



**Ad-Hoc Query on Family Reunification with third-country national family members- applicable rules to "non-mobile"
EU nationals**

Requested by COM on 5th June 2009

Compilation produced on 2nd July 2009

**Responses from Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Ireland,
Italy, Latvia, Lithuania, Netherlands, Portugal, Slovak Republic, Spain, Sweden, United Kingdom (19 in Total)**

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1. Background Information

Third country nationals who request family reunification with a third-country national family member are covered by [Council Directive 2003/86/EC](#) (the Family Reunification Directive).

EU Nationals who made use of their right to free movement and thus reside in a Member State other than the one of their nationality and who request family reunification with a third-country national are covered by [Council Directive 2004/38/EC](#) (the Free Movement Directive).

The situation of EU Nationals who reside in the Member State of their nationality ("non-mobile" EU national) and who request family reunification with a third-country national is not covered by any EU legislation and thus subject to national laws.

EMN Ad-Hoc Query: Family Reunification rules for "non-mobile" EU nationals




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Questions:

1. The Commission would appreciate information on which legislation applies in your respective Member State to the latter family reunification requests of "non-mobile" EU nationals: the same rules as for third-country nationals (i.e. Directive 2003/86/EC), or the same rules as for EU nationals under Directive 2004/38/EC, or different rules laid down in national legislation (in case yes, which ones?) ?
2. For the three Member States (Denmark, Ireland, United Kingdom) not bound by Directive 2003/86/EC, the question would be whether the rules for nationals of an EU Member State under Directive 2004/38/EC apply, or different rules laid down in national legislation (in case yes, which?).





It would be very much appreciated if you could provide your responses by **19th June 2009**.

2. Responses

		Wider Dissemination?	
	Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that their response is not disseminated further.
	Belgium	Yes	The same rules apply as for EU-nationals under Directive 2004/38/EC.
	Bulgaria	Yes	<p>The conditions for family reunification in cases of marriages between Bulgarian citizens and TCNs are regulated in the Law for the Foreigners in the Republic of Bulgaria.</p> <p>1. In regard to the entry in Bulgaria the more released regime of Directive 2004/38/EC has been adopted in the national legislation. It says that:</p> <p><i>A foreigner, who is a member of the family of a Bulgarian citizen, may enter the territory of the Republic of Bulgaria with a passport and a visa, in case such is required. A visa shall be issued under terms and following a procedure, determined by the Council of Ministers, without paying taxes for processing the documents and issuing the visa.</i></p> <p><i>Visas shall not be required in case a foreigner – member of the family of a Bulgarian citizen, has a residence card of a member of the family of an European Union citizen, issued:</i></p> <ul style="list-style-type: none"> - <i>either in the Republic of Bulgaria, if the grounds of issue thereof have dropped out;</i> - <i>or in another Member State of the European Union, in case he/she escorts or joins a Bulgarian citizen.</i>


