



Conformity studies of Member States' national implementation measures transposing Community instruments in the area of citizenship of the Union

FINAL REPORT I

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

Horizontal Synthesis Report

Submitted to:
Michal Meduna
European Commission
DG JLS/C3
Rue de Luxembourg 46
1000-Bruxelles

milieu
ENVIRONMENTAL LAW & POLICY

Submitted by:
Milieu Ltd. (Belgium)
Europa Institute, University of Edinburgh

Date of submission: 18 December 2008



This Horizontal Report has been prepared by Milieu Ltd. in consortium with the Europa Institute, Edinburgh University under Contract No JLS/2007/C4/004-30-CE-0159638/00-31. This report reflects the transposition into the national legal orders until 1 August 2008.

The views expressed herein are those of the consultants alone and do not necessarily represent the official views of the European Commission.

Milieu Ltd. (Belgium), 29 rue des Pierres, B-1000 Brussels, tel: 32 2 506 1000; Fax 32 2 514 3603; e-mail: sophie.vancouwenbergh@milieu.be; web address: www.milieu.be

**HORIZONTAL ANALYSIS OF THE TRANSPOSITION OF
DIRECTIVE 2004/38/EC ON FREE MOVEMENT OF UNION CITIZENS**

TABLE OF CONTENTS

EXECUTIVE SUMMARY	i
ABBREVIATIONS USED	viii
ABBREVIATIONS USED IN TABLES	viii
1 INTRODUCTION	9
1.1 Summary of objectives of the study	9
1.2 Methodology and challenges	10
2 OVERVIEW OF MEMBER STATES' TRANSPOSITION OF DIRECTIVE 2004/38/EC	12
2.1 Definitions, family members and beneficiaries	12
2.2 Rights of exit and entry	22
2.3 Right of residence	25
2.4 Right of permanent residence	49
2.5 Common provisions	56
2.6 Restrictions on grounds of public policy, public security and public health	60
2.7 Procedural safeguards against decisions restricting free movement	66
2.8 Final provisions (Chapter VII)	72
3 CONCLUSIONS.....	78
ANNEX : List of transposing legislation per Member State	

EXECUTIVE SUMMARY

1. Introduction

This Horizontal Synthesis Report reviews how the 27 EU Member States have transposed 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.¹ Directive 2004/38/EC grants Union citizens and their family members the right of entry and residence in another Member State and facilitates entry and residence for other beneficiaries. It consolidates the patchwork of former Directives and long-standing case-law of the ECJ into one legal instrument, thus ensuring a comprehensive and clearer approach in this area.

The Directive clearly determines, on the one hand, the formalities that Member States can require from Union citizens and their family members residing in their territory. These formalities are expressly established in the Directive and restricted in function of the duration of the stay in the Member State. On the other hand, the Directive also establishes the only acceptable reasons for restricting the free movement of citizens by Member State authorities.

The report is based on national reports that have been developed for each of the Member States. Each national report includes a Conformity Study and a table of concordance assessing, article per article, the transposition of each requirement of the Directive.

It also provides the reader with a general overview of the current situation with respect to free movement of Union citizens and their family members in the Member States. For some Member States, the results of a questionnaire with responses of Member State authorities were taken into account and assessed in light of proper findings by the national experts. However, for most countries, the answers to the questionnaire were not received before the finalisation of this report.

2. Overview of Member State transposition of Directive 2004/38

The overall transposition of Directive 2004/38/EC is far from satisfactory. Not one of the Member States has transposed the entire Directive in an effective and correct manner. In a few Member States (i.e., Cyprus, Greece, Finland, Portugal, Luxembourg and Spain), the problems of conformity relate only to a small number of Articles, but in most Member States, considerable parts and crucial provisions were wrongly or not transposed. Even in Member States with a relatively good transposition, some issues of conformity were found that would need to be remedied in order to fully achieve the objectives of the Directive.

Though this study aimed to provide the Commission with up-to-date and accurate reports on the state of law in each Member State, the legislative changes taking place in several countries posed particular challenges. Member States' amendments introduced changes either improving or affecting conformity of the transposing legislation with the Directive. Italy was especially active in that a number of highly controversial proposals were discussed, amended and eventually adopted or abandoned.

The provisions creating most problems of conformity are Articles 27 and 28 relating to restrictions of the right of entry and residence on grounds of public policy and public security. Despite the importance of these principles, only four Member States (i.e., Cyprus, Greece, Portugal and Malta) correctly transposed these Articles. In addition, many Member States applied the principles of the Directive in a more stringent manner, even for those articles where transposition seemed to be more or

¹ This study has been carried out under contract JLS/2007/C4/004-30-CE-0159638/00-31 awarded to Milieu Ltd. and the Europa Institute of Edinburgh University.

less in line with the provision of the Directive. The great number of complaints lodged by Union citizens and their family members and reported to the European Parliament, the European Court of Justice and the national courts adds weight to this conclusion.

However, these are certainly not the only Articles creating serious issues of conformity with the Directive, as summarised below.

1. Definitions and the concept of family member

Most Member States have correctly transposed the definitions of the Directive and include the correct persons as family members in the scope of the transposing legislation. However, some potential problems were identified with regard to implementation, rather than with actual transposition of the Directive.

For example, registered partners might be refused entry and residence in a Member State that has not included registered partners under the definition for family member (an option allowed by the Directive) and that has not transposed the requirement to facilitate entry and residence for the persons covered by Article 3(2)(b), namely partners in a durable relationship.

2. Beneficiaries

Article 3 grants Union citizens and their family members who accompany or join them, as defined in Article 2, the right to enter and reside in another Member State. Two main issues have been identified with the transposition of this part of Article 3.

First, some Member States, *i.e.*, Denmark, Ireland, Finland and UK, make the rights of third country family members under the Directive expressly conditional upon a previous lawful residence in another Member State. Other Member States (*e.g.*, Austria, Czech Republic, Germany, Greece, Cyprus, Malta and the Netherlands) follow the same interpretation even if not expressly indicated in the legislation. This could lead to the situation where family members of a Union citizen are refused entry and residence in a Member State of the EU. The ECJ has recently stated that this requirement is against the Directive.² This additional requirement creates a serious problem of conformity.

Secondly, only half of the Member States have introduced a system to facilitate entry and residence of the persons covered by Article 3 of the Directive, namely other members of the household, dependent family members and persons with serious health concerns requiring the specific care of the Union citizens.

3. Entry

The most important concern with the transposition of Article 5 is that some Member States require a visa for third country family members after the first entry in the Member State even when they already have a residence card. This is the case in Denmark and Ireland. In addition, many Member States have not introduced the accelerated procedure for visa issuance.

4. Residence for up to three months

Article 6 provides that every Union citizen has the right to reside in the host Member State for a period of up to three months without any conditions or formalities other than holding a valid identity card or passport. In addition, family members accompanying or joining the Union citizen have the same right with the mere requirement of presenting a passport. Most Member States have transposed this provision in an effective manner.

² Case C-127/08 *Metock et al v. Minister for Justice, Equality and Law Reform*, judgment of 25 July 2008.

5. Documents certifying the right of residence of up to three months

Union citizens also have the right to reside for longer than three months in another Member State, but then their stay becomes conditional. The Member State can require that:

- they are workers or self-employed in the host MS;
- they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State and they have a comprehensive sickness insurance cover in the MS;
- they are students in a private or public establishment accredited or financed by the MS and have a comprehensive sickness insurance and sufficient resources for themselves and their family members;
- they are family members accompanying or joining a Union citizen who satisfies one of the three conditions above.

It is remarkable that two Member States - Estonia and Spain - do not require any of the conditions mentioned in Article 7. The right is only conditional on being a Union citizen.

Union citizens need to register with the authorities of the host Member State when residing for longer than three months. In order to be granted the residence certificate confirming they fulfil the conditions to exercise their right granted by the Directive, they need to submit some supporting documents mentioned in Article 8. Generally most Member States have transposed all conditions (*e.g.*, being a worker, having sufficient resources ...) allowed by the Directive and most have done so in a correct manner. However, the supporting documents requested by national authorities often go far beyond what is allowed by the Directive.

The problems identified in relation to the conditions for exercising the right of residence are often similar in several Member States. In some Member States, family members who are themselves Union citizens only have an independent right of residence, which means they are not able to join their Union citizen family member if they do not individually fulfil the conditions of the Directive. Other Member States impose additional requirements, such as “adequate accommodation” (*e.g.*, Czech Republic) or the obligation of lawful residence (*e.g.*, UK, Ireland, Sweden). Finally, the retention of the status of worker, guaranteed by Article 7(3) of the Directive, is sometimes transposed as a mere retention of residence.

The *registration certificate* is an official document stating that a Union citizen fulfils the conditions for residence of more than three months and can thus exercise his or her right of free movement in the Member State. As such there is no margin of discretion for the authorities when issuing the certificate, nor can they refuse entry or residence when the conditions of the Directive are fulfilled. This approach is one of the major changes introduced by Directive 2004/38/EC. The certificate merely attests fulfilment of the legal conditions.

Certain Member States have not fully introduced this new approach in their legal order, in violation of the Directive.³ For example, Lithuania continues to use the wording “residence permit” or “residence card” for Union citizens, and Slovakia speaks of “first permission to stay”. More serious problems have been created by the condition and related proof indicating that a person has sufficient resources. Some Member States have fixed the amount, in violation of the explicit requirements of the Directive.

Article 9(1) establishes that Member States are obliged to issue a residence card to third country family members of a Union citizen who reside in the Member State for more than three months.

³ Notice the wording used in some Member States’ transposing legislation. For example, Denmark requires Union citizens to “apply” for a registration certificate at the State Administration., Some other Member States, such as Bulgaria, do not explicitly recognise a “right” to reside, but rather use “may” reside or “resides”.

Almost all Member States have correctly transposed this obligation, with a few exceptions, or at least ambiguous cases.

Finally, the modalities for issuance of the registration certificate for Union citizens and the residence card for third country family members have not always been included in the national legal order.

6. Retention of the right of residence

One of the novelties introduced by the Directive is the retention of the right of residence for family members. Articles 12(3) and 13(3) specify that this right shall be retained on a personal basis. Many Member States have not transposed the obligation to retain the right on a personal basis and this could be considered as having created a more favourable treatment since the family reunification rules of the Directive could continue to apply.

It is important to verify whether the general aliens regime also applies to retainees of the right of residence for other matters covered by the Directive, which would no longer be in line with the Directive. For example, applying the expulsion grounds of the general aliens legislation to family members who retain the right of residence is not in line with these Articles of the Directive. In some cases, the application of the Directive for other purposes than family reunification could be deduced from the text of the legislation (e.g., this was the conclusion for Czech Republic, Estonia and Germany). In other cases, the transposition was considered incomplete because it was not clear that the general aliens' regime would not apply to persons retaining the right of residence. Finally, Spain directly excluded family members who retained the right of residence from the scope of application of the legislation transposing the Directive.

7. Permanent residence

Article 16 of the Directive recognises the right of permanent residence for Union citizens and their family members who have resided legally for a continuous period of five years. The right is no longer subject to the conditions of Chapter III. Nevertheless, Hungary, Lithuania, Luxembourg, Poland and Slovenia not eliminated the conditions for exercising the right of permanent residence, creating a serious violation of the Directive. Moreover, some Member States have not correctly transposed the conditions for the right of permanent residence of workers and self-employed persons who have stopped working.

8. Equal treatment

A large number of countries have not included Article 24(1) in the transposing legislation. Rather, Member States simply refer to the general principles of equal treatment, either as part of Community law or national equality laws. The UK adopted a piecemeal approach amending specific pieces of legislation. This approach could be problematic since there is no general principle of equal treatment in UK law, even if no real omissions were identified so far. Less than half of the Member States have expressly transposed Article 24(2), which permits a Member State to restrict the equal treatment right in certain areas.

9. Transposition issues regarding public order and public security

Articles 27(1)-(2) and 28(1) lay down specific principles that must be taken into account by the competent authorities when restricting freedom of movement or residence based on public policy, public security and public health. These principles are essential assessment tools to ensure that denial of entry or expulsion measures adopted by competent authorities and/or reviewed by courts comply with EC law and are not arbitrary or disproportionate. These provisions consolidate an abundant and constant jurisprudence of the ECJ in this area.

Despite the importance of these principles, the transposition of these Articles by Member States is far from satisfactory. Only three Member States (Greece, Malta and Portugal) have correctly transposed Articles 27 and 28. Some countries have not transposed Article 27 at all and others have only partially transposed the provisions. Other countries have transposed the provisions, but added other grounds or given extremely broad definitions for the situations that may be considered as public order and public security grounds.

More specifically, 16 Member States⁴ did not transpose the obligation not to invoke public policy, public security and public health grounds to serve economic ends and eight countries⁵ did not transpose Article 27(2) at all. The principle that previous criminal convictions shall not in themselves constitute grounds for expulsion decisions was not transposed in Bulgaria, Hungary, Latvia, the Netherlands and Sweden.

However, many national courts tended to take those principles into account and even referred to the ECJ jurisprudence in their review of expulsion decisions. Practice differs from Member State to Member State but in general the courts refer to the ECJ jurisprudence specifically quoting *R v. Bouchereau*,⁶ *Calfa*⁷ and other relevant cases. The courts incorporate the principles included in the Directive and some have applied Article 27 as a provision with direct effect.

No particular problems were identified for the transposition of Article 29, which allows restrictions to the rights of the Directive on grounds of public health.

10. Procedural guarantees

Articles 30 and 31 of the Directive include a range of procedural guarantees that need to be respected in the application of expulsion measures as well as in the adoption of decisions to restrict free movement not based on public order, public security and public health (Article 15 of the Directive).

