



EMN Ad-Hoc Query on Misuse of family reunification rights by Third Country nationals granted under Directive 2004/38/EC

Requested by Adolfo SOMMARRIBAS on 14th June 2018

Family Reunification

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, Spain, Sweden, United Kingdom, Norway (25 in total)

Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

Background information:

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 should have originally applied to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members who accompany or join them (this rule is covered by both the Directive and the Communication from the EC to the EP and the Council on guidance for better transposition and application of the Directive 2004/38/EC). However, the Court of Justice of the EU and its following case law extended the scope of the Directive significantly.

According to case law the Directive also applies to a family member of a Union citizen who applies for a residence permit in the same Member State of which the Union citizen is a national. It is, for instance, a situation in which a Union citizen decides to return to his country of origin after having used the right of persons to move and reside freely within the territory of the Member States.

In the Czech Republic, the scope of the above-mentioned Directive was extended also to family members of the Czech citizens (without any limits). But, we have been facing a huge problem over the last few years. Third-country national whose residence permit expired or who has been issued by the return decision from various reasons and who are therefore obliged to leave the Czech Republic, declare him/herself to be a family member of the Czech citizen and applies for residence card of a family member of a Union citizen provided for in the Directive. The main aim of those third country nationals is to circumvent the law, and thus to delay or even to avoid the obligation to leave the territory of the CR.


When dealing with this abuse we are limited by the case-law of the Court of Justice of the EU. According to the case-law we cannot exclude Czech citizens or their family members from the scope of this Directive.



The general aim of this Ad-Hoc Query is to get an overview on the situation in other Member States which will serve the basis for preparation of the CZ EMN conference focusing on this topic. The conference is going to take place in Prague (Czech Republic) at the end of September 2018 or at the beginning of October 2018 (date TBC). More information on agenda, place etc. will follow soon.

Questions

1. Does your national legislation distinguish family members of your own citizens from family members of the Union citizens as defined in the Directive?
2. If so, what conditions for filling an application is a family member of a national of your Member State required to meet when applying for a residence permit?



Responses




| | Country | Wider Dissemination | Response |
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|  | Austria | Yes | <p>1. Yes. When making the distinction it is necessary to determine whether the Austrian citizen has utilised their right to freedom of movement in accordance with EU law of at least three months (Art. 47 para 1 Settlement and Residence Act). In the case Austrian citizens - did not use their harmonised right to freedom of movement, family members are (Art. 47 para 2 in conjunction with Art. 2 para 1 subpara 9 Settlement and Residence Act):</p> <ul style="list-style-type: none"> o Spouses or registered partners – the 21st year of life must be completed at the time of filling the application in both cases o Unwed minors (including adopted- and stepchildren.) These persons are granted the residence permit “family members” if the general requirements are met (see answer No. 2; Art. 47 para 2 Settlement and Residence Act). <p>- did use their harmonised right to freedom of movement, the following groups are entitled to join the person (Art. 54 para 1 and 2 in conjunction with 52 para 1 subpara Z 1-3 Settlement and Residence Act):</p> <ul style="list-style-type: none"> o Spouses or registered partners (no age limit applies), o Relatives of the EEA citizen or registered partners in a direct, descending line until completion of the 21st year of life and beyond that as long as they are as a matter of fact granted a necessary maintenance (biological children, adopted children, stepchildren, grandchildren) and o relatives of the EEA citizens respectively of their spouses or registered partners in a direct and ascending order (parents or grandparents) as long as they are as a matter of fact granted a necessary maintenance. Additionally, the following persons are counted as dependants of a citizen of the Union entitled to the right to freedom of movement if the in-migrating person is an EEA citizen (and not a third country national) in accordance with Art. 52 para 1 Settlement and Residence Act: o if they prove the existence of an enduring civil partnership, or o if they are other dependants of the EEA citizen if * they have already received a necessary maintenance by the EEA citizen in the country of origin * they have already lived in the same household as the EEA-citizen in the country of origin, or * in cases where serious health grounds strictly require the personal care of the family member. <p>2. The Settlement and Residence Act contains the general requirements for issuing a residence permit (e.g. Arts. 11, 21a Settlement and Residence Act). The following is required for filling an application:</p> <ul style="list-style-type: none"> • A valid travel document • a birth certificate or a corresponding certificate • a recent photography (not older than six month) • marriage certificate, partnership certificate, adoption certificate, certificates or other documents evidencing a next of kin relationship • evidence of entitlement to accommodation fulfilling local standards |