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			<p>2. As far as the granting of residence status is concerned the regime is licensing and the approach of Directive 2003/86/EC has been adopted. The national legislation says that:</p> <p><i>Permission for long stay shall be able to receive foreigners who have a visa and are members of the family of a Bulgarian citizen.</i> <i>Permission for permanent stay shall be possible to receive the foreigners who are members of the family of the Bulgarian citizen, if they have stayed continuously in the territory of the Republic of Bulgaria during the previous five years.</i></p>
	Czech Republic	Yes	Czech migration legislative does not make difference between family members of an EU citizen and family members of a Czech citizen, so it applies the rules under the Directive 2004/38/EC to the family members of a Czech citizen.
	Estonia	Yes	In Estonia the Citizen of European Union Act § 1 point 2 regulates the family reunification of the citizens of the European Union and the citizens of the European Economic Area who are not Estonian citizens , and to the citizens of the Swiss Confederation to their family members. Estonian citizens family members who are the third country citizens are regulated by Aliens Act and the Directive 2003/86/EC, according to which a temporary residence permit may be issued to an alien to settle with his or her spouse or with close relative who is an Estonian citizen .
	Finland	Yes	<p>In regard to "non-mobile" EU-nationals, same rules apply as for third-country nationals (2003/86/EC). Exceptionally issuing a residence permit does not require secure means of support and application may be lodged in Finland. Relatives other than family members are also entitled to apply for residence permit on the basis of family ties (Section 50 of the Finnish Aliens Act).</p> <p>The Free Movement Directive applies to family members of a Finnish citizen, if a Finnish citizen has used the right of free movement laid down in the Directive 2004/38/EC by moving to another Member State or residing in another Member State and the family member has accompanied or joined him or her.</p>
	Germany	Yes	<p>The rules on family reunification concerning the subsequent immigration of dependents to Germany to join a family member of either German nationality (the German being a "non-mobile" EU national) or the nationality of a third country are both laid down in the Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory (Residence Act="Aufenthaltsgesetz", abbreviated as AufenthG). Concerning the family reunification with a third-country national family member the implementation of the Council Directive 2003/86/EC into national law has been carried out by this act. In contrast, the subsequent immigration to EU Nationals, who have made use of their right to free movement, follows the Act on the General Freedom of Movement for EU Citizens (Freizügigkeitsgesetz/EU, abbreviated as FreizügG/EU), which implements Council Directive 2004/38/EC (Free Movement Directive) into national law.</p> <p>The AufenthG stipulates general rules (esp. sec. 27 AufenthG), which apply to third-country nationals, who migrate to Germany in the context of family reunification. However, in the following, the act distinguishes between the subsequent immigration of dependents of third-country nationals to German citizens (sec. 28 AufenthG) and to third-country nationals (sec. 29 et seq. AufenthG). Accordingly,</p>


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			<p>subsequent immigration of dependents to Germans is privileged, since the constitution guarantees Germans the right to establish their family life on the German territory regardless of the nationality of their spouse. Moreover, the marriage/family of a German citizen shall enjoy more protection, since Germans regularly do not enjoy the right of residence in foreign countries and Germans are reliant on implementing their family life in Germany.</p> <p>The subsequent immigration of dependents to Germans is determined in sec. 28 AufenthG as follows:</p> <p>Section 28 Subsequent immigration of dependents to join a German national:</p> <p>(1) The residence permit shall be granted to the foreign</p> <ol style="list-style-type: none"> 1. spouse of a German, 2. minor, unmarried child of a German, 3. parent of a minor, unmarried German for the purpose of care and custody if the German's ordinary residence is in the Federal territory. <p>By way of derogation from Section 5(1), no. 1, it shall be granted in the cases covered by sentence 1, nos. 2 and 3. By way of derogation from Section 5 (1), no. 1, it should be granted as a general rule in the cases covered by sentence 1, no. 1. By way of derogation from Section 5 (1), no. 1, the residence permit may be granted to the parent of a minor, unmarried German who is not entitled to custody of said child, if the family unit already exists in the Federal territory. Section 30 (1), sentence 1, nos. 1 and 2, sentence 3 and (2), sentence 1 shall apply mutatis mutandis in the cases covered by sentence 1, no. 1.</p> <p>(2) As a rule, the foreigner shall be granted a settlement permit if he or she has been in possession of a residence permit for three years, the family unity with the German continues to exist in the Federal territory, there are no grounds for expulsion and the foreigner is able to communicate verbally in the German language on a basic level. The residence permit shall otherwise be extended as long as the family unity continues to exist.</p> <p>(3) Sections 31 and 35 shall apply subject to the proviso that the foreigner's residence title shall be replaced by the ordinary residence of the German in the Federal territory.</p> <p>(4) Section 36 shall apply mutatis mutandis to other dependents.</p> <p>(5) The residence permit entitles the holder to pursue an economic activity.</p> <p>The full text of the AufenthG in German and English you will find on the Website of the German Federal Ministry of the Interior http://www.en.bmi.bund.de/cln_028/nn_122730/Internet/Navigation/EN/ActsAndRegulations/actsAndRegulations_node.html_nnn=true.</p>
	<p>Greece</p>	<p align="center">Yes</p>	<p>Greece also applies proportionally the provisions of the Directive 2004/38/EC to “non-mobile” EU citizens (Greeks) who request family reunification with third country nationals.</p>

