



Ad-Hoc Query on rights of nationals vs rights of EU-citizens (Directive 2004/38)

Requested by BE EMN NCP on 10th March 2009

Compilation (wider dissemination) produced on 9 June 2009

Responses from AT, BE, BG, DE, ES, FI, FR, GR, HU, LT, LU, NL, PT, RO, SE, SI, SK, UK (18 in Total)

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1. Background Information











According to Directive 2004/38/EC, citizens of the Union and their family members have the right to move and reside freely within the territory of the Member States. In Belgium, in the context of family reunification, a EU-citizen and a Belgian citizen can have a family reunification on almost the same conditions. The only difference is that a Belgian will need for his (grand) parents sufficient means of subsistence and a health insurance covering the risk of his family member, whereas a EU citizen will not need this. Thus, the conditions are slightly more favourable for EU-citizens and their family members.

The Research section of the Belgian Immigration Department would like to have a better view on the situation in the other Member States. They have the following query:

'Do family members of a national of your Member State have the same/less/more rights than family members mentioned in Directive 2004/38/EC'? In case of differences in the rights, please provide details.'

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2. Responses¹

		Wider Dissemination? ²	'Do family members of a national of your Member State have the same/less/more rights than family members mentioned in Directive 2004/38/EC'? In case of differences in the rights, please provide details.'
	Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Belgium	Yes	They have almost the same rights. E.g. a more favourable condition to EU-citizens regarding health insurance and means of subsistence in the context of family reunification.
	Bulgaria	Yes	In Bulgaria the family members of a Bulgarian citizen and those of an EU-citizen can have reunification on different conditions, regulated by two separate acts – respectively – Law for the Foreigners in the Republic of Bulgaria and Law for Entering, Residing and Leaving the Republic of Bulgaria of European Union Citizens and Members of Their Families. The conditions for granting residence permit to the family members of EU citizens are more favorable and the procedure is easier in comparison to the family members of BG citizens.
	Cyprus		
	Czech Republic		
	Denmark		
	Estonia		
	Finland	Yes	The scope of a family member is narrower for Finnish citizens than for EU family members. A family member is basically, according to Section 50 in the Aliens Act, a spouse and minor (under 18) unmarried child. A permit for family members of a Finnish citizen does not require secure means of support according to subsection 4. Otherwise the rights are the same.
	France	Yes	In a context of <u>family reunification</u> , the French who want to bring their spouse or husband (or minor children), did not justify means of subsistence. All they need to justify is their legal marriage and a community of life. There are no other conditions. However, citizens of a State outside the EU must attest minimum means of subsistence to bring <u>another family member</u> .
	Germany	Yes	The concept of "family member" in Article 2 of Directive 2004/38/EC is broader than that of the provisions regarding residence for family reasons in the German Residence Act, which principally only includes spouses or cohabiting partners and minor, unmarried children, whereas subsequent immigration of other family members is only possible in exceptional circumstances to avoid undue hardship.





¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."