In 20 Member States,⁸ the transposing legislation applies the procedural guarantees to all administrative decisions. In these cases, the assessment of the transposition of Article 30 and 31 applied by analogy to Article 15. Some specific problems are explained in detail in the horizontal report. In France, procedural guarantees are excluded in one type of procedure dealing with cases of absolute urgency.

3. Conclusion

This assessment of the transposition of Directive 2004/38/EC on the free movement of Union citizens and their family members has identified a range of errors and gaps in the transposing legislation of almost all Member States. Overall, the study shows that an enormous amount of work is ahead for the Member States, and for the European Union, to achieve full free movement of its citizens and their family members. A joint effort will need to be undertaken to ensure the full transposition and application of Directive 2004/38/EC.

⁴ Austria, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Hungary, Italy, Lithuania, Latvia, the Netherlands, Romania, Sweden, Slovenia and Slovakia.

⁵ Czech Republic, Denmark, Estonia, France, Lithuania, Slovenia, Slovakia and Sweden.

⁶ Case 30/77 [1977] ECR 1999.

⁷ Case C-348/96 [1999] ECR I-11.

⁸ Austria, Bulgaria, Cyprus, Czech Republic, Germany, Estonia, Greece, Finland, France, Luxembourg, Latvia, Malta, Netherlands, Poland, Portugal, Romania, Sweden, Slovenia, Slovakia and UK.

SUMMARY DATA SHEET

Consolidated summary table of conformity

Legend

- NT:** Not transposed
G: Incomplete transposition
I: Incorrect transposition
√: Correct and complete transposition

Directive 2004/38		Member States																											
Article	Summary of contents	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
1	Subject																												
2	Definitions	I	√	I/G	I	G	A	√	G/I	I	I/A	√	√	I	√	√	√	√	√	√	√	G	√	√	√	G	√	√	
3	Beneficiaries	I/G	I/G	√	√	I	G	I	G/I	G	I/G	I/G	G/I	I/G	I	I	G	G	I/G	I	√	G	√	G	G/I	G	G	I	
4	Exit	G	I	√	√	√	G	I	G/A	√	√	√	√	√	I	√	√	√	G	√	√	√	√	√	√	√	√	√	
5	Entry	I/G	G	I/G	√	G	G/I	G	G	√	I	G	A	I/G	G/I	I	G	G/I	G	I	G	I/G/A	√	√	G	A/G/I	√	I	
6	Residence < 3m	√	√	G	√	A	√	G	G	I	I	√	√	A	√	I	√	√	√	√	√	√	√	√	√	I	A	√	
7	Residence >3m	G	I/A	I/G	√	I/G	I	I	I	√	√	G	A/I/G	A/I/G	I	I	G	A/I/G	G/I	√	G/I	I/G	A	I/G	I/G	I/A	G	I	
8	Admin formalities (EU)	I/G	I/A	I/G	I	I	I/G	√	I	G	I	G	I/A	I/G	I	I/A/G	I/G	I/G	G/I	√	G/I	I/G	A	I	I/G/A	G/A/I	√	I	
9	Admin formalities (3rd)	√	√	I/G	√	I	√	I	√	I	√	√	I	I	I/A	√	I	G	G	√	I	√	A	√	√	√	I/G	√	
10	Residence cards	I/G	I/G	G	I	G/I	I/G	I/G	G/I	√	I	√	I/G	I	I	I/G	I/G	G	G/I	√	G	G	√	G/I	A	A/G	G	I	
11	Validity	G	G	I	√	I	√	I	G	√	√	√	√	G/I	√	√	√	√	I	√	I	G	√	√	√	√	I	I	
12	Retention (death/departure)	G	A	I/G	G	G	√	G	I/G	√	I	G	√	I	I	G	√	I	G	√	I/G	G/I	G	G	I/G	G	G	I	
13	Retention (divorce etc)	G	G	I/G	I/G	G	G/I	G	I/G	√	I	G	√	I	I	I/G	G	G	G/I	√	G/I	G	G	G	G	G	G/I	I/G	√
14	Losing the right	G	G/I	A/G	√	G	G	G/I	G	I	√	I	NT	I	G/I	G	G	√	G	G	G/I	√	√	G/I	G/I	A/G	G/I	G/I	
15	Procedural safeguards	G	G/I	NT	√	A	√	√	G/I	√	I/A	√	I	I/G	G	G/I	√	I	G/I	√	G	√	√	G	I	I	√	I	
16	General rule perm residence	G	I	I	√	√	A	I	√	√	I	√	√	I/A	I	√	I	I/G	I/G	√	√	G	√	√	√	I/G	G/I	I	
17	Exemptions	NT	G	I	G	√	I	G	G/I	√	√	√	√	G/I	G	A	√	√	G	√	√	I	√	√	I	G	√		
18	Right perm resid (3rd family)	NT	I	NT	√	√	√	√	I	√	I	G	√	G/I	√	√	√	√	√	√	√	√	√	√	√	I	√	G	
19	Document perm resid	NT	I	G/I	√	I	√	I	G	G	√	√	I	√	I	√	√	G	I	√	√	√	√	I	√	I/G	√	√	
20	Perm residence card	I/G	I/G	√	√	√	√	I	G/I	I	√	√	A	I	I	G	G	G	G/I	√	G/I	√	I/A	G/I	√	I/G	√	I	

Directive 2004/38		Member States																										
Article	Summary of contents	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK
21	Continuity	G	√	√	I	G	G	G	G	√	I	√	√	I	√	I	√	√	G	G	√	√	√	G	A/G	G	√	√
22	Territorial scope	I	I	√	√	√	√	G	√	√	√	√	I	√	√	G	√	√	√	√	√	√	√	√	√	√	√	√
23	Related rights	I	I	√	√	√	√	√	√	√	I	√	I	I	I	A	√	√	G	√	√	√	√	√	√	√	√	I
24	Equal treatment	A	√	√	√	√	G	A	G	√	√	√	I	√	I	I/G	I	√	G	√	√	G	I	I	A	G	G	I
25	General provisions	G	√	I	√	I	I	G	G	√	I/G	√	G	G/I	I/G	G	I	G	G	√	√	G	√	D	G	G	G	√
26	Checks	I	√	√	√	I	√	√	√	√	√	√	I	I	√	√	√	I	√	√	√	√	√	√	I	√	I	√
27	Expulsion grounds - principles	A/G/I	G	I/G/A	√	G	I/G	I/G	I/G	√	G	G/I	G/I	I/G	I/G	I/G	G	G	G	√	G	G	√	G	G/I	G/I	G	G
28	Protection against expulsion	I/A/G	I	A	√	G/I	√	I/G	G	√	√	I/A	NT	I	I/G	I	G	I	G	√	G	√	√	√	I	I/A/G	G/I	√
29	Public health	A/I/G	G	I/G	√	G	G	I/G	G	√	√	√	√	I/G	I	G	G	√	G/I	√	G	G	√	G	G/A	I/G	A	√
30	Notifications	G	G	I/G	√	G	G	G	I	√	√	I/G	G	I/G	I/G	I/G	√	√	G/I	G	G/I	I	√	I/G	I	G	G	I
31	Procedural safeguards	A	I	√	√	I	G	G	I/G	I	√	√	G/I	A/I	I	I	√	I	G	G	√	√	√	√	√	G	G	I
32	Duration exclusion order	I/G	I	I	√	G	√	G	G	√	√	√	G	G/I	I	I	G	√	G	√	G	√	√	I/G	G	G	G	I
33	Expulsion as penalty	√	G	√	√	I	√	I/G	G	√	√	√	I/G	I/G	√	NT	√	√	G	√	√	√	√	A/I	I	I	G	√
34	Publicity	√	-	-	√	-	-	√	G	√	√	√	NT	-	-	√	√	-	G	-	-	-	√	I	√	-	-	-
35	Abuse of rights	A	√	NT	√	√	√	I	I	√	A	I	I	I	I	NT	√	√	G	√	√	√	√	√	I	A	√	√
36	Sanctions	NT	I	I	√	√	√	I	√	√	√	√	I	I	√	√	√	I	√	√	√	√	√	√	√	√	√	√
37	More favourable	NT	√	NT	-	-	√	√	-	√	√	√	-	G	√	√	-	√	-	-	-	-	-	NT	√	-	NT	-

ABBREVIATIONS USED

ECJ	European Court of Justice
Art	Article
EEA	European Economic Area
EC	European Commission
MS	Member State(s)
DG JLS	DG Justice, Freedom and Security
TOC	Table(s) of Concordance
CA	Competent Authority

ABBREVIATIONS USED IN TABLES

n/a	Not applicable
G	Gap
I	Incomplete
A	Ambiguous
√	Transposition in conformity
P	Proportionate
ND	Non- discriminatory

1 INTRODUCTION

This report assesses how the 27 EU Member States have transposed 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.⁹

The final report consists of national reports for each of the 27 Member States as well as this Horizontal Synthesis Report. The national report for each Member State includes a Table of Concordance and a Conformity Study. The Conformity Study describes the distribution of competencies and the organisation of the national authorities, and contains an objective legal examination of the conformity of the relevant provisions of national acts with each Article of the Directive. The Horizontal Synthesis report makes a transversal analysis of the transposition of the Directive and highlights any recurrent problems of transposition, as well as similar manners of transposition in various Member States. It enables the reader to obtain an overview of the transposition of a particular Article in all Member States.

Another report will cover the transposition of three instruments relating to electoral rights of Union citizens:

- Act concerning the election of the members of the European Parliament by direct universal suffrage, annexed to Council Decision 76/787/ECSC in the 27 Member States;
- Directive 94/80 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a MS of which they are not nationals in the 12 new Member States;
- Directive 93/109/EC laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals in the 12 new Member States.

1.1 Summary of objectives of the study

This study aims at providing the European Commission with up-to-date and accurate reports on how the Member States have transposed 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.

Directive 2004/38/EC grants Union citizens and their family members the right of entry and residence in another Member State and facilitates entry and residence for other beneficiaries. It consolidates the patchwork of former Directives and long-standing case-law of the ECJ into one legal instrument, thus ensuring a comprehensive and clearer approach in this area.

The Directive clearly determines, on the one hand, the formalities that Member States can require from Union citizens and their family members residing in their territory. These formalities are expressly established in the Directive and restricted in function of the duration of the stay in the Member State. On the other hand, the Directive also establishes the only acceptable reasons for restricting the free movement of citizens by Member State authorities.

⁹ This study has been carried out under contract JLS/2007/C4/004-30-CE-0159638/00-31 awarded to Milieu Ltd. and the Europa Institute of Edinburgh University.

The studies cover not only the incorporation as such of Directives into the national legal order but also broader implementation aspects. This requires analyzing whether the Member States have taken the measures required to guarantee the results imposed by the Directive and whether they have adopted the necessary measures to ensure the effective application and enforceability of the Directive. For this purpose, the national studies review the interpretation and application of the transposing legislation by national courts in line with the definitions of the Directive, administrative practice and procedural rules. Information on implementation was in particular obtained for Articles 27 and 28 on public order and public security.

1.2 Methodology and challenges

1.2.1 Methodology

This study was carried out with the support of a team of national legal experts covering all 27 Member States. In order to ensure an adequate level of uniformity among the ToCs and conformity studies, the management team developed a series of guidelines for undertaking conformity checking of Directive 2004/38/EC. The team also provided the national experts with a list of parliamentary questions of the European Parliament regarding the Directive and developed a Table of Concordance and templates for the national reports.

In addition to the transposing legislation notified by the Member State authorities to DG JLS, the national experts carried out research to ensure that all relevant acts transposing Directive 2004/38/EC were gathered. The experts finalised the ToCs and then responded to a first round of comments from the management team. A second, third and, for some countries, fourth review of the ToC was carried out by the management team to clarify comments and assessments.

The experts also contacted the competent authorities for additional information on interpretation of certain concepts, implementation of the legislation and administrative practice.

The ToCs were updated on the basis of contacts with national authorities, new developments in national transposing legislation and of further in-depth work of the national expert. For some MS the ToC required a very thorough revision due to many new developments and information, for others the revision was limited to some specific aspects. The national experts then drafted the National Reports.

This Horizontal Synthesis Report is based on the last available versions of the ToCs and Conformity Studies.

1.2.2 Main challenges encountered

Several challenges were encountered by the team of national experts preparing the National Reports and by the management team carrying out quality control over the ToCs and the Conformity Studies.

The early challenges mainly concerned the confusing and fragmented transposition of the Directive in some Member States, which made the transposition assessment a time-consuming exercise.

Legislative developments in the area covered by the Directive often required double work. Some proposals or acts were amended several times during the duration of the project. This was particularly the case for Italy, Belgium, Denmark, Luxembourg and Lithuania. The Italian expert analysed, in addition to the existing legislation, three legislative proposals that were not approved by the Italian

Parliament, as well as one pending legislative proposal and the amendments proposed to it by the Parliament.¹⁰

In addition, it was not always easy for the national experts to obtain the new legislative proposals and amendments because they were not publicly available. This was particularly the case for Italy and Luxembourg.

A second challenge was to obtain additional information on the implementation or interpretation of the Directive through contacts with the competent authorities. Some Member State authorities did not respond to the national experts. In addition, it was sometimes difficult to identify the correct service and contact person for certain information since the competencies for this Directive are often scattered among various services.

The responses to the questionnaires sent by the Commission to Member State authorities to obtain information on implementation and administrative practice did not all reach the Commission before the deadline of the final report or in time to be included in the national reports.

¹⁰ It should be noted that at the moment of finalising this report, a new draft proposal was issued by the Estonian Ministry to amend the existing legislation. The draft proposal has not yet been adopted by the Government and is not yet publicly available.