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	<p>Hungary</p>	<p>Yes</p>	<p>According to the Hungarian legislation (Act I of 2007 on the Entry and Stay of Persons Enjoying the Right of Free Movement) “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>The Hungarian legislation 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.</p> <p>Concerning the right of residence for a period longer than three months and permanent resident status, it can be stated that the provisions are quite similar (and based on the 2004/38/EC Directive) but <u>there are cases when more favorable rules apply for the family members of Hungarian citizens than of EEA nationals.</u></p> <p>Right of residence for a period of longer than three months Section 6</p> <p>(1) All EEA nationals shall have <u>the right of residence for a period of longer than three months</u> 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. <p>(2) If the EEA nationals meet the requirements set out in point a) or b) their family members shall have the right of residence.</p> <p>(3) The <u>spouse and dependent children</u> of any EEA national who satisfies the requirements set out in point c) shall have the right of residence.</p>
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		<p>Section 7</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> <p>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</p> <p>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> <p>More favorable rules for family members of Hungarian citizens are the following:</p> <p>1.) 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) (sufficient resource and health insurance).</p> <p>2.) In addition to that, if for example the Hungarian citizen is enrolled at an educational institution, his/or her family members (and not just his/her spouse and dependent children) have the right of residence of longer than 3 months (of course just in case if the Hungarian citizen has the sufficient resources and health insurance set out in point a) and b).</p> <p>3.) The competent authority may grant the right of residence of more than three months to persons on the grounds of family reunification, who:</p> <p>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</p> <p>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. This requirement in bold is not prescribed in case if a dependant or a member of the household of a Hungarian citizen is concerned.</p> <p>Permanent resident status</p> <p>Section 16</p> <p>Permanent residence status shall be granted to:</p> <p>b) family members who have resided legally and continuously within the territory of the Republic of Hungary for five years;</p> <p>c) persons who have retained the right of residence in connection with their relationship to an EEA national or a Hungarian citizen, and who have resided legally and continuously within the territory of the Republic of Hungary for five years; and</p> <p>d) the children of a parent who has the right of permanent residence in the territory of the Republic of Hungary.</p> <p>More favourable rules for the family members of Hungarian citizens are the following:</p> <p>a) the family members of Hungarian citizens - except the spouse - who have resided continuously within the territory of the Republic of Hungary in the household of a Hungarian citizen for a period of at least one year;</p>
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			b) the spouse of a Hungarian citizen if their marriage was contracted at least two years prior to the date when the application was submitted and they share the same household since.
	Ireland	Yes	<p>There are no statutory rules governing family reunification for an Irish national residing in Ireland with a non-EEA national.</p> <p><u>Spouses</u> The non-EEA national spouse requests permission to reside in Ireland on the basis of marriage to an Irish national. In the case of a non-EEA national spouse who already has permission to remain in Ireland (this includes a 'D'-type visa which may be granted for the purpose of joining a spouse; the first 90 days after arrival in the State for a non-visa required national or other forms of permission to remain), both the non-EEA national spouse and the Irish national spouse attend their local Garda National Immigration Bureau Registration Office, with the requested documentation.</p> <p>Non-EEA nationals without current permission to remain in the State (including persons with short-stay 'C-type visas) must make a formal application to the Irish Naturalisation and Immigration Service of the Department of Justice, Equality and Law Reform, with the requested documentation.</p> <p>The permission to remain is granted on the basis of genuine evidence of a valid and genuine marriage and of joint residence.</p> <p>The couple may be required to attend for interview. Applications can take up to 12 months to process.</p> <p>There are no absolute rights of retention of residence in the event of separation/divorce.</p> <p><u>De facto relationships</u> Non EEA nationals who are in a de facto relationship with an Irish National must be in a position to provide evidence of a durable attested relationship of at least 2 years.</p> <p><u>Deportation</u> In the case of non-EEA national with an existing Deportation Order, the person may apply for revocation of the Deportation Order on the basis of marriage to an Irish national, pursuant to section 3(11) of the Immigration Act 1999.</p> <p><u>Irish Born Child Scheme</u> The Irish Born Child Scheme was a scheme with a limited timeframe which allowed for non-EEA national parents of Irish born children to be granted permission to remain in the State in certain limited circumstances. Following the enactment of the Irish Nationality and Citizenship Act 2004, the non-Irish parents of children born in Ireland after 1 January 2005 would not be automatically entitled to Irish citizenship. The Irish Born Child 2005 Scheme was established to clarify the position of non-EEA national parents of Irish born children who had applied for residency on the basis of their Irish child. It was an administrative scheme under which non-EEA national parents of Irish citizen children could apply for permission to remain in Ireland. The non-EEA national parent was required to be living in the family unit with the child, or actively involved in the upbringing of the child. A successful application did not give rise to further family</p>