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| | | | <ul style="list-style-type: none"> • evidence of adequate health insurance cover • evidence of adequate means of subsistence • proof of a sufficient proficiency in German |
|  | Belgium | Yes | <p>1. Yes</p> <p>2. In general the following requirements are imposed for exercising the right to family reunification of a TCN with a Belgian sponsor: 1) The applicant needs to pay a fee to apply for a residence permit, in principle 200 euro per adult; 2) In case of partners or spouses, both partners need to be 18 years old or older. In case the family member is a child older than 21 years, he or she has to be dependent on the parent-sponsor. 3) The TCN sponsor must have an accommodation suitable for the size of the family; 4) The TCN sponsor must have healthcare insurance, covering the sponsor and his/her family members. 5) The TCN sponsor must have sufficient, stable and regular means of subsistence, to cover the needs of the sponsor as well as those of the family members to avoid them becoming a burden on the public authorities. The level of income is set at 120% of the social assistance level (or living wage): this amounts currently to 1476.32 EUR. Allocations that are not part of the contributory social security system (social assistance, child benefits etc) are excluded. This condition does however not apply when the sponsor is only joined by a minor child. 6) The family member should join the sponsor in Belgium (factual family unit). 7) (Please note that since January 2017, there are also integration requirements after admission, at renewal : the family member needs to provide evidence of his/her willingness to integrate into society. The Immigration Office will do the verifications and if the person does not make a ‘reasonable effort’ to integrate, the Immigration Office can take this into account.) In case the sponsor is a Belgian minor, he or she can reunite with his/her parents. In this case most conditions do not apply. However, the fee of 200 euro has to be paid, the family member has to be the parent and has to prove its identity and the parents should come and live with the Belgian minor and form a factual family unit.</p> |
|  | Bulgaria | Yes | <p>1. Yes. The Foreigners in the Republic of Bulgaria Act regulates the measures which are applied for countering the abuses with marriages of convenience between Bulgarian nationals and third-country nationals. The law provides a broader range of powers of the competent authorities in the detection of suspected marriages of convenience. The residence of EU citizens and their family members is settled in the Act on entering, residing and leaving the republic of Bulgaria by European union citizens, who are not Bulgarian citizens and their family members. In the Foreigners in The Republic of Bulgaria Act is provided</p> |

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| | | <p>a possibility of the authorities to refuse to issue a residence permit or extension of the residence to a foreigner who has married a Bulgarian citizen or with a foreigner, granted a residence permit, if there is evidence that the marriage was concluded in order to circumvent the norms stipulating the regime for foreigners in the Republic of Bulgaria. The assessment to refuse the permit shall be taken by the offices for administrative control of the foreigners on the basis of evidence justifying an objective conclusion that the matrimony has been concluded solely for the purpose of evading the norms stipulating the regime for foreigners in the Republic of Bulgaria and obtaining a permit for stay. Such evidence can be: the circumstance that the spouses or the adopted person and the adoptive parent do not live together, lack of contribution to the commitments ensuing from the marriage, the circumstance that the spouses have not known each other before the marriage, the presentation of contradicting information for the personal data of the other spouse or the adopted person (name, address, nationality, profession), for the circumstances of their acquaintance or other important personal information, the circumstance that the spouses or the adopted person and the adoptive parent do not speak a language understandable for both of them, the payment of money for the contracting of the marriage beyond the usual dowry, the presence of previous marriages or adoptions contracted for the purpose of evading the norms stipulating the regime for the foreigners. The data can be established by interviews held by employees of the services for administrative control of the foreigners, by statements of the concerned or third persons, by documentary means or by investigation and check-up carried out by the state bodies. The services for administrative control of the foreigners shall obligatorily hear out the concerned persons.</p> |
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2. Conditions: For receiving the right to a long term residence the foreigner shall produce in person to the Migration Directorate a standard application, which shall have attached as follows: 1. a copy of a valid passport, or replacing document with the pages of the photo, the personal data, a copy of the visa under Art. 15, Para. 1 of the AFRB, where applicable and the stamp of the last entry in the country; for comparison of the authenticity of the copy, the original passport, or replacing document shall also be produced; 2. a document for a paid state fee under Art. 10, Para. 3 of Tariff N 4 on Fees, collected in the MI system under the Act on State Fees; 3. evidence for a provided accommodation; 4. obligatory medical insurance, valid on the territory of the Republic of Bulgaria, where the person has not been insured under the AHI; 5. evidence for stable, regular, providable and sufficient maintenance funds without referring to the social assistance system in the amount not smaller than the minimal monthly work salary, the minimal stipendium or the minimal pension for the country, for the term of residence on the territory of the Republic of Bulgaria; 6. certificate showing no previous convictions, issued by the state, whose national the foreigner is, or by the


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| | | | state of his usual residence – in an initial submission of the application; 7. marriage certificate |
|  | Croatia | Yes | <p>1. 1. Croatian Foreigners Act slightly makes a difference between the mentioned. Family members of Croatian citizens, who can be joined to them and get the temporary residence are: spouse or domestic partner*, their minor children (including adopted children and step-children), parents or adoptive parents of minor children. In the case of polygamous marriage, family reunification is granted only to one of the spouses. Family reunification will not be granted if a spouse or a domestic partner is married to or is in a long-term relationship with someone else. *Croatian law considers domestic partnership as a partnership of unmarried woman and unmarried man who share the same residence, which lasts for minimum 3 years, or shorter if they have a child. Family members of an EEA citizen who can be joined to them and get the temporary residence: spouse, domestic partners or partners in a long-term relationship (of minimum 3 years or shorter if there are evidences of constancy of a relationship), relatives of the EEA citizen or their spouse/domestic partner/partner in a long-term relationship descending until completed 21 years of life, including adopted children and stepchildren (or older if the EEA citizen, their spouse or partner are obliged to provide maintenance), relatives of the EEA citizen or their spouse/domestic partner/partner in a long-term relationship in a direct and ascending order, another member of the family of the EEA citizen or their spouse/domestic partner/partner in a long-term relationship who is in the country of origin supported member of the EEA citizen’s family, member of the household of the EEA citizen or they require personal care of the EEA citizen because of medical reasons.</p> <p>2. 2. Family member of a national of Croatia, who is a third country national, should acquire the following conditions when applying for a temporary residence permit (according to the Croatian Foreigners Act, article 54): proof of a temporary stay, valid travel document (or any other document which proves their identity when it is not possible to obtain it in government representation of the foreign country), health insurance, does not have a restriction of entrance and stay in Republic of Croatia, does not represent a danger for public order, national security or public health. The only difference from other third country nationals who want to apply for a residence permit for reasons other than family reunification is that ones who are family members are not obliged to have their own means of support.</p> |
|  | Cyprus | Yes | <p>1. Currently there is a lack of legislation which regulates specifically the issues regarding the family members of Cypriot Citizens. The matter is expected to be resolved in the near future with the adoption of</p> |