2 OVERVIEW OF MEMBER STATES' TRANSPOSITION OF DIRECTIVE 2004/38/EC

2.1 Definitions, family members and beneficiaries

2.1.1 Definitions: the concept of "family members" (Article 2)

Directive 2004/38/EC grants Union citizens and their family members the right to enter and reside in another Member State. Article 2 of the Directive defines who constitutes a Union citizen's family member for the purpose of the Directive.

It should be noted that quite a few Member States¹¹ have replaced the term "Union" citizen with reference to a European Economic Area national and so also include Norway, Iceland and Liechtenstein (Switzerland is also included). In relation to nationals of the latter group of states, the underlying EU law does not apply as they do not have free movement rights under the EC Treaty, but rather – so far as they are recognised at the supranational level – by virtue of the separate EEA agreement.

Spouse of a Union citizen

The definition of family member in Article 2 includes the spouse of the Union citizen. All Member States but Spain¹² have transposed this definition in an effective manner. Some problems could arise with regard to same-sex marriages. Certain Member States, namely Spain, Belgium and the Netherlands, have introduced same-sex marriages in their legal systems, and therefore same-sex spouses are considered as a family member of the Union citizen. However, many Member States do not recognise same-sex marriages in their legal systems (in some cases they are considered as against public order) which in practice will mean that these spouses will not enjoy the right of free movement as family members. This situation could be considered as leading to discrimination in the application of the Directive on the ground of sexual orientation and that could be considered as contrary to Article 13 of the EC Treaty and Article 21 of the Charter of Fundamental Rights. However, there is no agreement among legal scholars and experts on this issue, which is therefore merely highlighted, rather than assessed as a potential conformity problem.

Registered partner of a Union citizen

A second group of family members includes the partner with whom the Union citizen has contracted a registered partnership on the basis of the legislation of a Member State. The host Member State is required to treat registered partners as family members if its legislation treats registered partnerships as equivalent to marriage, and in accordance with the conditions laid down in the relevant legislation of the home Member State.

A few Member States treat registered partners as family members, even if these partnerships are not treated as equivalent to marriage. Registered partners are considered as family members in Belgium, Bulgaria, Czech Republic, Denmark, Finland, Lithuania, Luxemburg, the Netherlands, Portugal, Spain, Sweden and the UK. Some of these countries, Bulgaria, Finland, Portugal and Sweden, also grant the status of family member to partners in a factual cohabitation. This creates a more favourable treatment for unregistered partners than under the Directive, since Article 3(2) only requires unregistered partners to be facilitated entry and residence in another Member State. In Member States

¹¹ Austria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Hungary, Italy, Latvia, the Netherlands, Poland, Sweden, Slovakia and the UK.

¹² The Spanish transposition defines the spouse as "the spouse, provided that the marriage has not been declared void, there is no agreement or declaration of divorce or of legal separation". The reference to legal separation is problematic since in these cases the marital link continues to exist.

that have not used the option to grant the status of family member to registered partners, the same problems as above could occur in Member States who have not transposed Article 3(2). In those Member States, registered partners will not be given the right to be facilitated entry and residence, thus possibly being refused entry and residence in the Member State where their Union citizen partner is residing.

Direct descendants and ascendants

Article 2 also grants the status of family member to direct descendants under the age of 21 or who are dependants of the Union citizen and of to his or her spouse or partner and to their direct ascendants. Most Member States treat these persons as family members. In the Member States where registered partnerships are not considered as equal to marriage, the relatives of the partner are excluded by the definition of family members. This does not create problems of conformity as the partner himself will not enjoy a direct right of entry and residence.

Four Member States, (*i.e.* Czech Republic, Estonia, Greece and Slovenia), have restricted the concept of direct descendants to the “children” of the Union citizen, and of his or her spouse or partner.¹³ In Greece, this seems to be due to the official Greek translation of the Directive, which uses a concept that reduces the meaning of “direct descendants” to children. In Slovenia, the transposing legislation only includes the unmarried children, which is a more restrictive transposition than allowed by the Directive.

Bulgaria has transposed the concept of direct descendant and ascendants for the relatives of the Union citizen effectively. However, for the relatives of the spouse, a different concept was used, namely “heir” to the spouse. On the basis of family law, an “heir” is not necessarily a descendant or ascendant. In addition, referring to “heir” could exclude direct descendants and ascendants and thus deprive them from the rights granted by the Directive.

Finally, it should be noted that most Member States appear to use the concept of dependency in accordance with the interpretation of the ECJ in *Lebon*¹⁴ and *Jia*¹⁵, although this could not be verified for all Member States, often due to a lack of national case-law. Czech Republic and Germany have explicitly included the ECJ’s interpretation in the transposing legislation. Other countries, such as Spain, include reference to the ECJ’s interpretation in instructions and circulars.

2.1.2 Beneficiaries and facilitation of entry and residence (Article 3)

This section focuses on beneficiaries and the facilitation of entry and residence. The key provision is Article 3, which is comprised of two parts. Firstly, Article 3(1) explains that the Directive applies to Union citizens who move to or reside in a MS in which they are not a national. This first part also extends to family members (as defined in Article 2(2)) accompanying or joining the Union citizen. Secondly, Article 3(2) states that MS must facilitate entry and residence to other persons: “other family members” (Article 3(2)(a)) and partners in a “durable relationship” (Article 3(2)(b)). This analysis splits “other family members” into “members of household and dependants” and those with “serious health grounds”.

The following discussion provides a comparative overview of how EU MS treat these categories of persons. The information is also contained the table further below.

¹³ The Austrian Aliens legislation effectively transposes the definition of descendants and ascendants. However, it should be emphasised that other relevant legislation speaks of “children” instead of “direct descendants” and of “parents” instead of “direct relatives in the ascending line”. In spite of the narrow construction of the wording, the Administrative Court has held that the term “children” must be interpreted in conformity with the Directive and thus be understood to comprise direct descendants in the sense of the Directive.

¹⁴ Case 316/85 *Lebon* [1987] ECR 281.

¹⁵ Case C-1/05 *Jia v. Migrationsverket*, [2007] ECR I-1.

(a) Beneficiaries

The right to enter and reside in another Member State is granted to Union citizens and their family members who accompany or join them, as defined in Article 2. Two main issues have been identified with the transposition of this part of Article 3.

- **Application of *Surinder Singh* in the Member States**

A number of Member States¹⁶ have explicitly excluded their own nationals as beneficiaries of the Directive. This reasoning was explained by Member State authorities as introducing the EU principle that “wholly national situations” are not regulated by EC law. This approach does however not take into account the case-law of the ECJ in case C-370/90 *Surinder Singh*. The case covers the scenario of the national of a Member State returning to his or her home state having worked or been self-employed in another Member State and bringing with them (non-EU) family members.¹⁷ There is a concern whether a misapplication of the *Surinder Singh* principle is unjustly limiting the rights conferred by the Directive.

In other Member States, the legislation explicitly applies to family members of a returning national (e.g., Belgium, Denmark, Finland, Hungary, Lithuania¹⁸, Slovenia, Spain and UK).¹⁹

In yet other cases, the legislation does not explicitly include reference to family members of a national who exercised the right of free movement. However, the definition of Union citizens does not exclude own nationals, or the legislation simply refers to all Union citizens without excluding the own nationals. This is the case in Cyprus²⁰, Germany, France, Ireland, Italy, Latvia, Luxembourg, Poland, Portugal and Romania.

The experts of Lithuania and Bulgaria indicated that the legislation was not entirely clear as to whether own nationals would enjoy the rights of the Directive.

- **Requirement of lawful residence (*MRAX*²¹, *Jia*²² and *Metock*²³)**

Four Member States, *i.e.*, Denmark, Ireland, Finland and UK, expressly make the rights of third country family members under the Directive conditional upon their previous lawful residence in a Member State. Other Member States (*i.e.*, Austria, Czech Republic, Germany, Greece, Malta and the Netherlands) follow the same interpretation of Article 3(1) as Ireland during the proceedings of the

¹⁶ Austria (even though Austrian citizens are explicitly excluded from the transposing legislation, they have a legal status including at least the same level of protection as granted by the Directive), Czech Republic, Estonia, Greece, Malta (although the expert indicates that practice is in conformity with the Directive), Netherlands (although the expert indicates that practice is in conformity with the Directive), Sweden, Slovenia and Slovakia (but the guidelines issued clearly include Swedish nationals) have explicitly excluded their own nationals, either in legislation, case-law or circulars.

¹⁷ See Case C-370/90 *R v. Immigration Appeal Tribunal and Surinder Singh, ex parte Secretary of State for the Home Department* [1992] ECR I-4265.

¹⁸ Nevertheless, a possible issue of conformity was identified in the Lithuanian transposition. It seems that the rules would only apply to non EU family members of a Lithuanian citizen, if they are accompanying the Lithuanian citizen, or joining him from an EU MS. Consequently, non-EU family members joining the Lithuanian citizen from outside the EU seem not to be covered by the transposing legislation.

¹⁹ Some experts, *e.g.*, Hungary and Spain, have raised concerns regarding different treatment between a family members of an EU citizen and family members of a sedentary national (Hungary) or a national who exercised the right of free movement (Spain).

²⁰ The case-law of the Supreme Court in Cyprus has included Cypriot nationals in the scope of the Directive. However, this line does not seem to be adopted in practice.

²¹ Case C-459/99 *MRAX v. Belgium* [2002] ECR I-6591

²² Case C-1/05 *Jia v. Migrationsverket*, [2007] ECR I-1.

²³ Case C-127/08 *Metock*, 25 July 2008.

*Metock*²⁴ case, even if not expressly indicated in the legislation. This additional requirement is not in line with the Directive, as recently stated by the ECJ, and creates a serious problem of conformity. It could lead to the situation where family members of a Union citizen are refused entry and residence in a Member State of the EU. One Member State, Denmark, has already indicated that it opposes the interpretation given by the ECJ and wants an amendment of the Directive. Others, such as Malta and Czech Republic, have already indicated that they will accommodate the new interpretation.²⁵

Another source of concern is that the legislation of some Member States is sometimes ambiguous about the way a family member of a Union citizen can enter the territory of another Member State where the Union citizen is residing. The right to enter and reside when joining or accompanying the Union citizen is not always explicitly provided for. For example, in Latvia, difficulties could arise when the family member wishes to join the Union citizen who is already established in Latvia.

(b) Other family members (Article 3(2)(a)) and facilitation of entry and residence

The persons mentioned in Article 3(2)(a) are not granted an ‘automatic’ right to enter and reside in another Member State with the Union citizen, but Member States should facilitate their entry and residence.

- **Personal scope**

The Directive refers to “members of household and dependants” and approximately half the Member States²⁶ have transposed this specific case correctly and completely. Notably, some MS have tightened definitions to the extent that their transpositions are incorrect²⁷ and others have omitted “dependants” from the transposing legislation altogether.²⁸ In addition, some Member States refer to the country of origin (or country where they have a right of permanent residence) instead of the “country from which they have come” which narrows the scope of the Directive.²⁹

For “serious health grounds”, a similar number of MS have transposed this correctly and completely. The transposition here is predominantly the same as in the MS that transposed “members of household and dependants”. Where differences exist, the remaining MS have either failed to transpose the provision³⁰, or restricted the definition in a manner that is incorrect³¹.

In terms of the “durable relationship” provision, the table shows more of a mixed bag. Only eleven MS have correct and complete transpositions³², while four MS transpositions are incorrect.³³ The latter are mostly incorrect because of extra requirements or restrictive definitions. Of the remaining MS eight have simply not transposed the provision³⁴ and four have transposed it in an incomplete

²⁴ Case C-127/08 *Metock*, 25 July 2008.

²⁵ Regarding the case of a third country national already residing in the host Member State and subsequently becoming a family member (e.g. a third country family member living in the UK who marries a Lithuanian citizen residing in the UK), only a few Member States have indicated in their legislation how this situation would be assessed in view of the requirement of previous lawful residence. As such, it remains unclear whether this person would or would not be entitled to reside in the UK with the EU citizen he or she married there if he or she entered the UK illegally.

²⁶ Bulgaria, Cyprus, Denmark, Estonia, Greece, Finland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Romania and Slovakia.

²⁷ Hungary, Latvia, Slovenia, Spain and the UK.

²⁸ Austria, Belgium, Germany, France, Lithuania and Poland.

²⁹ Czech Republic, Ireland and Sweden.

³⁰ Latvia, Sweden, Slovakia and Slovenia.

³¹ Germany and Estonia.

³² Bulgaria, Cyprus, Czech Republic, Greece, Hungary, Ireland, the Netherlands, Portugal, Romania, Spain and Sweden.

³³ Denmark, Italy, Malta and the UK.

³⁴ Austria, Belgium, Estonia, Lithuania, Luxembourg, Latvia, Poland and Slovenia.

manner³⁵. Curiously, in Slovenia “durable relationship” is not transposed despite having very liberal laws towards *de facto* relationships -laws which, because of non-transposition, apply only to nationals.

- **Facilitation**

For the first two categories above, facilitation exists in less than half of the MS.³⁶ In cases where facilitation exists (to the level envisaged by the Directive), it is predominantly achieved by treating “other family members” as a family member under Article 2, which includes rights to entry and residence.³⁷ These MS for the most part have a separate regime (*i.e.*, they do not just include Union citizens and nationals in the same basket) regardless of whether the rules for nationals are the same. Non-facilitation by MS is principally due to non-transposition of the entire group of “other family members”³⁸ and/or the provisions for those with “serious health grounds”.³⁹ In some cases, such as in Estonia, “serious health grounds” have been narrowed by additional requirements (*e.g.*, ‘permanence’) and in Germany the transposing legislation speaks of “particular hardship”, which is stricter than the wording of the Directive. However, the majority simply omit the provision completely.