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			reunification rights. During 2007, arrangements were put in place for the renewal of permissions originally granted under the 2005 scheme.
	Italy	Yes	If we have well understood that in our case as "non-mobile EU nationals" must be considered Italian citizens residing in Italy, it's possible to say that under the art. 23 of Legislative Decree n. 30/2007, Italy applies the same rules as for EU nationals under Directive 2004/38/EC. See, http://www.interno.it/mininterno/export/sites/default/it/assets/files/15/08982_DECRETOLEGISLATIVO6febbraio_2007.pdf .
	Latvia	Yes	Family members of non-mobile citizens of Latvia enter and stay in Latvia in accordance with national law (Immigration Law). Application for a residence permit should be lodged in abroad (in Embassy of Latvia). Persons should submit 1) proof of sufficient financial means, 2) proof of place of residence in Latvia 3) statement that a person is not suffering of tuberculosis; 4) criminal record (only citizens from non-visa countries) 5) health insurance policy; 6) valid travel document. After first application a residence permit for one year is issued, then- for 4 years and finally – a permanent residence permit. To get a permanent residence permit a person should prove knowledge of state language.
	Lithuania	Yes	Lithuanian nationals who have not used their right of free movement can invite their family members (third-country nationals) according to the national rules which are similar to the directive 2003/86/EC. In the national legislation the category of the "family member" is broader if compared to the 2003/86/EC Directive (see below). Also: third-country nationals wishing to invite their family members must have resided in the Republic of Lithuania for the last 2 years, hold a temporary residence permit valid for at least one year and have reasonable prospects of obtaining the right to permanently reside in the Republic of Lithuania (exemptions for refugees, researchers). This requirement is not applied to Lithuanian nationals. Art. 43 of the Law on the Legal Status of Aliens: Article 43. Issue of a Temporary Residence Permit to an Alien in the event of Family Reunification 1. A temporary residence permit may be issued to an alien in the event of family reunification if: <ol style="list-style-type: none"> 1) the alien's parents or one of them who are citizens of the Republic of Lithuania are residing in the Republic of Lithuania ; 2) the parents of the minor alien or one of them or the spouse of one of them, who is a citizen of the Republic of Lithuania or is in possession of the residence permit, in whose guardianship the minor alien is, are residing in the Republic of Lithuania; 3) the alien's child who is a citizen of the Republic of Lithuania is residing in the Republic of Lithuania; 4) the alien's child, who has been granted refugee status and has been issued a permanent residence permit, is residing in the Republic of Lithuania; 5) the alien's spouse or the person with whom a registered partnership has been contracted and who is a citizen of the Republic of Lithuania or an alien in possession of a permanent residence permit is residing in the Republic of Lithuania; 6) he is a first-degree relative in the direct ascending line of an alien in possession of a residence permit;