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| | | | <p>new legislation. Nevertheless, in anticipation of the adoption of the new legislation regulating the aforementioned issues and in order to preserve the equal treatment between the family members of European and of Cypriot citizens, the Ministry of Interior of Cyprus has currently formed a policy which equates the treatment of family members, in consistence with the relevant European directive.</p> <p>2. N/A</p> |
|  | Czech Republic | Yes | <p>1. The Czech law does not distinguish family members of our own citizens from the family members of the Union citizens.</p> <p>2. See above</p> |
|  | Estonia | Yes | <p>1. Yes. Estonia has two separate legislations – Aliens Act and European Union Citizens Act. Family members of Estonian citizens usually apply for residence permit under Aliens Act. With regard to the ECJ case law, Estonia would need to apply it directly, since no legislative changes have been made accordingly.</p> <p>2. When applying for the residence permit for a family member, family needs to have a place of residence in Estonia and they need to declare that they have sufficient funding and a medical insurance contract. The authority responsible for handling the applications has the right to ask for proof in writing and also carry out additional checks (interviews, house checks).</p> |
|  | Finland | Yes | <p>1. Yes</p> <p>2. Alien's Act (301/2004) Section 36 (668/2013) General requirements for issuing residence permits (1) A residence permit may be refused if the alien is considered a danger to public order, security or health or to Finland's international relations. Endangering public health does not, however, prevent the issuing of an extended permit, if the requirements for issuing a permit are otherwise met. Endangering international relations does not, however, prevent the issuing of a residence permit on the basis of family ties or issuing a residence permit to an alien who has been issued with a long-term resident's EC residence permit by a Member State of the European Union. (358/2007) (2) A residence permit may be refused if there are reasonable grounds to suspect that the alien intends to evade the provisions on entry into or residence in the</p> |