In terms of the “durable relationship” provision, eight MS facilitate entry and residence by widely defining “family members” to include those in durable relationships.⁴⁰ In some cases, such as Bulgaria, recognition of this class of persons is encompassed in the national law regarding *de facto* relationships. In those MS that do not facilitate entry and residence of persons living in a durable relationship, this is mainly because of four reasons: (1) the requirement for registration of the partnership such as in Germany and Finland, (2) restrictive definitions such as in France and Slovakia, (3) a requirement that the Union citizen’s MS duly attest the relationship as in Italy, or (4) blatant non-transposition, such as in Austria, Estonia, Latvia, Lithuania, Luxembourg, Poland and Slovenia. It should also be noted that in Malta discretion is given to the authorities not to facilitate in case such a durable relationship is in conflict with the public policy of Malta.

It should, however, be noted that facilitation in these MS is achieved regarding those who fall under the personal scope of this provision, as outlined above. In Spain, even though the provisions concerning facilitation have been correctly transposed, it is unclear how this provision is applied in practice. In the UK, the practical effect of the transposing legislation also seems problematic to the extent to which we cannot conclude that the facilitation required by the Directive is actually effective.

Table 2.1 Treatment of registered partnership and other family members

Member State	Registered Partnership	Members of household & dependant	Serious health grounds	Durable relationship
AT	n/a - No registered partnerships in national legal order.	G - Almost literal transposition but G because it does not cover right of entry/residence for up to 3 months.	G- Literal transposition but G because it does not cover right of entry/residence for up to 3 months	I – Extra requirement that relationship existed in country of origin.
BE	√ - Registered partnerships from certain countries considered equal to marriage: DK, DE, FI, (ICE), NO, UK, SE.	NT – No facilitation of entry and residence.	NT- No facilitation of entry and residence	G – Not all durable relationships (they need to be registered but different from 2.2.a)- Those covered considered as family members.
BG	√ - More favourable.	√ - More favourable.	√- More favourable.	√ - See “registered

³⁵ Germany, Finland, France and Slovakia.

³⁶ Bulgaria, Cyprus, Czech Republic, Denmark, Finland, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Romania and Spain

³⁷ Bulgaria, Czech Republic, Denmark, Estonia, Finland, Malta, the Netherlands and Romania

³⁸ Belgium, France, Germany, Lithuania and Poland

³⁹ Belgium, France, Latvia, Lithuania, Poland, Slovakia, Slovenia and Sweden

⁴⁰ Bulgaria, Czech Republic, Denmark, Hungary, Ireland, the Netherlands, Portugal and Romania

Member State	Registered Partnership	Members of household & dependant	Serious health grounds	Durable relationship
	Partner in factual cohabitation is family member; no distinction between (un)registered partnerships.	Treated a family member	Treated as family member	partnerships”
CY	n/a - Not transposed. No registered partnerships in national legal order.	√	√	√
CZ	√ - Registered partnership is equivalent to marriage.	I – They request country of origin/country of long-term residence. More favourable: treated as family members	√ More favourable: treated as family members	√ - Effective transposition under “common household”. ⁴¹ More favourable: treated as family members.
DE	Ambiguous – normally registered partnerships should be equivalent to marriage, but they are not entirely treated as family member.	G – No provision for dependants. Ambiguous for facilitation (subject to general aliens rules)	I – Restrictive definition: “particular hardship” Ambiguous for facilitation (subject to general aliens rules)	I – Have to be in a registered partnership. Ambiguous for facilitation (subject to general aliens rules)
DK	√ - Registered partnership is equivalent to marriage.	√ More favourable: treated as family members	√ More favourable: treated as family members	I – Additional condition: Living at a joint place in stable, long-term cohabitation and the EU citizen should maintain the applicant. Facilitation more favourable: treated as family member.
EE	n/a - No registered partnerships in national legal order.	√ More favourable: treated as family members	I – Restrictive “permanently” qualification for health grounds. More favourable: treated as family members	NT
EL	n/a - No registered partnerships in national legal order.	√ - Literal Facilitation means examination by priority	√ - Literal Facilitation means examination by priority	√ - Literal Facilitation means examination by priority
ES	√ - Registered partnerships equivalent to marriage (although no national law)	I – Limited to second degree Ambiguous: it does not seem to cover entry but for residence less documents requested	√ - Limited to second degree Ambiguous: it does not seem to cover entry but for residence less documents requested	√ - Literal Ambiguous: it does not seem to cover entry
FI	√ - Registered partnership is equivalent to marriage.	√ - Literal More favourable: treated as family members.	√ - Literal More favourable: treated as family members.	I – Durable relationship under certain conditions (e.g. 2 years, child) treated as family member. No facilitation for other relationships.
FR	n/a - Registered partnership is not equivalent to marriage in national legal order.	NT	NT	G- It would only cover registered partnerships but not other types of durable relationships No facilitation: strict

⁴¹ Please note that the Directive is broad enough to cover durable relationships that do not involve cohabitation. In which case, the transposition could be considered incomplete. This comment also applies to other countries.

Member State	Registered Partnership	Members of household & dependant	Serious health grounds	Durable relationship
				conditions and does not cover entry.
HU	n/a but registered partnerships recognised as of 1/01/09	I- Conditions for members of household prior cohabitation More favourable: treated as family members	√ More favourable: treated as family members	√ - Cohabitation required More favourable: treated as family members
IE	n/a - No registered partnerships in national legal order but there is a proposal pending.	I- Country of origin, habitual residence or previous residence Facilitation not clear for entry but once entered treated as family members	I- Country of origin, habitual residence or previous residence Facilitation not clear for entry but once entered treated as family members	√- Literal transposition Facilitation not clear for entry but once entered treated as family members
IT	√- Definition transposed, but no registered partnerships in national legal order. Not treated as family member.	√- Literal Ambiguous: seems to follow the general regime (so probably no real facilitation)	√- Literal Ambiguous: seems to follow the general regime (so probably no real facilitation)	I – Too stringent: limitation of means of proof (only by attestation from home Member State). Ambiguous: seems to follow the general regime (so probably no real facilitation)
LT	√-Registered partnerships equivalent to marriage	NT	NT	NT
LU	√- Registered partnerships are equivalent to marriage	√ I- Only facilitation is that the Ministry “may authorise”	√ I- Only facilitation is that the Ministry “may authorise”	NT
LV	n/a - No registered partnerships in national legal order	I-Conditions made cumulative More favourable: treated as family member	√ More favourable: treated as family member	NT
MT	n/a - Registered partnership is not equivalent to marriage in national legal order.	√ Not really facilitation but the official has to give due and proper consideration to the admission	√ Not really facilitation but the official has to give due and proper consideration to the admission	I – The discretion given to Maltese authorities (i.e. not to consider a durable relationship if it is in conflict with the public policy of Malta) may constitute a case of conflict.
NL	√ - Registered partnerships in accordance with law of MS where concluded or declared valid afterwards, recognised.	√ More favourable: treated as family member	√ More favourable: treated as family member	√ - Guidelines indicate 1 year duration/ a declaration may be asked for in practice More favourable: treated as family member
PL	n/a - No registered partnerships in national legal order	G- Only reference to ties of family nature No proper facilitation	G- Only reference to ties of family nature No proper facilitation	NT- Not covered by the concept of family ties
PT	√ - Partners in <i>de facto</i> union and durable relationship are treated as family member.	√ Facilitation: simplified documents required	√ Facilitation: simplified documents required	√ - More favourable because included in the definition of “family member” (de facto union has to exist for more than 2 years).

Member State	Registered Partnership	Members of household & dependant	Serious health grounds	Durable relationship
RO	n/a - No registered partnerships in national legal order	√ Facilitation: treated as family members	√ -Covered by dependency Facilitation: treated as family members	√ - Cohabitation needed Facilitation: treated as family members
SE	√ - More favourable. Cohabiting partner is family member; no distinction with respect to (un)registered partnerships.	I – “facilitation” definition restricted (including country of origin) Facilitation: seems to apply general aliens rule	NT although could be covered by concept of dependency	I- Intention to marry or enter a serious cohabiting relationship but the Union citizen has to reside in SE Facilitation: a residence permit granted but it does not seem to cover entry and short term residence.
SI	n/a - No registered partnerships in national legal order.	I – Very narrow transposition, almost to the point of NT. Facilitation: “exceptional circumstances that justify family reunification”. Very vague and does not cover entry	NT	NT for EU citizens. NB: Slovenian unregistered partners considered as equal to spouses.
SK	√ - Registered partnership not equivalent to marriage in national legal order. Member of household can be family member: case-by-case analysis.	√ Facilitation: dependant treated as family member. For member of household see Registered partnerships.	G – Not explicitly mentioned but could be included in dependant Facilitation: if they are dependant, they are considered as family members. Otherwise, no facilitation.	G – Member of household can be family member. Case-by-case assessment: on grounds of permanent coexistence and sharing of costs. No other facilitation.
UK	√ - Registered partnership is equivalent to marriage.	I – Restrictive and complicated. Facilitation: treated as family member (if they fall under the definition; otherwise no facilitation)	I – Included in legislation, but still restrictive and complicated. Facilitation: treated as family member (if they fall under the definitio; otherwise no facilitation)	√ - But extensive exam of personal circumstances required. (2 years duration required) Facilitation: treated as family member.

- **Examination of personal circumstances**

Under Article 3(2) second subparagraph, Member States have to undertake an extensive examination of the personal circumstances and justify any denial of entry and residence of other family members. Member States that treat “other family members” as core family members within the meaning of Article 2(2) of the Directive and thus grant a right of entry and residence have in some cases not transposed this provision. The reasoning behind this is that in principle, the competent authorities have no discretion to deny entry and residence if the conditions are met, and because the procedural guarantees under Article 30 and 31 will apply by analogy (according to Article 15 of the Directive).⁴²

⁴² This is the case in Denmark, the Netherlands and Romania. Some Member States treating Article 3(2) family members as family members within the meaning of Article 2(2) have also transposed the provision but as a general obligation for all decisions, e.g., Czech Republic.

The transposition is considered correct in Bulgaria, Cyprus, Czech Republic, Denmark, Greece, Ireland, Italy, Malta, the Netherlands, Portugal, Romania, Spain and UK. Finland did not transpose the provision as such, but applies general administrative procedural rules which are considered to grant the same level of protection as the Directive. In this case, the transposition was considered correct. However, other Member States where general provisions of administrative law are applied as transposing measures do not ensure the same level of protection⁴³ as the Directive, and the transposition is considered incorrect (*i.e.*, Austria, Estonia, Germany, Lithuania, Latvia, Poland, Slovakia, Slovenia and Sweden). Finally, other Member States have incompletely transposed the provision⁴⁴ (*i.e.*, Belgium, France, Hungary and Luxembourg⁴⁵).

- **Supporting documents requested for other family members**

Table 2.2 Supporting documents for other family members

Member State	Overall assessment	Members of household & dependant	Serious health grounds	Durable relationship
AT	I	- Documentary evidence of country of origin, of payment of maintenance or living in the same household	- Evidence of serious health reasons	- Evidence of existence of a permanent relationship in the country of origin
BE	G	Article 3(2)(a) not transposed	Article 3(2)(a) not transposed	- Evidence of existence of partnership (means of proof include: cohabitation for at least one year, regular telephone contact, email, the fact that the partners met at least 45 days in the last two years, or common children)
BG	√+	Not transposed (but treated as family member, so only family link to be established)		
CY	√	- Document issued by the relevant authority in the country of origin or country from which they are arriving certifying that they are dependants or members of the household of the Union citizen	- Proof on the existence of serious health grounds which render the personal care of the family member by the Union citizen absolutely necessary	- Proof of the existence of a consistent relationship with the Union citizen
CZ	√	- Attest living in a common household in the country of origin or where they had permanent or long-term residence; or - Proof of being supported by the Union citizen	- Proof of health reasons	- Proof of durable relationship
DE	I	Article 3(2)(a) transposed as particular hardship. Authorities can ask for any document		- Proof of existence of a registered partnership
DK	√	/	- Documentary evidence of serious health grounds	- Proof of family link
EE	G	- Proof of link (for third country nationals only) - For EU citizens: unconditional (no documents needed)		- Not transposed for third country nationals - For EU citizens: unconditional
EL	√	- Document by CA of country	- Proof of existence of serious	- Documentary proof of

⁴³ In some cases because they do not ensure an extensive examination of the personal circumstances; in other cases because there were exceptions to motivation of refusal, especially regarding visas or refusals of entry.

⁴⁴ Examination of personal circumstances or motivation in general or in certain cases (*e.g.*, refusal of entry or visas) was not included.

⁴⁵ In this case, the provision has been transposed but it does not apply to Article 3(2)(b) since durable relationships are not covered by the proposed legislation.

