait for a very long time before obtaining a limited response from a helpline operator. There is no provision for e-mail contact with INIS.</p>
<b>Italy</b>	<p>Presidenza del Consiglio dei Ministri Dipartimento per le Politiche Comunitarie Indirizzo: piazza Nicosia 20, 00186 Roma Sito: &lt;&lt;<a href="http://www.politichecomunitarie.it">http://www.politichecomunitarie.it</a>&gt;&gt;. Tel.: 06.67791 Fax : 06.6779.5342/5326 e-mail: <a href="mailto:info@politichecomunitarie.it">info@politichecomunitarie.it</a></p>
<b>Latvia</b>	<p>The Office of Citizenship and Migration Affairs</p> <p>Address: Riga, Čiekurkalna 1st line, 1, Building 3 Latvia Tel.: 67588675 E-mail: <a href="mailto:pmlp@pmlp.gov.lv">pmlp@pmlp.gov.lv</a> Website: &lt;&lt;<a href="http://www.pmlp.lv">www.pmlp.lv</a>&gt;&gt;.</p>
<b>Lithuania</b>	<p>Ministry of Social Security and Labour A.Vivulskio str. 11, 03610 Vilnius, Tel.: (+370 5) 2664 201,</p>



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<b>Luxembourg</b>	<p>Foreign Office, City of Luxembourg.  Ministère des Affaires étrangères et de l'immigration  Direction de l'immigration  12-16 avenue Monterey  L-2163 Luxembourg</p> <p>Contact : Madame Malou FABER, préposée du service des étrangers.  Fax : 22.76.61  Website: &lt;&lt;<a href="http://www.mae.lu">www.mae.lu</a>&gt;&gt;.</p>
<b>Malta</b>	<p>Not provided</p>
<b>Netherlands</b>	<p>The Immigration and Naturalisation Services (the "IND"):  Immigratie- en Naturalisatiedienst, Afdeling Voorlichting,  Postbus 3211, 2  280 GE Rijswijk,  Tel. +31 20 8893045,  Website: &lt;&lt;<a href="http://www.ind.nl/nl/index.asp">http://www.ind.nl/nl/index.asp</a>&gt;&gt;.</p>

<b>Poland</b>	<p>Urząd do Spraw Cudzoziemców (Office for Foreigners – Ministry Department)          ul. Koszykowa 16          00-564 Warszawa          tel. (22) 601 74 02          fax (22) 601 74 13</p> <p>Website: &lt;&lt;<a href="http://www.udsc.gov.pl/Strona_Glowna,1.html">http://www.udsc.gov.pl/Strona_Glowna,1.html</a>&gt;&gt;.</p>
<b>Portugal</b>	<p>SEF – Serviço de Estrangeiros e Fronteiras - Foreigners and Borders Service:          Av. António Augusto de Aguiar, 20          1069-119 LISBOA          Tel: 213 585 500          Fax: 213 144 053          Horário: 8h00-18h00          E-Mail: <a href="mailto:dir.lisboa@sef.pt">dir.lisboa@sef.pt</a></p> <p>Ministério da Administração Interna (Ministry of Internal Affairs)          Minister: Rui Pereira</p> <p>Chief of Cabinet: Arménio Ferreira</p> <p>Praça do Comércio - 1149-015 Lisboa          Tel.: 213 233 000          Fax: 213 232 292          Email: <a href="mailto:gabinete.ministro@mai.gov.pt">gabinete.ministro@mai.gov.pt</a>          Website: &lt;&lt;<a href="http://www.mai.gov.pt">www.mai.gov.pt</a>&gt;&gt;.</p> <p>ACIDI – Alto Comissariado para a Imigração e Diálogo Intercultural          - High Commissariat for Immigration and Intercultural Dialogue (the Equality body in Portugal):</p> <p>Gabinete do Alto Comissário para a Imigração e Diálogo Intercultural          (Cabinet of the High Commissioner)          Rua Álvaro Coutinho, 14          1150-025 LISBOA</p> <p>Telefone: 21 810 61 00 Fax: 21 810 61 17          E-mail: <a href="mailto:acidi@acidi.gov.pt">acidi@acidi.gov.pt</a>          Website: &lt;&lt;<a href="http://www.acidi.gov.pt/">http://www.acidi.gov.pt/</a>&gt;&gt;.</p> <p>Centros Nacionais de Apoio ao Imigrante (Centres for the Support of Immigrants in Portugal)</p> <p>CNAI - Lisboa          R. Álvaro Coutinho, 14          1150-025 LISBOA          Telefone: 21 810 61 00          Fax: 21 810 61 17</p>