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| | | <p>country. (3) A residence permit by reason of family ties may be refused if there are reasonable grounds for suspecting that the sponsor has received a residence permit by circumventing the provisions on entry or residence by providing false information on his or her identity or family relations. (549/2010) Section 50 (360/2007) Issuing residence permits to family members of Finnish citizens (1) Family members of a Finnish citizen living in Finland and minor unmarried children of the family members are issued with a continuous residence permit on the basis of family ties upon application filed in Finland or abroad. (2) Relatives other than family members of a Finnish citizen living in Finland are issued with a continuous residence permit if refusing a residence permit would be unreasonable because the persons concerned intend to resume their close family life in Finland or because the relative is fully dependent on the Finnish citizen living in Finland. Such other relatives must remain abroad while the application is processed. (3) If a Finnish citizen has used the right of movement laid down in the Directive 2004/38/EC of the European Parliament and of the Council amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Free Movement Directive), by moving to another Member State or by residing in another Member State and the family member has accompanied or joined him or her, provisions in Chapter 10 apply to the entry and residence of the family member. (4) Issuing a residence permit referred to in this section does not require the alien to have secure means of support. Chapter 10 Residence of citizens of the European Union or comparable persons Section 153 (360/2007) Scope of application of the Chapter (1) This Chapter applies to EU citizens and comparable persons and their family members and other relatives. (2) This section contains provisions on: 1) the conditions on how EU citizens and their family members can use their right to move and reside freely within the territory of the Member States; 2) the right of EU citizens and their family members to reside within the territory of the Member States on a permanent basis; 3) restrictions concerning the rights referred to in paragraphs 1 and 2 on grounds of public order, public security or public health. (3) The Chapter applies to EU citizens who move to Finland or reside in Finland, and to their family members who accompany them or join them later. (432/2010) (4) The Chapter applies to family members of a Finnish citizen if the Finnish citizen has exercised his or her right of free movement under the Directive by settling in another Member State, and the family member accompanies him or her to Finland or joins him or her later. (432/2010) Section 153a (360/2007) Exception to the scope of application of the Chapter (1) EU citizens whose right of residence cannot be registered or approved on the basis of the provisions of this Chapter may, as an exception, be issued with a residence permit on the basis of Chapter 4. (2) A family member of an EU citizen, who is not an EU citizen and to whom the provisions of this</p> |
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| | | <p>Chapter do not apply, is issued with a residence permit on the basis of Chapter 4. Section 154 (360/2007) EU citizens' family members (1) The following persons are considered family members of an EU citizen: 1) his or her spouse; 2) his or her descendants who are under 21 years of age or dependent on him or her, and the descendants of similar status of his or her spouse; 3) his or her direct relatives in the ascending line who are dependent on him or her, and relatives of similar status of his or her spouse. (2) If the EU citizen living in Finland is a minor, his or her guardian is considered a family member. (3) In the application of this Chapter, persons living continuously in a marriage-like relationship in the same household regardless of their sex are comparable to a married couple if they have lived in the same household for at least two years. In the application of this Chapter, the relationship between them is comparable to a marriage. However, the requirement of living together for at least two years does not apply if the persons living in the same household have a child in their joint custody or if there are other weighty reasons for it. (4) Other relatives are treated in the same manner as family members of EU citizens, regardless of their citizenship, if: 1) the relative is, in the country of departure, dependent on an EU citizen who has the primary right of residence, or the relative lived in the same household with the EU citizen in question; or 2) serious health grounds absolutely require the EU citizen in question to give the relative personal care. Section 155 (360/2007) EU citizens' entry into and residence in the country (1) EU citizens entering into and residing in the country must have a valid identity card or passport. (2) If an EU citizen or his or her family member who is not an EU citizen does not have the necessary travel document or, where required, the necessary visa, he or she must, before being refused entry, be given an opportunity to obtain the necessary documents or to have them delivered to him or her, or prove by other means that he or she has a right to move and reside freely in the country. Section 155a (266/2011) Entry of EU citizens' family members (1) Family members of an EU citizen who are not EU citizens shall have valid passports to enter and reside in the country. Family members may be required to have visas if they are citizens of a country which is not exempt from visa requirements under the Council Regulation. (2) Family members who hold valid residence cards referred to in the Free Movement Directive are not required to have visas, and no entry or exit stamps are placed on their passports. The residence card shall be produced when entering the country from outside the Schengen area. (3) Visa applications filed by EU citizens' family members are processed as soon as possible and free of charge under an accelerated procedure. Visa applicants or their family members may be heard orally when the issuing of a visa for them is considered. The Finnish mission hears applicants who reside abroad, and a local police department hears applicants who reside in Finland. Persons residing in Finland may be heard by an official of the Finnish mission processing the application related to</p> |
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| | | | <p>the hearing, if this is required to resolve the visa issue. (4) A decision to refuse, annul or revoke a visa shall be given to the applicant in writing, and it shall be justified unless this is contrary to the security interests of Finland or another EU Member State. Section 156 (360/2007) Public order and security (1) A requirement for an EU citizen's and his or her family member's entry into and residence in the country is that they are not considered a danger to public order or security. (2) Preventing entry into and removal from the country on grounds of public order or security must be based solely on the alien's own behaviour and not merely on any previous convictions. The behaviour of the alien must represent a genuine, immediate and sufficiently serious threat affecting a fundamental interest of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention will not be accepted. Section 156a (360/2007) Public health (1) Entry into and residence in the country by an EU citizen and his or her family members may be restricted on grounds of public health. The restrictions may apply only on the basis of a disease with epidemic potential as defined by the relevant instruments of the World Health Organization and other infectious diseases which would justify restrictions to the freedom of a Finnish citizen who had caught the disease or who was suspected of having caught the disease, so as to prevent the disease from spreading. (2) A disease posing a threat to public health that occurs after a three-month period from the date of arrival may not constitute grounds for removal from the country. (3) An EU citizen or his or her family members may, within three months of the date of arrival, and if it is clearly necessary, be required to undergo a free medical examination to certify that they are not suffering from any of the diseases referred to in subsection 1. Such medical examinations may not be required of all applicants as a matter of routine. Section 157 Nordic citizens' entry into and residence in the country (1) Citizens of Iceland, Norway, Sweden and Denmark have the right to enter the country directly from any of these States without a passport and to reside in Finland without registering their right of residence. (360/2007) (2) Citizens of Iceland, Norway, Sweden and Denmark shall be able to prove their identity and citizenship in a reliable way. (3) Nordic citizens entering the country for a purpose other than short-term residence shall register their residence in the manner agreed between the Nordic Countries on population registration. (34/2006)</p> |
|  | France | Yes | <p>1. Yes.</p> <p>2. A French national may be joined by third-country family members. This procedure is codified in book III of the CESEDA. It includes common items to family reunification, as it stipulates common criteria (effective shared life, issue of a long-stay visa) and a shared restriction on polygamy. However, the criteria</p> |