Member State	Overall assessment	Members of household & dependant	Serious health grounds	Durable relationship
		of origin or country from which they arrive certifying that they are members of a household	health grounds	durable relationship
ES	√+	- For EU citizens: unconditional (no documents needed) - For third country nationals: document issued by the country of origin or country from where they are arriving certifying that they are dependents or members of the household	- For EU citizens: unconditional (no documents needed) - For third country nationals: proof of existence of serious health ground	- For EU citizens: unconditional (no documents needed) - For third country nationals: proof of existence of durable relationship
FI	√	- For EU citizens: not clear whether EU family members get an independent registration or which documents may be required, if registered as family members. - For third country nationals: document issued by the country of origin or country of departure certifying that they are dependents or members of the household	- For EU citizens: not clear whether EU family members get an independent registration or which documents may be required, if registered as family members. - For third country nationals: proof of existence of serious health ground	- For EU citizens: not clear whether EU family members get an independent registration or which documents may be required, if registered as family members. - For third country nationals: proof of existence of durable relationship
FR	NT	Article 3(2)(a) and (b) have not been transposed.		
HU	G/I	- Documentary evidence of being supported - Official certificate issued by the CA of the country from where they are arriving proving that they are members of a household (country of origin NT)	- Statement of doctor verifying health conditions	- No specific rules for durable relationships. (Entry may be possible as members of the household)
IE	I	- For EU citizens: no registration (no documents needed) - For third country family members: Evidence of residence Birth Certificates (if applicable)	- For EU citizens: no registration (no documents needed) - For third country family members: Medical evidence (if applicable) Birth Certificates (if applicable)	- For EU citizens: no registration (no documents needed) - For third country family members: Partnership Certificate (if applicable) Proof of relationship (if applicable)
IT	√	- Declaration of dependency or of being members of household	- Proof of existence of serious health grounds	- Not transposed. However, the Circular indicates that durable relationships should be shown
LT	NT	Articles 3(2)(a) and (b) not transposed		
LU	NT	A future Regulation will develop the supporting documents (currently not transposed)		Article 3(2)(b) not transposed
LV	G	- Document proving common household or dependency		Not transposed
MT	√	- Proof that they are members of the household - Document issued by CA of the country of origin or country from which they have come showing dependency - Other family members testifying that applicant is dependant	- Document issued by CA of the country of origin or country from which they have come showing existence of serious health grounds	- Proof of existence of durable relationship
NL	NT	- No information about documents (treated as family members)		- Declaration of relationship partner (form). (Treated as family members)

Member State	Overall assessment	Members of household & dependant	Serious health grounds	Durable relationship
PL	I	Articles 3(2)(a) and (b) not transposed.		
PT	√	- Document issued by the country of origin or country from where they are arriving certifying that they are dependents or members of the household	- Proof of existence of serious health ground	Proof of existence of durable relationship (treated as family members)
RO	√	- Document issued by any CA of country of origin or by the CA of the country where they come from showing family link or dependency or any of the conditions		
SE	√	- Documents proving dependency; or - Document proving family relationship Note: Article 3(2)(a) and (b) not correctly transposed		
SI	I	For EU citizens: Not transposed. (independent right of residence required) For third country family members: Article 3(2)(a) and (b) have not been transposed		
SK	G	For EU citizens: no documents required (but only ID-card or passport as proof of identity accepted) For third country nationals: document or affidavit showing that person is dependent or member of household Unclear whether durable relationships will be considered as members of household (strict interpretation of durable relationship)		
UK	I	- Not explicitly regulated which seems to leave more discretion to the Secretary of State, who is however required to undertake an extensive evaluation of the personal circumstances. (most probably persons will have to show that they meet the conditions of Article 3(2)(a) and (b))		

2.2 Rights of exit and entry

2.2.1 Right of exit (Article 4)

Article 4 of the Directive ensures that Union citizens and their family members have the right to exit any Member State, with only an identity card or passport. The Article clearly specifies that no exit visa can be imposed and that it is the home Member State's responsibility to make sure that a person can obtain or renew one of these valid travel documents.

It should be noted here that Ireland, UK, Cyprus, Romania and Bulgaria are not part of the Schengen Agreement. On the other hand, Norway and Iceland are parties to the Schengen Agreement, but not EU Member States. There are no internal border controls between Schengen countries.

The elements of Article 4 of the Directive are generally transposed in an effective manner⁴⁶. Some Member States allow a Union citizen to leave the country when he or she proves his or her identity by any other means (e.g., driving licence), not only by means of an identity card or passport. This is the case for Czech Republic and Austria, even though the Austrian transposition contains other issues of conformity. French and Dutch legislation set a broad right to leave the territory to all foreigners and do not set any condition to the possession of a valid ID card or passport.

All passports have validity duration of at least five and often ten years. The few exceptions are passports for small children, e.g., under 2 years of age, or for exceptional circumstances. This was assessed to be reasonable by the national experts. In addition, Ireland has passports that are valid for ten years, but a renewed or replacement passport may be of a shorter duration, since it will be valid for the remaining validity duration of the passport that was lost or damaged. This reduced duration of validity could create a problem of conformity with the Directive.

⁴⁶ It should be noted that transposition at some specific points is: ambiguous in Hungary and Bulgaria; incomplete in Austria, Germany and Latvia; incorrect in Belgium, Denmark, Poland and Sweden. Estonian legislation does not regulate document requirements for leaving; in practice the same documents are required for exit as for entry.

2.2.2 Right of entry (Article 5)

(a) Supporting documents for entry in another Member State

Article 5 of the Directive regulates the right of entry in another Member State. It mentions that Union citizens are allowed to enter any Member State with a valid identity card or passport. Since Union citizens and their family members are granted a right to move freely inside the EU, when they enter another Member State, the authorities of the other Member State are only allowed to verify the nationality and identity of the person and, for family members, the family link. Family members who are not nationals of an EU Member State have the right to enter another Member State with an entry visa or with a specific residence card for family members of a Union citizen issued by any EU Member State. The table below shows any additional requirements identified by the national experts in some of the Member States. These additional requirements are a violation of the Directive.

Table 2.3 Additional requirements for entry

Member State	Additional requirements
AT	No visa exemption for family members who have a residence card issued in another Member State
BG	It is not clear from the legislation what type of visa shall be required for entry
DK	No visa exemption for family members who have a residence card. Passports may be stamped
ES	No visa exemption for family members who hold a residence card from a non-Schengen State (<i>e.g.</i> , IE, UK etc)
IE	No visa exemption for family members who have a residence card issued in another Member State
PL	Reference to visa but not clear whether only entry or also residence visa
SI	Reference to residence permit instead of residence card
UK	For all non EEA-nationals: EEA family permit, residence card or permanent residence card To obtain EEA family permit from outside the EEA: subject to UK Immigration rules (extensive information and supporting document requirements, such as travel history, personal details, etc.)

Article 5(2) of the Directive clearly specifies that only an entry visa can be required for family members of a Union citizen who are not EU nationals themselves. Once the family member has obtained a residence card for family members of a Union citizen, he or she can enter another Member State with this residence card without being asked for an entry visa.

Austria has restricted the scope of this provision in its transposing legislation by granting the visa exemption only when the person has a residence card issued by the Austrian authorities. As a result, the family member will have to present a visa for entering this Member State, even if he or she already has a residence card from another Member State. In Spain, the legislation only excludes the obligation of visa when the family member holds a residence card issued by a Schengen State, which is not in line with the Directive. Two Member States, Ireland and Denmark, have not introduced the visa exemption for persons holding a residence card for family members of a Union citizen in their national legislation.

The UK has introduced a number of additional requirements for non-EEA family members who wish to enter the UK. Visa nationals entering the UK from outside the EEA will have to apply for an EEA family permit, which is subject to UK Immigration rules, and requires extensive additional information and supporting documents. The person applying for an EEA permit will have to fill out a questionnaire with a number of personal questions, information on previous stays in the UK, criminal convictions and travel history.

The Bulgarian legislation is not clear on what type of visa can be required and there is no legal guarantee that only an entry visa can be requested. Thus the transposition is ambiguous. The same is true for the Polish transposing provisions, which refer to a visa without specifying whether it should be an entry or a residence visa where the requirement of the latter would be contrary to the Directive.

The Slovenian legislation refers to residence permits instead of residence cards. Even though these residence permits are only residence permits in name and are actually similar to residence cards, this may create confusion in the practical implementation. Furthermore, the Slovenian legislation does not seem to have taken into account that Slovenia became a Schengen country as of 21 December 2007. Although the legislation is confusing, it will not have practical consequences because the Schengen Regulation is directly applicable.

In addition, Article 5(2) mentions that Member States should grant family members subject to an entry visa every facility to obtain the necessary visa. There should be an accelerated procedure and the visa should be free of charge. Twenty-two Member States⁴⁷ have introduced some kind of specific facility for family members in their legislation. Among these, Greece has not created an accelerated procedure, but appears to handle visa request for family members with priority. Some other countries seem to ensure facilitation in practice, such as Bulgaria and Germany (via administrative Instructions). In Luxembourg a Regulation will soon establish the facilitation procedure. The remaining countries have not transposed this provision in any way⁴⁸.

Article 5(3) prohibits Member State authorities from placing a stamp in the passport of non-EU family members of a Union citizen when they present the residence card for a family member of a Union citizen. The lack of transposition of Article 5(3) detected in a number of Member States does not necessarily create a problem of conformity for countries to which Regulation 562/2006 applies. Article 10 of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community code on the rules of the movement of persons across borders (Schengen Borders Code) mentions clearly that no exit or entry stamp should be placed in the passport of family members who present the residence card for family members of a Union citizen. A serious issue of conformity was only found in two MS: In Ireland, the authorities may place a stamp in the passport of a non-EU family member when the person does not have a residence card issued by the Irish authorities. The possibility to stamp passports also exists in Denmark.

(b) Reasonable opportunities for obtaining the necessary travel documents

Finally, Article 5(4) of the Directive introduces the guarantee for family members who do not have the necessary travel documents to obtain these documents before being turned back. Member States need to give these persons every reasonable opportunity to obtain the documents within a reasonable period of time and allow them to prove by any other means that they are covered by the right of free movement. This provision was completely transposed in only eleven Member States, namely, Cyprus, France, Greece, Ireland, Luxembourg, Portugal, Romania, Slovakia, Slovenia, Spain and the UK. In Italy, the legislation allows for 24 hours to obtain the documents and in Poland, 72 hours. In other cases, the time-limit allowed to obtain the document may be even more of a problem (*e.g.* Slovenia only allows for 6 hours). Other Member States have transposed the provision incompletely, leaving more margin of discretion to the competent authorities.⁴⁹ Finally, Austria, Denmark, Estonia and Germany have not transposed the provision in any way.

- **Good practices identified**

A few cases of good practice were detected. Belgium accepts any other means for proving the person is a beneficiary of the right of free movement, and Greece gives a Union citizen or his or her family member one month to obtain the necessary documents for entering the country.

⁴⁷ Austria, Bulgaria, Cyprus, Czech Republic, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Spain, Sweden and the UK.

⁴⁸ Belgium, Denmark, Estonia, Luxembourg and Slovenia.

⁴⁹ Belgium, Bulgaria, Czech Republic, Ireland, Finland, Hungary, Latvia, Lithuania, Malta, the Netherlands and Sweden.

(c) Reporting presence in the Member State

Under Article 5(5), Member States may ask a Union citizen and his or her family members to report their presence in its territory within a reasonable and non-discriminatory period of time. This is an optional provision and has not been transposed by all Member States. The table below gives an overview of the Member States that have made use of this option and the time-limits involved. Time-limits of less than 10 days have been considered incorrect. Article 5(5) also allows Member States to impose proportionate and non-discriminatory sanctions when a person fails to report his or her presence. These sanctions will be discussed together with Article 36, where a comparative table of the different sanction regimes allowed by the Directive will be looked at in depth.

Table 2.4 Time-limit for reporting

Member State	Reporting requirement	Time-limit for reporting
AT	Yes	3 days
BE	Yes	10 working days
BG	No	/
CY	No	/
CZ	Yes	30 days
DE	Yes	One to two weeks, with exception of Rheinland-Pfalz, where reporting has to be immediate
DK	No	/
EE	No	/
EL	No	/
ES	No	/
FI	No	/
FR	No	/
HU	No	/
IE	No	/
IT	Yes but new decree to be adopted	New Decree will be adopted establishing conditions for reporting presence for EU citizens. If presence not reported, assumption that residence is for more than 3 months.
LT	No	/
LU	Yes	3 days (this provision to be abolished under proposed legislation)
LV	No	/
MT	Yes	One month
NL	No	/
PL	Yes	4 days
PT	Yes Only non-EU family members	3 days
RO	Yes	15 days
SE	No	/
SI	No	/
SK	Yes	10 working days
UK	No	/

2.3 Right of residence

2.3.1 Right of residence for up to three months (Article 6)

Article 6 provides that every Union citizen has the right to reside in the host Member State for a period of up to three months without any conditions or formalities other than holding a valid identity card or passport. In addition, family members accompanying or joining the Union citizen have the same right with the mere requirement of presenting a passport. During the first three months, it is therefore irrelevant to know whether the person is moving to the host Member State for professional or private reasons, as a resident or as a tourist.

Most Member States have transposed this provision in an effective manner. The issues of conformity detected are rather minor, except for the treatment of jobseekers and the requirement to have entered lawfully in order to enjoy the right of residence in a lawful manner.

(a) Jobseekers

The right to reside for less than three months without any formalities or conditions is extended for jobseekers. The Directive does not include the special treatment for jobseekers in the body of the Directive, but their right to reside is covered through a combined reading of Recital 9 and Article 6 of the Directive. Jobseekers should be able to reside for a period of at least six months and even after that period as long as the person provides evidence that he is continuing to seek employment and that he has genuine chances of being engaged, in accordance with the case-law of the ECJ⁵⁰.

As a result, jobseekers cannot be requested to register unless at least six months have passed since their arrival in the host Member State, and even longer, if they have reasonable chances of being engaged. Very few Member States have transposed this special treatment of jobseekers.⁵¹ The only Member States having transposed this requirement correctly are Denmark, Finland, Malta and Sweden. Czech Republic, Ireland, Slovakia and the UK have made registration for all Union citizens optional. Therefore, the lack of explicit transposition in these four Member States should not create any problems of conformity.