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			<p>7) the alien's parents, who are incapable to work due to pensionable age or disability and are in possession of a permanent residence permit are residing in the Republic of Lithuania;</p> <p>8) if particularly difficult circumstances related to divorce or dissolution of a registered partnership or death of a family member, regulated according to the procedure laid down in paragraph 5 of Article 51 of this Law, emerge. In this case the application to issue a temporary residence permit must be filed before the divorce or dissolution of the registered partnership or the day of death of the family member, if the alien has not yet been granted a temporary residence permit for family reunification, or not later than within 6 months after the divorce or dissolution of the registered partnership or the day of death of the family member, if before the divorce or dissolution of the registered partnership or the day of death of the family member the alien held a temporary residence permit issued for family reunification. The temporary residence permit of one year's duration may be granted under this paragraph.</p> <p>2. The application to issue a temporary residence permit may be filed by an alien whose family members enter for family reunification or by one of the adult family members.</p> <p>3. In the cases provided for in subparagraphs 2, 4 to 7 of paragraph 1 of this Article the family member of the alien may be granted or replaced a temporary residence permit if he satisfies the conditions laid down in subparagraphs 2 to 4 of paragraph 1 of Article 26 of this Law or is the person whom they are joining the alien for family reunification ensures according to the procedure laid down by laws that his family member satisfies the said conditions.</p> <p>4. If a temporary residence permit is issued to the alien according to subparagraph 5 of paragraph 1 of this Article, it must be established according to the procedure laid down by the Minister of the Interior whether or not the concluded marriage is not a marriage of convenience.</p> <p>5. In the event of family reunification an alien shall be issued a residence permit for the same period as the alien who entered for residence.</p> <p>6. The alien indicated in subparagraphs 2, 5 and 6 of paragraph 1 of this Article, whose family members enter for family reunification, must have resided in the Republic of Lithuania for the last 2 years, hold a temporary residence permit valid for at least one year and have reasonable prospects of obtaining the right to permanently reside in the Republic of Lithuania, regulated according to the procedure provided for in paragraph 5 of Article 51 of this Law. The provision shall not apply when the family members join the alien who has been granted the refugee status in the Republic of Lithuania or who has a temporary residence permit issued on the ground established in subparagraph 13 of paragraph 1 of Article 40 of this Law.</p> <p>7. The provisions of subparagraph 5 of paragraph 1 of this Article regarding family unification shall be applied when both alien spouses or aliens who have contracted a registered partnership are not younger than 21 years.</p> <p>8. The right to family reunification shall not rest with the aliens who have filed applications for the granting of refuge in the Republic of Lithuania until their application has not yet been finally decided as well as the aliens who have been granted subsidiary or temporary protection in the Republic of Lithuania.</p>
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	Netherlands	Yes	Requests of Dutch nationals who reside in the Netherlands for family reunification with a third-country national are covered by legislation which is based on Directive 2003/86/EC. An exception is made if a Dutch national has made use of his right to free movement and has in accordance with Community Law resided with a family member from a third country in a Member State other than the one of his nationality. In that case the Dutch government allows the family member of a third country residence on the basis of Community Law. This policy is based on the judgment of the Court of Justice of the EC of 7 July 1992 in Case C-370/90 (Surinder Singh).
	Portugal	Yes	Under article 3 (5) of Act 37/2006, 9 th August (Rules the right of citizens of the European Union and their families to move and reside freely in the national territory and transposes to the internal legal order the European Parliament and Council Directive n.º 2004/38/EC of 29 April) the regulations of this law applicable to family members are extendable to family members of citizens of Portuguese nationality, regardless of their nationality.
	Slovak Republic	Yes	The issue of family reunification of the "non-mobile" Slovak nationals is governed by the Act on the residence of foreigners. In this regard neither the provisions of the Directive 2003/86/EC nor the provisions of the Directive 2004/38/ES are applicable to the family reunification requests of "non-mobile" Slovak nationals. This issue is governed by separate provisions of the Act on the residence of foreigners (e.g. type and the procedures of granting the residence permit). More information can be found also in the response to the BE ad-hoc query from 10 April 2009 on rights of nationals vs. rights of EU citizens.
	Spain	Yes	By virtue of the Nineteenth and Twentieth Additional Provisions of the Regulations of Organic Law 4/2000 of 11 January on the rights and freedoms of foreigners in Spain and their social integration, introduced by Royal Decree 240/2004 which transposes Directive 2004/38, our own nationals' family members receive equal treatment as Community citizens except under the circumstances of family reunification of parents.
	Sweden	Yes	Sweden applies the same rules as for third-country nationals. The rules are implemented in the Swedish Aliens Act, Chapter 5, Section 3. These rules are complemented by national rules, which (and this goes for the rules of the Directive as well) are valid for third-country nationals as well as for EU Nationals who lack right of residence, no matter what is the nationality of the person living in Sweden. If the person living in Sweden is an EU National with right of residence, the family member will of course have right of residence, but if the family member wants to have a residence permit as well, he/she is granted this if the requirements are fulfilled. The national rules are found in Chapter 5, Section 3 a, of the Swedish Aliens Act, and state that: <i>“Unless otherwise provided in Section 17, second paragraph, a residence permit may be given to</i> <ol style="list-style-type: none"> <i>1. an alien who intends to marry or enter into a cohabitee relationship with a person who is resident in or who has been granted a residence permit to settle in Sweden, if the relationship appears to be serious and there are no special grounds not to give a permit,</i> <i>2. an alien who in some way other than those referred to in Section 3 or in this Section is a close relative of someone who is resident in</i>