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| | | | <p>are different as the accommodation and resource conditions are not required. As it is a residence permit in accordance with article L.313-11, 4° and 6° of the CESEDA, the following people may benefit from this procedure and obtain a VPF residence permit, unless their presence constitutes a threat to public policy: • the foreign national, not living in a polygamous relationship, married to a French nationality spouse if he/she meets the following conditions: o has obtained a long-stay visa; o continued relationship; o the spouse has retained his/her French nationality and; o in the event of a marriage celebrated abroad, that it has been transcribed on the registers of the French civil authorities. • the foreign national, who is not living in a polygamous relationship, and who is father or mother of a minor child living in France, provided he/she establishes that he/she has effectively contributed to the child's upkeep and education as stipulated in article 371-2 of the French Civil Code since the child's birth or for at least two years. In application of article L.314-11 of the CESEDA, a residence permit is issued to the following persons, subject to lawful stay and that their presence does not constitute a threat for public order: • the foreign children of French nationals if the children are aged from 18 to 21 years or under the conditions stipulated in article L.311-3 of the CESEDA, or if they are dependent on their parents (if they are aged over 21); • the dependent first-degree relatives in the direct ascending line of French nationals and their spouses, as long as they have a visa for a stay over three months. With regard to dependent children or parents of French nationals, the French authorities verify that the financial and material means really exist (income and accommodation requirement). There are no minimum resources, but the SMIC may be used as a reference. The applicants must prove that they are unable to meet their own needs and that they are dependent on their parents, that they do not receive benefits or that they are looking for work. The dependent parent must also prove that he/she is dependent on his/her French child and that he/she cannot exercise a professional activity. The proof of isolation in the country of origin - e.g., there are no other children or family members in the country of origin - may also be taken into account.</p> |
|  | Germany | Yes | <p>1. Yes, but with the following exception: In cases in which the German has previously exercised his or her right to freedom of movement and returned to Germany (“returnee cases”), his or her third-country-national family members have equivalent status to Union citizens in the sense that they are also eligible for freedom of movement in derived form.</p> <p>2. A third-country-national spouse or minor, unmarried child of a German is entitled to receive a residence permit in order to maintain the family community if the general preconditions for issuing a residence title</p> |

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| | | | <p>are met. Their identity must be established, and the passport obligation must be complied with. There may also not be any interest in expulsion vis-à-vis the individual. Unlike when it comes to family reunification to join third-country foreigners, it is not required for their livelihood and sufficient living space to be proven as a matter of principle. Both spouses must have reached the age of 18, and the foreign spouse must on principle demonstrate a simple knowledge of German. Family reunification is ruled out if it is established that the marriage or the family relationship (established through adoption) is only to be used to obtain a right of residence for the third-country foreigner, or there are any de facto indications of a forced marriage.</p> |
|  | Greece | Yes | <p>1. There is no distinction in EL legislation between third country nationals, family members of EU citizens and third country nationals, family members of Greek nationals who have returned to Greece after having exercised the right of free movement in other m-s. No explicit reference to the second category of persons is included in the Greek Immigration Code. On the contrary, there is a clear distinction between third country nationals who are family members of EU citizens and third country nationals who are members of the family of a Greek citizen. It should be noted however that the provisions that apply to family members of a Greek national are to a great extent similar to those that apply to family members of an EU national. Furthermore it is recommended to the immigration authorities to consult the Commission Communication on guidance for better transposition and application of the Directive 2004/38/EC.</p> <p>2. n/a</p> |
|  | Hungary | Yes | <p>1. Hungarian legislation does not distinguish between own citizens and citizens of other European Economic Area (EEA) countries when it comes to family unification. This issue is governed by Act I of 2007 on the Admission and Residence of Persons with the Right of Free Movement and Residence an unofficial translation of Act I of 2007 can be accessed here: http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=country&category=LEGAL&coi=HUN&skip=0&querysi=2007&searchin=title&sort=date</p> <p>2. According to Paragraph (1-2) of Article 6 the family member of an EEA national has the right of long-term residence (exceeding 90 days in 3 months) in Hungary if they do not pose an undue burden to the social welfare system, and have comprehensive sickness insurance for health-care services or possess</p> |


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| | | | <p>sufficient financial resources to cover the eventual medical treatments themselves. (Paragraph 3 of above Article limits the scope of being a family member to the spouse and dependent children, in case the EEA-national resides in Hungary for study purposes.) Later on, the very same requirements are laid down for family members of Hungarian citizens in Article 7, but it is worth mentioning that the parents (or other persons exercising parental custody) of Hungarian minors are exempted from the above criteria.</p> |
|  | Ireland | Yes | <p>1. In Ireland, the Directive 2004/38/EC is transposed via the European Communities (Free Movement of Persons) Regulations 2015. The Regulations define a Union citizen as a person holding the nationality of a Member State and a Member State is defined as any EU Member State other than Ireland. The Regulations therefore do not apply to Irish citizens. However, if a TCN has previously held an EU Residence card as family member of an Irish citizen in another EU Member State, and moves back with their Irish family member to Ireland, then EU Treaty Rights can apply. The 2015 Regulations updated earlier Regulations on Directive 2004/38/EC and included provisions relating to combatting marriages of convenience.</p> <p>2. In general, spouses or civil partners of an Irish national must apply for residence in the State. The conditions of the "Policy document on non-EEA family reunification" (regarding for example financial requirements) apply. If the spouse/civil partner are currently legally in the State, they and their Irish spouse/partner attend the Garda National Immigration Bureau to make the application for permission for the TCN spouse or partner. If the spouse/partner does not have a current permission to be in the State, a postal application must be made. Applications from persons with existing deportation orders are not considered. Holders of deportations orders may apply to have the deportation order revoked on the basis of marriage/civil partnership to an Irish national under section 3(11) of the Immigration Act 1999. Further details are available here: http://www.inis.gov.ie/en/INIS/Pages/wp07000024.</p> |
|  | Italy | Yes | <p>1. No. The personal scope of the implementing regulation of Directive 2004/38 (D.lgs 30/2007) is provided for by art. 3 which states the applicability of the provisions only to European citizens, and their family members, who have exercised the right to move to another Member State. However, the scope of the Directive has been broadened also to family members of Italian nationals by art. 23 of the abovementioned regulation. This article allows for the application of the same procedure also to family members of Italians if the provisions are more favourable.</p> |