Other Member States, Belgium and the Netherlands, explicitly mention jobseekers, but require them to register as of three months of residence, thus putting them on equal footing with, for example, workers. Greece has included the extended unconditional period for jobseekers, but is not clear about the rights of a Union citizen's family member to remain for a longer period in the territory without having to fulfil additional conditions or formalities. In Germany and France, jobseekers are entitled to stay if they have real chances of being employed. However, this does not guarantee that the person will be allowed to stay for a minimum of six months.

Estonia and Spain do not impose any conditions for residence is required after three months, but since registration, even if there are no conditions, the transposition is incorrect for jobseekers.

(b) Ambiguities in some Member States with regard to Article 6(2)

Article 6(2) on the right of residence for up to three months for third country family members was correctly transposed in nineteen Member States.⁵² In three Member States (Italy, Hungary and Spain), the requirement for residence of up to three months not only includes holding an ID card or passport, but also compliance with the entry requirements. This may create a link between lawful entry and lawful residence, or could be an implicit way of requesting a residence visa. Depending on the country, this could have significant consequences for the third country family members. For instance, in Spain, no residence visa is required and entering in violation of the immigration rules can only lead to a pecuniary sanction (in line with *Metock*). On the other hand, in Italy, it could eventually lead to expulsion since it is linked to public order and public security.

In Czech Republic, transposition of Article 6(2) is ambiguous. It seems that the exemption for a visa during the first three months is only applicable when the third country national stays in Czech Republic with the EU citizen for the whole period.

⁵⁰ Case C-292/89 *R. v. Immigration Appeal Tribunal ex p. Antonissen*, 1991, ECR I-745.

⁵¹ Austria, Bulgaria, Cyprus, Estonia, Greece, Hungary, Italy, Lithuania, Luxembourg, Latvia, Poland, Portugal, Romania, Slovakia and Slovenia do not include the guarantee for jobseekers to stay for at least six months in their legislation.

⁵² Austria, Belgium, Bulgaria, Cyprus, Germany, Estonia, Finland, France, Ireland, Lithuania, Luxembourg, Latvia, Malta, the Netherlands, Poland, Portugal, Romania, Sweden and the UK.

In Greece, the right of residence up to three months is conditional to holding a valid passport or visa, if required. This provision seems to refer to the cases under Article 5(2) where an entry visa can be required, which would render the transposition incorrect.

Slovakia has not transposed Article 6(1) and 6(2) at all. Regarding Article 6(1) the expert concludes that the right to free movement granted by the EC Treaty and the lack of any restrictions or formalities for residing in Slovakia as a Union citizen for up to three months, ensure that none of the rights granted by the Directive to Union citizens under Article 6(1) are affected. However, since third country family members do not have a primary right derived from the EC Treaty, the lack of transposition in this case constitutes a transposition gap.

Finally, the right of residence in Slovenia is shorter than three months if the residence card issued by another Member State or the entry visa expires before the end of the three months.

2.3.2 Right of residence for more than three months (Article 7-13)

(a) Conditions for residence and administrative formalities for EU Citizens

- *Conditions under (Article 7)*

Union citizens have the right to reside for longer than three months in another Member State, but then their stay becomes conditional. The Member State can require that:

- they are workers or self-employed in the host MS;
- they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State and they have a comprehensive sickness insurance cover in the MS;
- they are students in a private or public establishment accredited or financed by the MS and have a comprehensive sickness insurance and sufficient resources for themselves and their family members;
- they are family members accompanying or joining a Union citizen who satisfies one of the three conditions above.

It is remarkable that two Member States, Estonia and Spain, do not require any of the conditions mentioned in Article 7. The right is therefore only conditional on being a Union citizen.

Union citizens will need to register with the authorities of the host Member State when residing for longer than three months. In order to be granted the residence certificate confirming they fulfil the conditions to exercise their right granted by the Directive, they will need to submit some supporting documents mentioned in Article 8, and assessed below.

Most Member States have transposed all conditions (*e.g.*, being a worker, having sufficient resources...) allowed by the Directive, and most of them have done so in a correct manner. However, the supporting documents requested by national authorities often go beyond what is allowed by the Directive. These administrative formalities will be discussed below in more detail.

Nevertheless, some problems with respect to the transposition of Articles 7(1)(b) and 7(1)(c) were identified. For instance, Bulgaria only accepts public insurance. In Portugal, having sufficient resources is not a condition for residence in principle, unless the Union citizen is a national of a Member State where this requirement is a condition to recognise the right of residence to Portuguese nationals. The Portuguese authorities justify this measure on a reciprocity basis but it leads to different treatment between Union citizens coming from different Member States.

In relation to the right of family members, two types of problems have been identified:

- 1) In Slovakia and Slovenia⁵³, family members who are themselves Union citizens only have an independent right of residence. Therefore they have to prove that they fall under the conditions of Article 7(1)(a)-(c). For family members who are workers or self-employed persons, this independent right might not be a problem. For non-active family members, this approach may create an unnecessary burden since they will have to show that they have sufficient resources. Although the evaluation should take into account the incomes from the other Union citizen (the primary holder of the right of residence) the system is less automatic and more burdensome than if the right of residence is obtained as “family members”. On the other hand, the fact that the family member has obtained an independent right of residence will ensure the Article 12(1) and 13(1) rights for these family members.
- 2) The other main problem is the imposition of additional requirements, such as “adequate accommodation” (e.g., Czech Republic) or the obligation of lawful residence (e.g., UK, Ireland, Sweden), which has already been commented under Article 3(1) of the Directive.

Regarding the limitation of the *scope of students’ family members* (Article 7(4) of the Directive), some Member States have not made use of this option and all persons covered in Article 2(2) of the Directive will be treated as family members (Bulgaria, Denmark, Estonia, Spain, Ireland, Italy, Lithuania, Latvia, Portugal, Slovenia and Slovakia)⁵⁴ These Member States provide for a more favourable treatment. Other Member States have made use of the exception but they have not transposed the obligation to facilitate entry and residence for ascendants and descendants of over 21 years old (Belgium, Czech Republic, Germany, Finland, France, Hungary, Luxembourg, Poland, Romania, Sweden), which is not in line with the Directive.

The table below shows whether the conditions allowed by the Directive are required in a Member State, as well as any additional conditions not allowed by the Directive.

Table 2.5 Conditions under Article 7 as transposed by MS

Member State	Worker/self-employed	Sufficient resources	Students	Family member
AT	√ - worker/self-employed	√ - sufficient resources and health insurance	√ - Student - sufficient resources and health insurance	√ - for EU and non-EU family members
BE	√ - worker/self-employed (concept of worker defined by BE may pose problems)	√ - sufficient resources and health insurance	√ - Student - sufficient resources and health insurance for the student only (not applicable for his/her family members)	√ - for EU and non-EU family members
BG	√ - Worker/self-employed as condition for the residence certificate, not for the “right” to reside.	I - Sufficient resources Health insurance: private insurance policies not recognised	I – student - sufficient resources: fixed amount; Health insurance: private insurance policies not recognised	√ - for EU and non-EU family members
CY	√ - worker/self-employed	√ - sufficient resources and health insurance	√ - student (incl. vocational training) - sufficient resources and health insurance	√ - for EU and non-EU family members

⁵³ This is also the case in Denmark, but only for family members from Estonia, Latvia, Lithuania, Poland, Slovakia, Slovenia, Czech Republic and Hungary, which in addition to being incorrect, creates a different treatment between these EU citizens and others who can join their family member without having to fulfil any additional conditions.

⁵⁴ However, it should be noted that Austria did not transpose this provision but the expert has concerns about legal certainty, that family members are very narrowly defined in the Slovenian legislation and that, in Slovakia, this is only for third country family members. For family members who are EU citizens, see table (only an independent right as Union citizens and not as family members).

Member State	Worker/self-employed	Sufficient resources	Students	Family member
CZ	I - Worker/self-employed as condition for the residence certificate, not for the “right” to reside. - additional requirement to show proof of accommodation	√ - health insurance for EU citizen	√ - student - health insurance for EU citizen	I - for EU and non-EU family members - required to have accommodation
DE	√ - worker/self-employed/ service providers	√ - sufficient resources and health insurance	√ - student - sufficient resources and health insurance	√ - for EU and non-EU family members
DK	√ - worker/self-employed	√ - sufficient resources and health insurance	√ - student - sufficient resources and health insurance (not when accompanied or joined by family member: appraisal needed of sufficient resources)	I – additional requirement to have a permanent, lawful residence in an EU MS
EE	√ - no conditions	√ - no conditions	√ - no conditions	√ - no conditions
EL	√ - worker/self-employed	√ - sufficient resources and health insurance	√ - student - sufficient resources and health insurance	√ - for EU and non-EU family members
ES	√ - no conditions	√ - no conditions	√ - no conditions	√ - no conditions
FI	√ - worker/self-employed	√ - sufficient resources and health insurance	√ - student - sufficient resources and health insurance	√ - for EU and non-EU family members
FR	√ - worker/self-employed	√ - sufficient resources and health insurance	√ - student - sufficient resources and health insurance	√ - for EU and non-EU family members
HU	√ - being engaged in a gainful activity	√ - sufficient resources and health insurance	Ambiguous - sufficient resources and health insurance (only at time of entry which opens possibility of ending residence right at later stage)	√ - for EU and non-EU family members
IE	√ - worker/self-employed	√ - sufficient resources and health insurance	√ - student - health insurance (sufficient resources not required)	√ - for EU and non-EU family members
IT	√ - worker/self-employed	√ - sufficient resources and health insurance	√ - student - sufficient resources and health	√ - for EU and non-EU family members
LT	√ - worker/self-employed	√ - sufficient resources and health insurance	√ - student - sufficient resources and health insurance	√ - for EU and non-EU family members
LU	√ - worker/self-employed (concept of worker defined by BE may pose problems)	√ - sufficient resources and health insurance	√ - student - sufficient resources and health insurance	√ - for EU and non-EU family members
LV	√ - worker/self-employed	√ - sufficient resources and health	G – student: not vocational training. - sufficient resources and health insurance	I - for EU and non-EU family members - family members need to show sufficient resources and health insurance (see Article 8)
MT	√ - worker/self-employed	√ - sufficient resources and health insurance	√ - student - sufficient resources and health insurance	√ - for EU and non-EU family members
NL	√ - worker/self-employed	√ - sufficient resources and health insurance	√ - student - sufficient resources and health insurance	√ - for EU and non-EU family members

Member State	Worker/self-employed	Sufficient resources	Students	Family member
PL	√ - worker/self-employed	√ - sufficient resources and health insurance	I – student (PhD students not covered) - sufficient resources and health insurance: only from public institutions. (private insurance considered not sufficient)	√ - for EU and non-EU family members
PT	√ - worker/self-employed	I – sufficient resources and health insurance - reciprocity requirement	I – student - sufficient resources and health insurance - reciprocity requirement	√ - for EU and non-EU family members
RO	√ - worker/self-employed	I – resources at least at level of minimum income guaranteed in Romania and health insurance	I – student - resources at least at level of minimum income guaranteed in Romania and health insurance	√ - for EU and non-EU family members
SE	√ - worker/self-employed	√ - sufficient resources and health insurance	√ - student - sufficient resources and health insurance	√ - for EU and non-EU family members
SI	√ - worker/self-employed	√ - sufficient resources and health insurance	√ - student - sufficient resources and health insurance	I – For EU family members: other reasons. - for non-EU family members: fixed minimum resources and health insurance
SK	√ - worker/self-employed	√ - sufficient resources and health insurance	√ - student - sufficient resources and health insurance	G – EU family members of an EU citizen not covered: need independent right of residence
UK	√ - worker/self-employed/jobseekers	√ - sufficient resources and health insurance	√ - student - sufficient resources and health insurance	√ - for EU and non-EU family members

- (c) *Retention of the status of worker*

Article 7(3) determines the situations that allow a person who is no longer a worker or self-employed person to retain the status of worker. A guarantee is thus integrated for workers or self-employed persons who are temporarily unable to work as the result of an illness or accident, and who are in duly recorded involuntary unemployment or who embark on vocational training. They will be particularly protected against any expulsion measures.

Ten Member States, namely Germany, France, Hungary,⁵⁵ Ireland, Italy, the Netherlands, Poland, Slovakia,⁵⁶ Slovenia and Sweden⁵⁷ have transposed this provision by granting the retention of the right of residence in these situations. Such transposition is incorrect since it does not grant the persons concerned the same level of protection and more favourable treatment as foreseen by the Directive.

⁵⁵ In addition, Hungary has not correctly transposed Article 7(3)(d). The obligation not to link the vocational training to the previous employment in case of involuntary unemployment has not been transposed. This is also a problem in Ireland and Latvia (although in general it has effectively transposed the retention of the status of worker).

⁵⁶ Slovakia has also not transposed the obligation to retain the right of residence for no less than 6 months under Article 7(3)(c). The same comment applies for the UK, although in general it has effectively transposed the retention of the status of worker.

⁵⁷ Nevertheless Sweden has correctly transposed Article 7(3)(c), so the status of worker is retained in that case.

Belgium has transposed the provision as granting the retention of the right of residence under the specific provision transposing Article 7(1)(a) of the Directive. This transposition has been considered correct since it grants the status of worker to the persons concerned, in accordance with the Directive.

Austria has not transposed the provision on retention of the status of worker and thus leaves the option of expulsion in these situations open. Czech Republic has not transposed Article 7(3). However, the status of worker and self-employed person is retained under its Labour Law in case of temporary inability to work as a result of an illness or accident. A similar approach can be found in Romania. In the remaining cases, the status of worker is not retained but workers and self-employed persons cannot be expelled for becoming an unreasonable burden.