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			Principally, for subsequent immigration of spouses the German Residence Act stipulates that both spouses are at least 18 years of age and that the spouse who wants to immigrate is able to communicate in the German language on a basic level at least. Here, in the case of subsequent immigration of spouses to citizens of the EU making use of their right to move and reside freely within the territory of the EU, the judgement of European Court in the case "Metock" (C-127/08) must be taken into consideration, which confirms the precedence of Directive 2004/38. However, the preconditions of the German Residence Act remain valid with regard to the subsequent immigration of spouses from third countries to German nationals, if the case in question does not fall within the scope of community legislation because it does not contain a cross-border element.
	Greece	Yes	In order to avoid possible discriminations we accept that third country nationals who are family members of Greek citizens enjoy the same rights with the family members of EU citizens.
	Hungary	Yes	<p>The Hungarian legislation (Act I of 2007 on the Entry and Stay of Persons Enjoying the Right of Free Movement) prescribes the similar provisions when it comes to the right of entry and residence of less than three months of the family members of an EEA citizen and those of a Hungarian citizen in the territory of Hungary. Concerning the right of residence for a period longer than three months, the provisions are quite similar but a slight difference can be observed in the details which can be found below.</p> <p>According to the Hungarian legislation “family member” shall mean:</p> <ul style="list-style-type: none"> a) the spouse of an EEA national; b) the spouse of a Hungarian citizen; c) the direct descendants of an EEA national and those of the spouse of an EEA national who are under the age of 21 or are dependants; d) the direct descendants of a Hungarian citizen and those of the spouse of a Hungarian citizen who are under the age of 21 or are dependants; e) - unless otherwise prescribed in this Act - the dependent direct relatives in the ascending line of an EEA national and those of the spouse of an EEA national; and f) the direct relatives in the ascending line of a Hungarian citizen and those of the spouse of a Hungarian citizen; g) the person who has parental custody of a minor child who is a Hungarian citizen; h) any person whose entry and residence has been authorized by the competent authority on grounds of family reunification; <p>All EEA nationals shall have the right of residence for a period of longer than three months if they:</p> <ul style="list-style-type: none"> a) intend to engage in some form of gainful employment; b) have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the Republic of Hungary during their period of residence, and are entitled to make use of health-care services due to their health insurance as prescribed in specific other legislation, or if they assure that they have sufficient resources for themselves and their family members for such services as required by statutory provisions; or c) are enrolled at an educational institution governed by the act on public education or the act on higher education, for the principal purpose of following a course of study, including vocational training and adult education if offering an accredited curriculum, and they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the Republic of Hungary during their period of residence, and are entitled to make use of health-care services due to their health insurance as prescribed in specific other legislation, or if they assure that they have sufficient resources for themselves and their family members for such services as required by statutory provisions.



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			<p>If the EEA nationals meet the requirements set out in point a) or b) their family members shall have the right of residence. The spouse and dependent children of any EEA national who satisfies the requirements set out in point c) shall have the right of residence.</p> <p>The family members of any Hungarian citizen who is engaged in gainful employment shall have the right of residence for a period of longer than three months.</p> <p>The right of residence for a period of longer than three months shall extend to the family members of a Hungarian citizen if:</p> <ul style="list-style-type: none"> a) they have sufficient resources for themselves or the Hungarian citizen has sufficient resources for his/her family members not to become a burden on the social assistance system of the Republic of Hungary during their period of residence; and b) they are entitled to make use of health-care services due to their health insurance as prescribed in specific other legislation, or if they assure that they have sufficient resources for themselves and their family members for such services as required by statutory provisions. <p>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 in the absence of the requirements set out in point a) and b).</p> <p>The competent authority may grant the right of residence to persons on the grounds of family reunification, who:</p> <ul style="list-style-type: none"> a) are dependants or members of the household of a Hungarian citizen for a period of at least one year, or who require the personal care of a Hungarian citizen due to serious health grounds; or b) had been dependants or members of the household of an EEA national - who satisfies the requirements set out in Subsection (1) of Section 6 - in the country from which they are arriving, for a period of at least one year, or who require the personal care of an EEA national due to serious health grounds.
	Ireland		
	Italy		
	Latvia	Yes	<p>Citizens of Latvia and their family members have not been included into scope of Directive 38/2004 unless they return to Latvia from other MS after exercising their rights to free movement. Differences: definition of family member of citizen of Latvia includes: spouse, children, parents who have reached a retirement age (62 years) and persons under custody. Documents for a residence permit should be submitted abroad, outside of Schengen area. Family members should submit documents regarding their income, place of residence in Latvia, tbc test, criminal record, health insurance. A residence permit is issued for one year, then – for 4 years. After 5 years with temporary residence permit person can apply for a permanent residence permit (a certain degree of knowledge of Latvian language is required – 1B).</p>
	Lithuania	Yes	<p>As it concerns social rights, they are the same for all the third country nationals of the same category (temporary or permanent residents). The difference exists in the conditions of the issuance of temporary residence permits (more favourable for the EU citizens):</p> <ul style="list-style-type: none"> - family members of EU citizens and of Lithuanian citizens who have used the right of free movement obtain residence cards according to the directive 2004/38/EC, whereas family members of Lithuanian nationals who have not used their right to free movement obtain national temporary residence permits. <p>The difference between the EU residence cards and national temporary residence permits lies in their price (EU residence cards cost 10 litas or 2,89 euro; temporary residence permits cost 300 litas or 86,88 euro); validity period (EU residence cards can be issued for up to 5 years, depending on the intended length of stay of the EU citizen in LT; temporary residence permits are issued for 1 year); time of</p>