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<p><b>Romania</b></p>	<p>Ministry of Interior and Administration Reform, Romanian Office for Immigrations (Oficiul Român pentru Imigrări)  &lt;&lt;<a href="http://aps.mai.gov.ro/">http://aps.mai.gov.ro/</a>&gt;&gt;.  Address: Bucharest,  str. Lt.col. Marinescu Constantin, nr. 15 A, sector 5  Tel: 021.410.00.42  Fax: 021.410.75.10  E-mail: <a href="mailto:ori@mira.gov.ro">ori@mira.gov.ro</a>  Website: &lt;&lt;<a href="http://ori.mira.gov.ro/">http://ori.mira.gov.ro/</a>&gt;&gt;.</p> <p>Ministry of Interior and Administration Reform, National Directorate of Passports (Directia Generala de Pasapoarte) :</p> <p>Address Bucharest, str. Nicolae Iorga, nr.29, sector 1  Tel: 021-2125683, 021-2125674  Fax: 021-3121500  Public relations – Monday, Wednesday, Thursday, and Friday: 8:30-16:30; Tuesday: 8:30-18:30  Email: <a href="mailto:dgp.relatiipublice@mira.gov.ro">dgp.relatiipublice@mira.gov.ro</a>  Website: &lt;&lt;<a href="http://www.pasapoarte.mira.gov.ro/">www.pasapoarte.mira.gov.ro</a>&gt;&gt;.</p> <p>Ministry of Interior and Administration Reform, Romanian Border Police (Inspectoratul General al Politiei de Frontiera din Romania)  Address:  Bucharest,  str. Razoare nr. 2, sector 6,  Tel: (4021)318.25.91; (4021) 316.25.98; 9590  Fax: (4021) 316.35.11;  E-mail: <a href="mailto:igfp@mai.gov.ro">igfp@mai.gov.ro</a> ; <a href="mailto:prf@mai.gov.ro">prf@mai.gov.ro</a>  Website: &lt;&lt;<a href="http://www.politiadefrontiera.ro/">www.politiadefrontiera.ro/</a>&gt;&gt;.</p> <p>Ministry of Foreign Affairs, National Visa Centre (Ministerul Afacerilor Externe, Centrul National de Vize)  Address: Aleea Alexandru nr. 31, Sector 1, 011822 Bucharest  Phone: (40 21) 319.21.08; 319.21.25  Fax: (40 21) 319.68.62  E-mail: <a href="mailto:mae@mae.ro">mae@mae.ro</a>  Website: &lt;&lt;<a href="http://www.mae.ro/index.php">http://www.mae.ro/index.php</a>&gt;&gt;.</p> <p>Public Relations Office  Phone: (40 21) 319.21.08 sau 319.21.25 / Interior 1352</p>