Estonia and Spain have not transposed this provision because the right of residence is unconditional. All Union citizens have the same protection and can only be expelled on the grounds of public security, public order and public health⁵⁸.

In Luxembourg, the retention of the status of worker has not been transposed in the temporary legislation. However, the new proposed legislation would transpose the requirements of Article 7(3) effectively.

In Lithuania, the status of worker is only retained when the employee is dismissed from work without any fault on his part. This affects the correctness of the transposition of Article 7(3)(b)-(c) and (d), since it limits the scope of the Directive.

- ***Administrative formalities (Article 8)***

(a) Obligation to register

Member States can require Union citizens to register with the authorities for periods of residence longer than three months. The deadline for registration may not be less than three months from the date of arrival. Member States generally require registration within 3 months of arrival. Latvia, Hungary and Romania transposed “three months” by “90 days” (which seems to be in line with the Directive). In Italy, the proposed text currently under discussion sets forth the obligation to register 10 days after the 3 months have elapsed. In the Netherlands and Portugal, the time period is extended to four months. Lithuania has transposed this requirement incorrectly, since it requires registration for residence of three months within an aggregated period of half a year. From a practical point of view, this means that a person residing in Lithuania for two months, and a second time in the same half year for one month would be required to register, which is not in line with Article 8(1) of the Directive.

Bulgaria, Czech Republic, Ireland, Slovakia and the UK are the only Member States where registration is not required. Bulgaria, Czech Republic, Slovakia and the UK foresee a registration system, but this is optional, not mandatory. Ireland is the only Member State without a registration system.

In Italy, the proposed Draft Legislative Decree amending the transposing legislation will, if adopted, make the obligation to register a matter of public order and public security. In fact, failure to register within the deadline is considered a violation of public order and public security and may lead to expulsion.

⁵⁸ However note that in Estonia, public health can only be invoked as a ground to restrict entry, not residence. Limitations of free movement could be imposed within the emergency area for public health, if established in Estonia.

(b) Registration certificate

The registration certificate is an official document stating that a Union citizen fulfils the conditions for residence of more than three months. As such authorities have no margin of discretion when issuing the certificate nor can they refuse entry or residence when the conditions of the Directive are fulfilled. This approach is one of the major changes introduced by Directive 2004/38/EC. The certificate merely attests fulfilment of the legal conditions. Certain Member States have not fully introduced this new approach in their legal order, in violation of the Directive.⁵⁹ For example, Lithuania continues to use the wording “residence permit” or “residence card” for Union citizens, and Slovakia speaks of “first permission to stay”.

The requirement of Article 8(2) to issue the registration certificate immediately has often been transposed in a literal manner. However, it seems that the meaning of the term “immediately” has not always been understood in the same way by the Commission and Member States. Whereas the Commission indicates that immediately means when the person presents himself/herself with the supporting documents “on the spot”, some Member States appear to have certain delays in practice between the submission of the documents and the issuing of the certificate.

Some Member States have not transposed the obligation to issue the registration certificate immediately, which creates legal uncertainty, *i.e.* Austria, Estonia⁶⁰ and Slovenia. Other Member States have wrongly transposed this requirement, such as Hungary, where issuance of the registration certificate is upon verification of the conditions, which leaves discretion for different interpretations.

The situation in Belgium is complex. If the decision has to be taken by the commune (worker/self-employed), the certificate is issued immediately; however, in many other cases, the decision is issued by the Office for Foreigners, which could take up to five months. The certificate of application is issued on the spot. However, even in the cases where the registration certificate is issued on the spot, it only attests an enrolment on a waiting list until the residence control is carried out, verifying that the person actually lives at the address mentioned in the application form (“contrôle de résidence par la police du quartier”).

In some Member States the Union citizen will be registered in the general population register (*e.g.*, Cyprus, Estonia, Italy, Lithuania), while in other Member States, he/she will be in a register at the local level or in the central register for foreigners (*e.g.*, Spain). In Belgium, there appears to be a differentiation based on the duration of residence: for an anticipated stay of less than one year a Union citizen will be registered in the foreigners register; when the anticipated stay is longer than one year, the person will be registered in the population register. The reason for such differentiation is not entirely clear.

Article 8(2) also determines the information that can be mentioned on the registration certificate, namely the name and address of the person registering and the date of registration. The wording of the Directive does not seem to leave any possibility to introduce additional information on the registration certificate. Nevertheless, it seems that many Member States include more information on the residence card. For example, Austria mentions the Union citizen’s date of birth; country of citizenship; date of issuing of the certificate; and the issuing authority and the category of residence. Latvia, Spain and Romania include a personal identity number on the residence certificate, in addition to the information mentioned in the Directive. In the view of the experts, such practices are not in conformity with the

⁵⁹ Notice the wording used in some MS’ transposing legislation. For example, Denmark requires Union citizens to “apply” for a registration certificate at the State Administration, and some other Member States, such as Bulgaria, do not explicitly recognise a “right” to reside, but rather use “may” reside or “resides”.

⁶⁰ Nevertheless, the Estonian expert confirmed that, in practice, the certificate is issued immediately.

exact wording of the Directive.⁶¹ It could be argued that the Directive does not exclude the possibility of entering more data in the registration certificates but that this is nevertheless indirectly limited by the prohibition of additional documents imposed by the Directive. Following this interpretation, the Member States can enter data that they can easily get from the passport or ID card or the data they are generating themselves, such as unique identifiers.

It should be noted that in France the obligation to register will not apply until secondary legislation establishing the format of the residence certificate has been adopted. To date, this secondary legislation has not yet been adopted. As a consequence, the situation is rather ambiguous since there is another procedure allowing the EU citizen or his or her family member to apply for a specific residence card, for which application is optional. The conditions attached to its issuance are similar to those listed in Article 8(3) of the Directive. This optional system will remain until secondary legislation sets forth the conditions for registration.

Another issue is seen in the UK, which does not allow nationals of the new Member States to obtain the certificate unless they have been working in the UK for 12 continuous months on the ground of transitional arrangements. This might also be the case in other Member States.

(c) Additional identity cards

Some Member States offer Union citizen residents the possibility to apply for an identity card.⁶² If optional and not compulsory, this requirement is in line with the Directive. Austria, for example, offers residents the possibility to apply for the photo identity card which is said to be more practical than a registration certificate. However, it should be noted that in Austria this ID-card can be used as a travel document within the EU. This is not in line with the Directive since no ID cards issued by a Member State other than that of the nationality are accepted travel documents under the Directive.

Table 2.6 Documents required to prove Article 7 conditions

Member State	Overall assessment	Worker/self-employed	Sufficient resources	Students	Family member who is EU national
AT	I	- Confirmation of the employer	- Evidence of adequate health insurance - Sufficient means	- Evidence of adequate health insurance - Evidence of admission to a school or education establishment - Declaration or other documents relating to sufficient means	- Documents which prove existence of marriage, documentary evidence of existence of family relationship - Evidence of maintenance (dependant)
BE ⁶³	√	- Confirmation of engagement or certificate of employment - Inscription in the social register for companies and self-employed	- Proof of sufficient resources (e.g., social benefits) - Proof of health insurance	- Registration in educational establishment - Proof of health insurance - Declaration of sufficient resources or equivalent	- Proof of family link (means of proof include interview if no documentary evidence is available) - Registration certificate of Union citizen

⁶¹ It was not possible to obtain models of registration certificates for all Member States during completion of the study. As indicated, in some cases the models were not yet established. In other cases, the models could not be obtained by the experts.

⁶² Note that Estonia also issues ID cards for third country family members, instead of a residence card.

⁶³ The Belgian legislation seems to indicate that it is the family member (Union citizen or third country family member) who is required to present supporting documents of sufficient resources and health insurance. However, in practice, it seems that the Union citizen will be allowed to show sufficient resources and health resources for himself and the family member concerned. Consequently, transposition was said to be effective.

Member State	Overall assessment	Worker/self-employed	Sufficient resources	Students	Family member who is EU national
BG	Ambiguous	- Document certifying presence of circumstances. For example: labour agreement or contract, letter from company or association, document for the labour bureau of registration, medical note for temporary inability to work	- Document certifying presence of circumstances. For example: Retired (personal declaration), proof of social security and of sufficient financial means, medical note for temporary inability to work	- Declaration of sufficient resources - Not clear whether social security proof needed	- Document certifying family link For example: birth certificate, marriage certificate, declaration for concubine - Proof of dependency not requested
CY	I	- Confirmation of engagement of employer - Certificate of employment - Certificate of registration with the social insurance service	- Evidence of a stable or satisfactory income from employment or lawful sources or sufficient deposits in CY or abroad - Evidence of comprehensive sickness insurance	- Proof of enrolment - Proof of comprehensive sickness insurance - Declaration or equivalent of sufficient resources	- A document attesting to the existence of a family relationship - the registration certificate of the Union citizen whom they are accompanying or joining. - Proof of dependency <u>for all</u> family members
CZ	I	- Document confirming the purpose of stay, <i>e.g.</i> , employment, doing business, performing other economic activities - Proof of accommodation issued by the accommodation provider	- Proof of accommodation - Document confirming medical insurance - No need to provide information on sufficient resources	- Document confirming the purpose of stay, <i>i.e.</i> , studies. - Proof of accommodation - No need to prove health insurance coverage	- Proof of family link - Proof of medical insurance - Proof of accommodation - Proof of dependency
DE	G	- Confirmation of engagement from the employer - Certificate of employment - proof of independent economic activity	- Proof of sufficient resources - Sufficient sickness insurance	- Written confirmation of attending educational institution - Substantiation of sufficient resources and sickness insurance (not clear regarding specified amount)	- Proof of family relationship - Proof of existence of partnership - Registration certificate - Documentary evidence of dependency
DK	G	- Certificate from employer - Certificate of employment - Documentary evidence of self-employment	- Documentation that he/she disposes of sufficient funds or income to finance his/her stay, including the stay of the family members	- Documentary evidence of enrolment - Documentary evidence of health insurance - Declaration or equivalent documentary evidence of sufficient resources (specified amount not transposed)	- Registration certificate of Union citizen - Relevant family link
EE	√+	No supporting documents required (only proof of identity and nationality)			
EL	√	- Confirmation of engagement - Certificate of	- Formal documentation of satisfying the	- Documentation proving enrolment - Documentation	- Official document attesting existence of family relationship

Member State	Overall assessment	Worker/self-employed	Sufficient resources	Students	Family member who is EU national
		employment - Proof of self-employment	conditions	proving sickness insurance - Declaration or equivalent of sufficient resources	- True copy of registration certificate of EU citizen - True copy of birth certificate or certificate of age - Document by competent authority of country of origin or country from which they have come of dependency
ES	√+	No supporting documents required (only proof of identity and nationality)			
FI	G	- Confirmation of engagement - Certificate of employment - Proof of self-employment	- Proof of sufficient funds - If necessary, proof of health insurance	- Proof of enrolment - Proof of health coverage - Personal insurance or other sufficient clarification of sufficient funds	- Not clear whether family members get an independent registration or which documents may be required, if registered as family members
FR⁶⁴	G/I	- Confirmation of engagement - Certificate of employment - Proof of self-employment	- Certificate of health insurance - Documents proving sufficient resources	- Proof of enrolment - Certificate of health insurance - Declaration or equivalent of sufficient resources (specified amount NT)	- Proof of family link - Proof that Union citizen has sufficient resources and health insurance to cover all his/her family members
HU	I	- Document verifying the initiation of a relationship for the performance of work - Valid contract or official copy of company records, certificate of incorporation or company certificate verifying that the applicant is engaged in any gainful activity either as owner, director or equivalent - Valid private entrepreneur license or similar authorisation to engage in business activities - Any other verifiable means - Jobseekers: documents certifying that the person is actively seeking employment and that there is a probability of entering into	- Any verifiable means	- Declaration of sufficient resources - Certificate of enrolment or document to verify student status - Any other verifiable means.	- Proof of family link. For example: birth certificate, marriage certificate, adoption document - Any other verifiable means

⁶⁴ France issues for each activity a residence card with different names: Residence card “EC all professional activities”, Residence card “EC non active”, Residence card “EC student”, Residence card “EC family member all economic activities”, etc.