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			<p><i>or who has been granted a residence permit to settle in Sweden, if he or she has been a member of the same household as that person and there exists a special relationship of dependence between the relatives that already existed in the country of origin,</i></p> <p><i>3. an alien who is to exercise access rights that are not of limited scope to a child that is resident in Sweden and</i></p> <p><i>4. an alien who is of Swedish origin or has lived in Sweden on a residence permit for a long time.</i></p> <p><i>If an alien has been given a residence permit under the first paragraph, point 1, a residence permit for the same period shall be given to unmarried children of the alien.</i></p> <p><i>When there are exceptional grounds a residence permit may also be granted to an alien in cases other than those referred to in the first and second paragraphs if the alien</i></p> <p><i>1. has been adopted in Sweden as an adult,</i></p> <p><i>2. is a relative of an alien who is a refugee or a person otherwise in need of protection or</i></p> <p><i>3. has some other special tie to Sweden.”</i></p>
	<p>United Kingdom</p>	<p align="center">Yes</p>	<p>Re what legislation is applicable to ‘non mobile’ EU nationals seeking family reunification, i.e. can they benefit from the Free Movement Directive (Directive 2004/38/EC):</p> <ul style="list-style-type: none"> • The only scenarios where a British national could benefit from the Free Movement Directive are along the following terms. The provisions of the Directive are not applied directly to British nationals who return to the UK. Rather, it is their third country national family member who can benefit by entering the UK under European law in line with the European Court of Justice decision in the case of Surinder Singh. • The decision by the ECJ in the case of Surinder Singh confirmed that family members of British nationals who have worked or been self employed in another Member state have the option to enter the UK under EU law. Provided that the third country national can prove that s/he was related as claimed and had been living in another Member state with their UK relative who was a worker or self employed, they can be issued an EEA family permit in order to enter the UK. • There is no provision for a British national who is ‘non mobile’ and has never exercised his treaty rights in an economic capacity to bring in third country national family members under the Free Movement Directive. In such circumstances, family members of British nationals wishing to come to the UK would have to apply under the relevant category of the Immigration Rules (e.g. as a visitor, spouse etc.)