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			examination of the request (the request for an EU residence card is examined within 1 month; whereas the request for the first temporary residence permit – within 6 months; for the renewal of the temporary residence permit – within 2 months); means of subsistence (there is no particular amount defined for the EU residence cards).
	Luxembourg		
	Malta		
	Netherlands	Yes	No, A different family reunion regime applies to EU-citizens who move to the Netherlands (Directive 2004/38) and Dutch citizens or legally residing third-country nationals living in the Netherlands (Directive 2003/86). The latter group is treated as a uniform group and the rules applying to them concern the part of family reunification in Dutch law and practice, which is based on and corresponds to the requirements of Directive 2003/86. Once these Dutch citizens or legally residing third-country nationals use their right to free movement within the European Union, and reunite with their third-country family members in another Member State, they qualify as community citizens and may enter the Netherlands, as a family, under Community law (Directive 2004/38).
	Poland		
	Portugal	Yes	They have the same rights. According the Article 3º, n.º 5 of the Act n.º 37/2006, of 9 th of August (Rules the right of citizens of the European Union and their families to move and reside freely in the national territory), the regulations of this law applicable to family members are extendable to family members of citizens of Portuguese nationality, regardless of their nationality.
	Romania	Yes	Yes, there are provisions which are less favourable to the third country spouses, partners or family members of Romanians. The differences are: <ul style="list-style-type: none"> ü the Romanian family members are required to apply for a long stay visa ü the applicability area of definitions regarding partners and ascendants is smaller than in the case of EU citizens family members <i>“GEO 194/2002 republished - Art.46 (16) Following categories of persons may also request a visa for family reunification::</i> <i>b) the single aliens who cohabit with single Romanian citizens, if they have at least one common child, further referred to as „partners”;</i> <i>d) the relatives of 1st degree in ascending line of the Romanian citizen or of his/her spouse.</i>” <ul style="list-style-type: none"> ü the family members of Romanian citizens are obliged to present documents in order to prove their address of residence <i>“GEO 194/2002 republished - Art.50 (2) The right to temporary residence may be successively extended only if:</i> <i>f) proves the legal possession of the living space declared as legal residence on the territory of Romania. In the case of aliens who have been granted a right to reside for the purpose of family reunification, the proof of legal accommodation may be made by the sponsor or Romanian citizen whose family members they are and with whom they cohabitare;”</i>
	Slovak Republic	Yes	Directive 2004/38/EC has been transposed into the Slovak “Act on the Residence of Foreigners”. Fulfilled conditions needed for granting