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<b>Slovakia</b>	<p>Ministry of the Interior:</p> <p>Department of the border and foreigner police- Division of foreigner police.</p> <p>‘MINISTERSTVO VNÚTRA SLOVENSKEJ REPUBLIKY úrad hraničnej a cudzineckej polície odbor cudzineckej polície’</p> <p>Address: Vajnorská 25, 812 72 Bratislava Contacts: Tel: +421-9610-50701 Fax: +421-9610-59074 Website: &lt;&lt;<a href="http://www.minv.sk/?uhcp-mv-sr">http://www.minv.sk/?uhcp-mv-sr</a>&gt;&gt;.</p>
<b>Slovenia</b>	<p>Ministrstvo za notranje zadeve RS Ministry of the Interior of Slovenia Direktorat za upravne notranje zadeve Internal Administrative Affairs Directorate Tel./phone: +386 1 428 42 45 Fax: + 386 1 428 42 53 E-pošta/e-mail: <a href="mailto:pina.stepan@gov.si">pina.stepan@gov.si</a> Website: &lt;&lt;<a href="http://www.mnz.gov.si/en/">http://www.mnz.gov.si/en/</a>&gt;&gt;.</p> <p>State Portal website &lt;&lt;<a href="http://e-uprava.gov.si">http://e-uprava.gov.si</a> /&gt;&gt; (Section on ‘Acquiring a residence permit for foreign nationals’): Telephone for citizens and legal subjects (each workday from 7 a.m. to 8 p.m.): +386-1-478-85-90.</p>
<b>Spain</b>	<p>Ministerio de Trabajo e Inmigración (Ministry of labour and Immigration)</p> <p>Secretaria de Estado de Inmigración y Emigración (Secretary of State for Immigration)</p>

	<p>C/ José Abascal, 39 28003-MADRID Tel: 91 363 70 00 Website: &lt;&lt;<a href="http://extranjeros.mtin.es/es/index.html">http://extranjeros.mtin.es/es/index.html</a>&gt;&gt;.</p> <p>Additional website listing the contact details of the local Offices for Foreigners in Spain: &lt;&lt;<a href="http://extranjeros.mtin.es/es/InformacionInteres/OficinasExtranjeros/index.html">http://extranjeros.mtin.es/es/InformacionInteres/OficinasExtranjeros/index.html</a>&gt;&gt;.</p>
<b>Sweden</b>	<p>Migrationsverket (The Migration Board): Website: &lt;&lt;<a href="http://www.migrationsverket.se/">http://www.migrationsverket.se/</a>&gt;&gt;.</p> <p>The Migration Board consists of eight nation-wide divisions. If one is looking for the address and the phone number to a local office, or its opening hours, one chooses one of the following pages:</p> <ul style="list-style-type: none"> <li>• <a href="#">Asylum examination</a></li> <li>• <a href="#">Asylum reception and detention</a></li> <li>• <a href="#">Visas, work permits, residence permits</a></li> <li>• <a href="#">Citizenship</a></li> <li>• <a href="#">Administrative Procedure</a></li> <li>• <a href="#">European and International Cooperation</a></li> <li>• <a href="#">Management</a></li> <li>• <a href="#">All units</a></li> </ul> <p>National Expert has used: Stockholm Migrationsverk and Lund Migrationsverk (Contact in <i>Legal Service</i>: Anders Weström).</p> <p>The Swedish Cashier Service: Website: &lt;&lt;<a href="http://www.svenskassaservice.se/other_languages/other_languages.html">http://www.svenskassaservice.se/other_languages/other_languages.html</a>&gt;&gt;.</p>
<b>UK</b>	<p>UK Agency responsible for Enforcement of Immigration Rules:</p> <p>UK Border Agency Home Office Lunar House 40 Wellesley Road Croydon Surrey, CR9 2BY Website: &lt;&lt;<a href="http://www.ukba.homeoffice.gov.uk">www.ukba.homeoffice.gov.uk</a>&gt;&gt;.</p> <p>Enquiries (EEA applications) Tel: +44 (0)845 010 5200 E-mail: <a href="mailto:UKBAeuropeanenquiries@ukba.gsi.gov.uk">UKBAeuropeanenquiries@ukba.gsi.gov.uk</a></p>

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### **The Directive**

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