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|  | Latvia | Yes | <p>1. Yes</p> <p>2. It applies to a family member of a citizen of Latvia if the citizen of Latvia has exercised the right to free movement of persons and has resided in another Member State. This fact has to be proved with documents and if it is done, then his/her family member submits the same documents to the family member of any other Member State when applying for a residence permit. If the right to free movement of persons and residence in another Member State cannot be proved, the spouse of a citizen of Latvia requests a temporary residence permit in accordance with national law - the Immigration Law.</p> |
|  | Lithuania | Yes | <p>1. Yes</p> <p>2. If a citizen of Lithuania has exercised the right to free movement and has resided in another Member State, Directive 2004/38/EC would apply to his/her family members (this needs to be proved with documents). In such a case his/her family member applies for a residence card of an EU national family member and submits the same documents as family members of any other Member State when applying for such Card. The foreigner has to provide his/her travel document and a document proving that he is a family member of a Lithuanian national. The Lithuanian national has to provide documents proving that he has exercised the right to free movement. The application must be considered within one month. The Card is issued for 5 years. If the Lithuanian citizen has not exercised this right or cannot prove it, his/her family member has to apply for a temporary residence permit in accordance with general procedure of family reunification. A foreigner's application for the issuance of the TRP must be considered not later than within four months. The foreigner needs to provide much more documents for the TRP than for the EU family member card. The TRP is issued for 1 year.</p> |
|  | Luxembourg | Yes | <p>1. Article 12 (3) of the amended law of 29 August 2008 on free movement of persons and immigration (Immigration Law) expressly assimilates family members (EU citizens or third-country nationals) of a Luxembourgish national as family members of EU citizens. However, in the case of Luxembourgish nationals, none of the requirements established by article 69 (1) of the Immigration Law for family reunification of third-country nationals apply. In this regard, the Council of State considered in its legal</p> |


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| | | | <p>opinion of 20 May 2008 (Parliamentary document n° 5802/10 of 20 May 2008, p. 6) that it was against article 11 of the Constitution of the Grand-Duchy of Luxembourg, which guarantees the constitutional right to a family, to require a Luxembourgish national to fulfill the conditions established in article 6 of the Immigration Law assimilating a Luxembourgish national to an EU citizen in this context. This position has been ratified by the Administrative Courts (See First instance Administrative Court, 3rd Chamber, n° 34065 of 30 April 2015).</p> <p>2. The only condition that the national has to fulfill is to prove the family link (spouse, partner, children (even if adopted), the first degree ascendants) (See answer to Q.1).</p> |
|  | Malta | Yes | <p>1. The immigration position of family members of Maltese nationals are regulated by national legislation which is not based on the provisions of Directive 2004/38.</p> <p>2. The spouse or partner (including same-sex) of a Maltese national, joined together by means of civil marriage or civil union respectively enjoys automatically the right of free movement in Malta. The foreign spouse or partner of the said citizen of Malta shall enjoy such right as from the date of marriage or registration of civil union and will continue to enjoy it as long as the couple are living together. Their dependent children who are under the age of 21 years will also enjoy such right. Such persons are granted a residence permit to reflect such status. The request for a residence permit by other family members of such persons are considered on the merits of the case in accordance with national legislation.</p> |
|  | Netherlands | Yes | <p>1. Yes. In order to distinguish it is determined whether the Dutch citizen has lived together with the third-country national in another EU/EER Member State or Switzerland for at least 3 months before returning to the Netherlands. The residence must have been lawful based on EU Community law, thus the Dutch citizen must have used EU Community law (right to free movement). Directive 2004/38 is also applied in this situation if the third country national applies for EU residence with the Dutch citizen in the Netherlands.</p> <p>2. The family member (also third country national) has to comply with the following requirements: *The provision of a valid passport or other accepted travel document. *The provision of documents proving that the third country national and the Dutch citizen have a lasting relationship and lived together for at least three months in another EU/EER member state. *The family member or relative does not pose a threat to</p> |