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			<p>the permanent residence permit to foreigners on the territory of the SR are more favourable to those who are family members of EEA citizens than Slovak citizens. For more details, please see below:</p> <p>Permanent residence permit (so called “first permit”) to a foreigner who is a family member (a husband or a dependent direct relative) of a Slovak citizen with permanent residence on the territory of the SR can be granted (for 5 years) in case of submitting these proof documents:</p> <ul style="list-style-type: none"> - a document proving family relationship with the Slovak citizen, - a confirmation of probity, - a document confirming the financial means for the residence, - a document of accommodation, - a document that the foreigner will not be a burden on the social insurance system of the SR, <p>At the latest within 30 days from entry on the territory of Slovakia, a foreigner must also present to the police:</p> <ul style="list-style-type: none"> - a document of health insurance on the territory of the SR and - a document confirming that the foreigner is not suffering from a disease which threatens public health <p>After 5 years, a foreigner can ask for so called “further permit” (granted for an unlimited time period). The application must contain:</p> <ul style="list-style-type: none"> - financial means as for the first permit - health insurance on the territory of the SR. <p>In case of granting the permanent residence permit (so called “first permit”) to a foreigner who is not an EEA citizen but a family member (mentioned in Directive 2004/38/EC) of EEA citizen and is not a burden on the social and health insurance system of the SR needs to submit following proof documents::</p> <ul style="list-style-type: none"> - a document proving his/her family relationship with EEA citizen who has residence permit on the territory of the SR - a document or a declaration of honour proving his/her dependency (only in case of dependent direct relatives) - a declaration of honour that he/she will to be a burden on the social and health insurance system of the SR <p>Further permit to such a foreigner can be granted if his/her uninterrupted residence has lasted at least five years (or less then 5 years in special cases stipulated by the law). In the application, the foreigner needs to submit a document proving the length of his/her stay.</p>
	Slovenia	Yes	<p>Family members of Slovenian nationals enjoy equal rights to family members of EU nationals. In Slovenian aliens legislation both categories are treated equally and granted rights as stipulated in the Directive 2004/38/EC for family members of EU nationals. We require both categories to have sufficient means of subsistence and health insurance.</p>
	Spain	Yes	<p>The parents (third country nationals) of a Spanish citizen or those of his/her spouse, economically dependants, may reside in Spain in accordance with the provisions of the general alien affairs scheme, regulated by Organic Law 4/2000 of 11 January, on the rights and freedoms of foreigners in Spain and their social integration, approved by Royal Decree 2393/ 2004 of 30 December.</p> <p>Under specific circumstances, Royal Decree 240/2007 of 16 February 2007, on the entry, free movement and residence in Spain of citizens of the Member Status of the EU and of the other States that are a party to the Agreement on the European Economic Area, applies. Consequently, the parents of a Spanish citizen, or those of his/her spouse, who reside in other countries and are economically</p>

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			dependent on them (as long as no agreement or declaration as to the annulment of the marriage, divorce or legal separation have been ruled by a court) may be entitled to reside in Spain and obtain a Family Residence Card for EU citizens.
	Sweden	Yes	<p>Family members of a Swedish citizen have, according to Swedish legislation, slightly less rights than family members mentioned in Directive 2004/38/EC.</p> <p>Spouses and cohabitants are granted a permanent residence permit on application, if the spouse/cohabitant and the Swedish citizen has been living together abroad for two or more years. If not, the spouse/cohabitant is given a temporary residence permit, normally for two years. If the couple are still living together by the end of this period, the spouse/cohabitant can be granted a permanent residence permit.</p> <p>Children under 18 whose parent is residing in Sweden are normally granted a permanent residence permit. Children over 18 years of age can only be granted a residence permit if they have been living together with the parent recently and are, economically or otherwise, dependant of the parent living in Sweden. Parents, grandparents and other family members can only be granted a residence permit if they have recently been living together with the person living in Sweden and are, economically or otherwise, dependant of this person.</p> <p>In none of these cases does the person living in Sweden have to provide sufficient means of subsistence or a health insurance. These rules are the same for Swedish and other nationals residing in Sweden.</p>
	United Kingdom	Yes	<p>There are a number of provisions in our domestic immigration rules that contain more stringent criteria for third country national family members of UK nationals/settled persons than would be the case if the sponsor was an EEA national.</p> <p>Whereas the third country national family members of a UK national applying for family re-unification must show that they can satisfy the relevant criteria of the Immigration Rules, the Third Country national direct family members of an EEA citizen will be subject to the Immigration (European Economic Area) Regulations 2006, which transposes Directive 38/2004/EC. In some cases this will leave the third country national direct family member of an EEA national in a more favourable position than that of the third country national family member of a British citizen. For example, whilst the Immigration Rules, require that a spouse or civil partner meet more stringent maintenance and accommodation criteria, under the Directive 38/2004 the spouse or civil partner need only show that they are related as claimed and the decision maker is satisfied that there are no public policy or security grounds for refusing an application. This position has been further exacerbated by the ECJ judgment in the case of Metock.</p> <p>Other differences include how a 'child' is defined (domestic law it is those under 18 as opposed to European law which allows those under 21 to be dependent children. "Children" over 18 must therefore qualify for entry in their own right satisfying the relevant criteria of the Immigration Rules); provisions on maintenance and accommodation relating to spouses and civil partners; and various 'no switching' criteria between the Immigration Rules and the EEA regulations (for instance a third country national who entered as a visitor would not be able to work without specific permission.) The UK's immigration rules can be found at:</p> <p>http://www.bia.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/</p>