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| | | | public order or national safety. *The family member or relative must register in the Municipal Personal Records. *The family member or relative must be insured in the Netherlands for healthcare costs. |
|  | Poland | Yes | <p>1. In polish legal system there are no definition of family members of polish citizens. On the base of the Act of 12 December 2013 on foreigners (EU citizens are excluded from this act) we have definition of family member of polish citizen, who returns into the territory of the Republic of Poland after a period of residence in another European Union Member State, a European Free Trade Association (EFTA) member state – a party to the Agreement on the European Economic Area or the Swiss Confederation, where he was employed or self-employed, the provisions of Article 10 and Article 11(a) of the Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members. The definition is the same as for family member of the EU citizen: The family member – it shall signify: (a) the spouse, (b) the descendants of the Union citizen who are under the age of 21 or are dependants and those of the spouse or living in the common household with the Union citizen, (c) dependent direct relatives of the Union citizen in the ascending line and those of the spouse or living in the common household with the Union citizen.</p> <p>2. On the base of the Act of 12 December 2013 on foreigners, a temporary residence permit for a family member of a national of the Republic of Poland shall be granted to a foreigner if the foreigner: (1) is married to a national of the Republic of Poland under Polish law, or (2) is a minor child of a foreigner married to a national of the Republic of Poland under Polish law and holds a temporary residence permit for a family member of a national of the Republic of Poland. On the base of the Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members, Union citizen and family member who is not a Union citizen may reside in the territory of the Republic of Poland for a period of 3 months without the need to meet any residence requirements. In this period Union citizen shall be obliged to be in the possession of a valid travel document or another document confirming his/her identity and citizenship. According to the article 16 of the Act: 1. Union citizen shall have the right to reside for a period longer than 3 months if he/she meets one of the following conditions: (1) he/she is an employee or a self-employed person in the territory of the Republic of Poland; (2) he/she is covered by the general health insurance or is a person entitled to health insurance or is a person entitled to health insurance benefits on the grounds of the provisions on coordination within the meaning of Article 5 (23) of the Act of 27 August 2004 on health insurance</p> |

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| | | | <p>benefits finances from public funds and is in possession of enough funds to provide for himself/herself and his/her family members in the territory of the Republic of Poland without the need to make use of social insurance benefits; (3) he/she studies or undergoes vocational training in the Republic of Poland and is covered by general health insurance or is a person entitled to health insurance or is a person entitled to health insurance benefits on the grounds of the provisions on coordination within the meaning of Article 5 (23) of the Act of 27 August 2004 on health insurance benefits finances from public funds and is in possession of enough funds to provide for himself/herself and his/her family members in the territory of the Republic of Poland without the need to make use of social insurance benefits; (4) he/she is married to a Polish national. 2. If the purpose of residence in the Republic of Poland is to undertake gainful employment, a Union citizen against whom the limitations in the access to labour market apply pursuant to international agreements shall be granted the right to reside for a period longer than three months after obtaining a promise of employment permit in that territory. In the Act of 12 December 2013 on foreigners, we can find these articles: a foreigner shall be refused a temporary residence permit: (1) for a family member – a national of the Republic of Poland – in the case of a foreigner married to a national of the Republic of Poland, or (2) for the purposes of family reunification – in the case of a foreigner married to a foreigner referred to in Article 159(1)(1) – if such a marriage has been entered into in order to circumvent the Act.</p> |
| | Slovak Republic | Yes | <p>1. Yes, the Act on Residence of Aliens specifically states the family member of the Union citizen („A Union citizen is every person who is not a citizen of the Slovak Republic and who is a citizen of another EU Member state.“) According to this Act a family member of a Union citizen family member is a: a) his/her spouse, b) his/her child younger than 21 years, his/her dependent child and dependent children of his/her spouse, c) his/her dependent direct relative in descending or ascending line and such a person of his/her spouse, d) any other family member to whom paragraphs (a) to (c) do not apply and s/he is a dependent person in the country of his/her origin, e) any other family member to whom paragraphs (a) to (c) do not apply and s/he is the member of his/her household, f) any other family member to whom paragraphs (a) to (c) do not apply and s/he depends on his/her care due to serious health reasons, g) his/her partner with whom the Union citizen is in a permanent, duly certified relationship. h) third country national with the right of residence in the same member state in which the Union citizen has a right of residence and the Union citizen is a Slovak Republic national with whom the third country national returns or joins him/her to reside back in the Slovak Republic territory and fulfils some of the conditions specified in par.</p> |

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| | | | <p>(a) to (g) in relation to the Slovak Republic national – Only in such case the citizen of the SR is considered a Union citizen as the act states.</p> <p>2. Conditions for reunification with the Slovak citizen contain submitting an application for granting permanent residence for the purpose of family reunification in person in the official form at a diplomatic mission of the Slovak Republic abroad or at the Police Department in Slovakia, valid travel document and two photos in the passport format (3 x 3,5) picturing his/her current appearance and documents not older than 90 days proving: a) the purpose of stay b) clear criminal record, this does not apply for TCNs younger than 14 years or for the change of type of residence when this document was already submitted with the previous application for residence proving his/her clear record. c) written consent of the parent enjoying the right to meet the child – applicant – younger than 18 years of age d) financial coverage, e) accommodation for the 5 years of stay. Purpose of stay is proved: In case of a foreigner marrying a Slovak citizen with the permanent residence in Slovakia: - Slovak marriage certificate,; - Proof of the permanent residence in the Slovak Republic of the Slovak citizen who married the foreign national (ID). In case of an unmarried child younger than 18 entrusted to a personal care of a foreigner who is a spouse of a Slovak national with permanent residence in the territory of the Slovak Republic (e.g. child from the first marriage), it is necessary to submit to the Alien Police the following: - birth certificate of the child (authenticated by an apostillation or a consular super legalization and translated into Slovak language by an official translator) - Written affidavit of the parent that this child is not married - Slovak marriage certificate - Proof of permanent residence of the Slovak citizen, who married a foreign national (identification card) - Copy of the relevant decision issued by a competent foreign authority, according to which the child has been placed into the custody of a foreign national who is a spouse of a Slovak citizen (official translation) - Written consent of the second parent of the child who, according to the decision mentioned above, also has the right to meet the child.</p> |
|  | Spain | Yes | <p>1. No, in both cases it is applied the Spanish Royal Decree 240/2007 which transposes the European Parliament and Council Directive 2004/38/EC which regulates the conditions in which Union citizens and their families exercise their right to move and reside freely within the European Union.</p> <p>2. -</p> |

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|  | Sweden | Yes | <p>1. No</p> <p>2. Na</p> |
|  | United Kingdom | Yes | <p>1. Yes, there are essentially two separate but parallel legal frameworks for providing a lawful basis for the residence of non-British nationals in the UK. Firstly, there is the scheme of leave to enter and remain under the Immigration Rules and the Immigration Act 1971. As set out in the Immigration Rules Part 8 A280(d) with reference to Appendix FM, a family member is defined as “the fiancé(e), proposed civil partner, spouse, civil partner, unmarried partner, same sex partner, or child or other dependant relative.” Secondly, there are rights under the EU Treaties and EU secondary legislation, primarily the Free Movement Directive (Directive 2004/38/EC) which the UK transposed through the Immigration (European Economic Area) Regulations 2016 (‘the 2016 Regulations’). Regulation 7 of the 2016 Regulations defines a family member (FM) of an EEA national as; spouse or civil partner, direct descendants of the EEA national or their spouse or civil partner who are either under the age of 21 or dependants of the EEA national or their spouse or civil partner and dependent direct relatives in the ascending line of the EEA national or their spouse or civil partner. The 2016 Regulations also facilitate extended family members (EFM) under regulation 8. An EFM is defined as: someone who is not a FM for the purposes of regulation 7, but who can prove that they were dependant on the EEA national prior to joining the EEA national in the UK and whose dependency is ongoing, or who can prove that they are in a durable relationship with an EEA national. EEA nationals and their family members can benefit from the 2016 Regulations provided that the relevant criteria are met. British citizens and their family members residing in the UK are not able to exercise their free movement rights and are generally not eligible to benefit from the 2016 Regulations unless they meet one of the exceptions within regulations 9 or 16.</p> <p>2. Non-EEA nationals wishing to come to or remain in the UK on the basis of their relationship with a family member who is a British citizen or settled in the UK are governed by the family rules under Appendix FM to the Immigration Rules. GEN.2.1. states “the requirements to be met by a person seeking leave to enter the UK under this route are that the person- 1. (a) must have a valid entry clearance for entry under this route; and 2. (b) must produce to the Immigration Officer on arrival a valid national passport or other document satisfactorily establishing their identity and nationality.” Guidance can be found at: https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-fm-family-members. Non-</p> |

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| | | | <p>EEA nationals wishing to come to or remain in the UK on the basis of their relationship with a family member who is a British citizen or settled in the UK and rely on a derivative right are governed by the 2016 Regulations. The requirements are set out in full at regulation 9 and 16(5) of the 2016 Regulations. Guidance on these more specific routes is available to the public and can be found at: https://www.gov.uk/government/publications/free-movement-rights-family-members-of-british-citizens.</p> |
|  | <p>Norway</p> | <p>Yes</p> | <p>1. We understand that the questions relate to how Norway practices the Directive when it applies to Norwegian citizens who have exercised their rights as citizens of an EEA Member State to live with their families in another EU/ EEA Member State and which conditions must be met so that a family member who is a third country national, can acquire a residence permit based on the Directive. (This question may, strictly speaking, not entirely apply to Norway – not sure we can answer yes/no.)</p> <p>2. Family members who accompany or are reunited with a Norwegian citizen who returns to Norway after having exercised the right of free movement in another EEA Member State, are covered by the EEA regulations according to the Norwegian Immigration Act (Section § 110, paragraph 2). The definition in the Norwegian Immigration Act of who is included under the grouping of “family members” who are covered by these regulations is somewhat broader than what is actually indicated by the Directive (Section §19-7). • For a family member to get a residence permit under these conditions, the Norwegian citizen must have exercised their rights to live in another EEA Member State, either employed by someone or financially independent. As a general rule, it is expected that the Norwegian citizen was living in an EEA Member State with the family member in question. If the Norwegian citizen in this scenario has been working in another EEA Member State, it is not a requirement that they have employment when they return to Norway. However, if the person was living in another EEA Member State on private funds, then they must also be able to document such funds upon their return to Norway. It is our experience that third country nationals and Norwegian citizens take advantage of the opportunities the EEA-regulations provide in order to avoid the restrictions in the ordinary Norwegian regulations. If a third country national has taken advantage of the regulations, we do not refer to it as abuse, but as avoidance. That they adapt their situation to be covered by the EEA-regulations is not considered abuse and we do not refuse them their rights according to those regulations. We see for example, a number of Norwegian citizens moving to other EEA Member States in order to avoid the 24-year minimum requirement (for marriage to a non-national) stipulated in the ordinary Norwegian regulations (to deter forced marriages), or in order to get an entry-ban</p> |

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| | | | <p>repealed (which was issued according to the Norwegian regulations for family members). We also see a number of cases which involve abuse, such as when someone incorrectly informs us that they have moved abroad to exercise their rights of free movement when they haven't in fact, and we also see a number of pro-forma marriages.</p> |
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