Member State	Overall assessment	Worker/self-employed	Sufficient resources	Students	Family member who is EU national
		gainful employment.			
IE	√+	- For EU citizens: no registration (no documents needed)			
IT	√	- Proof of being worker or self-employed person	- Proof of sufficient resources - Proof of health insurance	- Proof of enrolment - Proof of sufficient resources - Proof of health insurance	- Document attesting family relationship - Certificate of application for registration of the EU Union citizen - Document attesting dependency or declaration
LT	√	- Labour contract - Letter from company, public institution or organisation confirming legal work - Certificate/ agreement for establishment of entity; document certifying registration of company and that EU citizen is owner	- Document confirming adequate means of subsistence - Valid document evidencing sickness insurance	- Document of admission - Letter from legal entity in Lithuania confirming or inviting for training - Possession of valid medical insurance - Declaration of sufficient resources	- Document attesting marriage, registered partnership, direct descendants, ascendants, dependents
LU	NT	A future Regulation will develop the supporting documents (currently not transposed)			
LV	I	- Declaration that conditions are met - Questionnaire with personal questions, including criminal convictions			- Copy of document certifying the fact of marriage or kinship
MT	I	- Working license (transitional arrangements) - Any proof of self-employment	- Proof of sickness insurance - Proof of sufficient resources	- Proof of enrolment - Proof of sickness insurance - Declaration of sufficient resources (specified amount not transposed)	- Document issued by CA of the country of origin or country from which they have come showing relationship - Registration certificate of the EU citizen - Document issued by CA of the country of origin or country from which they have come showing dependency - Other family members testifying that applicant is dependant
NL	NT	A future Regulation may will develop the supporting documents (currently not transposed)			
PL	I	- Written declaration of engagement - Written declaration of intention to give a job - Certificate of employment - Copy of an entry into the national court register - Certificate for entry into economic activities register	- Document confirming health insurance or the right to health insurance benefits - Evidence of sufficient resources	- Certificate of enrolment - Document confirming health insurance - Written declaration of sufficient funds (specified amount not transposed)	- Document confirming marriage Descendants: - Documents confirming family ties and document confirming age; or documents certifying dependency Ascendants: - Documents confirming family ties; or documents certifying dependency - Registration

Member State	Overall assessment	Worker/self-employed	Sufficient resources	Students	Family member who is EU national
					certificate of EU citizen
PT	√	- Proof that conditions are met		- Proof that conditions are met (declaration)	- Document attesting family relationship or partnership if relationship is not evident from the documents attesting family relationship. (<i>de facto unions</i>) - Registration certificate of EU citizen - Documentary evidence of dependency
RO	I	- Legalised copy of employment contract - Certificate from employer - Legalised copy of authorisation for carrying out independent activities	- Proof of sufficient resources - Proof of health insurance	- Proof of enrolment - Proof of health insurance - Declaration of sufficient resources (at least level of minimum income guaranteed in RO)	- Civil status document attesting marriage or a family relationship - Registration certificate of EU citizen
SE	I	- Documents confirming employment or self-employment activities in SE (e.g. marketing plan, lease agreement). The content of certificate of employment may be problematic because it includes information on hours worked per week	- Documents confirming adequate assets - Document confirming health insurance	- Document confirming enrolment - Document confirming health insurance - Declaration of sufficient resources (specific amount not transposed)	- Documents attesting existence of family relationship - Registration certificate or other documents proving that EEA national has right of residence in SE - Documents proving dependency
SI	I	- Employer's certificate attesting intention to employ - Evidence of employment or work - Document attesting self-employment or that he or she is service provider	- Proof of sufficient resources of at least amount of minimum income in Slovenia/month. - Proof of medical insurance	- Proof of acceptance or enrolment - Statement of sufficient means of subsistence of at least the minimal income in SI/month. - Proof of medical insurance	Not transposed (independent right of residence required)
SK	I	No documents required (but only ID-card or passport as proof of identity accepted) Concerns may be raised on the format of the registration certificate			
UK	I	- Contract of employment, plus most recent wage slips (at least one), and letters from employer confirming employment - Proof of self-employment: such as a lease on business premises, bank statements, invoices, evidence of national insurance contributions paid, etc. - Extensive	- Proof of sufficient resources - Evidence of comprehensive insurance - If retired: evidence of pension received - Extensive supporting documents, including information on criminal and civil convictions	- Letter confirming enrolment - Declaration or equivalent of sufficient resources (form requires a bank statement or evidence of a grant or scholarships) - Extensive supporting documents, including information on criminal and civil convictions	- Proof of being a family member (it should be noted that EU citizen should apply on behalf of the family member) - Extensive supporting documents, including information on criminal and civil convictions

Member State	Overall assessment	Worker/self-employed	Sufficient resources	Students	Family member who is EU national
		supporting documents, including information on criminal and civil convictions			

In general, the application forms request more information than is mentioned in the legislation, but these are often minor additions and related to personal data, such as place of birth, or names of mother and father. These could be considered as in compliance with the Directive since they may serve identification purposes. Sometimes the Member States also request the applicant to declare date of entry in the country, which is not considered to be in violation of the Directive, since it helps to make sure that the registration certificate has retroactive effect to the moment when the person entered the country, which is important to acquire the right of permanent residence. Finally, many Member States require photographs, which is in accordance with the Directive.

The most problematic Member States are those requiring, in addition to the documents listed in the Directive, the filling in of questionnaires or statements including personal information such as past criminal convictions, personal data on when the persons met, when they got married, *etc.* This type of information is requested in the UK and Latvia (and Ireland but only for third country family members).

(d) Sufficient resources

One of the provisions of the Directive that generally has not been correctly transposed is Article 8(4), according to which Member States may not lay down a fixed amount which they regard as “sufficient resources”, but must take into account the personal situation of the person concerned. Member States are allowed to establish an amount but this amount should only be indicative. A case-by-case examination of personal circumstances is required to decide whether a Union citizen has enough resources for him/herself and his/her family members when so required by the Directive. If the Member State decides to set forth this indicative amount, it cannot be higher than the threshold below which the nationals of the host Member State become eligible for social assistance or higher than the minimum social security pension paid by the host Member State.

In many Member States this provision has not been transposed (see table below). The most flagrant non-conformity cases are those where Member States did indeed fix a minimum amount and the obligation to take a decision based on the personal circumstances was not transposed (*i.e.*, Ireland, Italy, Latvia, Romania and Slovenia). In other cases, the provision is not or is only partially transposed, but practice is in compliance with the Directive (*e.g.*, Austria, Germany, the Netherlands and or Sweden). Belgium, Hungary, the Netherlands and Sweden have detailed guidelines on how to carry out the evaluation of sufficient resources and the type of income that will be taken into account to carry out the assessment. Latvia and Czech Republic have guidelines on how to assess unreasonable burden. Luxembourg and Slovakia still need to develop secondary legislation which will regulate how to assess sufficient resources. In other cases, transposition is correct but implementation is unsure since no guidelines exist. Finally, France has correctly transposed the requirement of Article 8(4) by referring to the Revenue Minimum d’Insertion (RMI)⁶⁵ as an indicative amount of what could be considered as sufficient resources. However, the Circular on the RMI specifies that in order to be considered as having sufficient resources, a Union citizen should have an equivalent amount of five months of RMI at his disposal, which is not in line with the Directive.

⁶⁵ The Revenue Minimum d’Insertion (RMI) is the minimum of social assistance.

Table 2.7 Evaluation of sufficient resources

Member State		Sufficient resources
AT	NT	No fixed amount
BE	Ambiguous	Article 8(4) correctly transposed, but implementation seems to impose minimum amount of 638 EUR Elements taken into account to evaluate sufficient resources, among others: - any kind of social allowance or social benefit directly obtained or obtained through a third person (e.g., invalidity, retirement, widower)
BU	I	Not transposed, but fixed amounts of minimum income applicable
CY	√	Literal transposition, no implementing regulations on how sufficient resources can be assessed
CZ	√	No fixed amount, but detailed guidelines on how to assess unreasonable burden
DE	NT	Not transposed, but no longer any specific amount of resources established by law. Administrative practice seems in compliance
DK	√	For students: declaration of sufficient resource enough However, when family reunification: sufficient resources evaluation subject to evaluation No information obtained on assessment criteria
EE	n/a	No conditions for residence imposed in EE
EL	G	As estimation: social security pension in EL taken into account. However, no explicit requirement to take personal circumstances into account
ES	n/a	No conditions for residence imposed in ES.
FI	NT	Not transposed, but preparatory materials indicate that decision is to be based on personal circumstances. No fixed amount
FR	√	For students: no fixed amount, only declaration. For other cases, the Circular on RMI specifies that an equivalent amount of five months of RMI could be required. This could influence a correct application of the Directive, even if the legal transposition is effective.
HU	√	Minimum old age social security pension, but case-by-case evaluation and possibility of appreciation below. List of assets that can be taken into account for determining sufficient resources: - social assistance and benefits - funds or benefit plans - deposit - income from maintenance and alimony Residence property and vehicles are not taken into account.
IE	I	Test of the social welfare legislation as a minimum threshold. Personal circumstances are taken into account, but only within the threshold.
IT	I	Fixed minimum amount: social allowance/ assistance. Practice seems not to be in compliance.
LT	√	Indicative figures: basic social security pension. Personal circumstances taken into account on case-by-case basis. It appears that the indicative figures differ between Lithuanian (115 EUR/month) and EU (230 EUR/month) citizens, but because these are only indicative, this was considered to be not in compliance.
LU	NT	The type of resources that will be taken into account and the way they will be assessed to be determined in an implementing regulation.
LV	G/I	Minimum amount: 50% of minimum wage in force for the relevant period of time Personal situation not explicitly required to be taken into account Evaluation of unreasonable burden
MT	√	Indicative minimum amount: social assistance. In all cases, personal circumstances have to be taken into account
NL	√	Incomplete transposition, but Aliens Circular applies the test correctly. Point of reference: the Work and Social Assistance Act for the category concerned. Source of income (open ended list): - inheritance - maintenance allowance and other social benefits - real estate - means of subsistence of the partner Not taken into account: illegal sources
PL	NT	No fixed amount, but no guarantee either. No guidance documents available.
PT	√	Literal transposition, but no guidelines on implementation.
RO	G/I	Fixed amount: usually at the minimum income level guaranteed in Romania. Personal circumstances not taken into account.
SE	NT	Guidelines indicate that secured finances have to be demonstrated. In the calculation is included: pensions, capital, in Sweden or in another MS.
SI	I	Sufficient means of subsistence: fixed amount, at least the amount of the minimal income in Slovenia, per month.
SK	√	Nothing is required, but this may change when the Minister for Internal Affairs issues a Decree

		fixing an amount, as foreseen in the legislation.
UK	√	The Regulations refer to eligibility for the social assistance benefits, but no guidelines on sufficiency.

The corresponding sanctions imposed by the national authorities are discussed under Article 36.

(b) Family members who are not nationals of a Member State (Article 9-11)

- *Administrative formalities (Article 9)*

Article 9(1) establishes that Member States are obliged to issue a residence card to third country family members of a Union citizen who plan to reside in the Member State for more than three months. Almost all Member States have correctly transposed this obligation, with a few exceptions, or at least ambiguous cases.

In Czech Republic, Lithuania, Latvia and Slovenia, the legislation still refers to a residence permit for third country family members, which is neither in line with the spirit nor the wording of the Directive.

Ireland seems to leave a margin of discretion to the Minister about the issuance of a residence card for third country family members, by using the wording “where the Minister is satisfied that it is appropriate to do so, he or she shall cause to issue a residence card”.

What is noticeable about the UK Regulations is that while the Directive appears to require residence cards to be issued, the UK measures only focus on the duty of the Secretary of State to issue residence cards, and not on the duty of the EEA national or family member to apply for one. The UK expert noted that this difference in approach has never in the past resulted in major issues of compliance.

Article 9(2) determines that the deadline for submitting the residence card application cannot be less than three months. Most Member States⁶⁶ have transposed this deadline for submission of the application as *within three months*. As, strictly speaking, within three months from the date of arrival is not less than three months, it was considered that such a transposition is correct. It should be noted nevertheless that 90 days (*i.e.*, Romania) does not always cover a period of three months. In France, the transposition is incorrect: the deadline for submission of the application is two months.⁶⁷ Lithuania, Latvia and Slovakia do not establish a deadline for application of the residence “permit”.

The Member State can make the person liable to proportionate and non-discriminatory sanctions for non-compliance with the obligation to submit a residence card application. The table included at page 63 for Article 36 includes more details on the specific sanctions that are imposed in each Member State for the failure to apply for a residence card. The transposition with regard to sanctions was found to be incorrect in Cyprus, Denmark, Greece, France, Hungary, the Netherlands, Portugal and Slovenia. In Ireland, the sanctions for all violations of the transposing Regulations are established between a minimum and a maximum. This transposition was considered as ambiguous for reasons of legal certainty. In Italy, the new Legislative Decree n. 30/07 could possibly introduce a serious infringement of the Directive since expulsion could become a sanction for non-compliance with the obligation to apply for a residence card.

It should also be noted that Bulgaria, Slovakia and the UK did not make use of the option to introduce sanctions for non-compliance, resulting in more favourable treatment.

⁶⁶ These Member States are Austria, Belgium, Bulgaria, Czech Republic, Germany, Denmark, Estonia, Greece, Spain, Finland, Hungary (93 days), Luxembourg, Poland, Romania (90 days), Sweden and Slovenia.

⁶⁷ Note that this provision of the French transposing legislation was annulled by the Conseil d’Etat as not being in conformity with EC law.

- **Issue of residence cards (Article 10)**

The right of residence of third country family members should be evidenced by a card called “Residence card of a family member of a Union citizen.” A number of Member States did not introduce the specific reference to Union citizens in the name of the card, which may have as a consequence that the third country family member is treated as a foreigner under the general aliens regime rather than under the protection of the Directive (*i.e.*, Bulgaria, Hungary, Ireland, Italy, the Netherlands, Romania and Slovakia).

The card is named differently in a number of Member States. For instance, in Austria, the card is called a “permanent residence card”, which is explained by the fact that Austria grants a permanent residence card, valid for ten years, from the third month of residence. Czech Republic, Lithuania, Latvia and Slovenia call the card a “residence permit”, which is neither in line with the spirit nor the wording of the Directive⁶⁸. France uses the correct name, but introduces additional titles for the card, referring to the possibility to work, which should be implied in the card itself. Estonia does not issue the residence card, but an identity card that proves the family member’s right of residence.

Article 10 requires the card to be *issued within 6 months from the date of application*. Almost all Member States have correctly transposed this requirement. Some even introduced shorter deadlines for obtaining the residence card, which is more favourable for the family member (*i.e.*, Bulgaria, Spain, Hungary, Portugal, Romania and Slovenia).

Denmark creates some room for uncertainty where the legislation says that the decision on whether the residence document shall be issued needs to be taken within 6 months. This is not the same as issuing the card itself. Estonia has included a possibility of extension of the original 3-month period for taking a decision, with three months at each time, thus also creating the possibility of exceeding the maximum period of the Directive. Finally, three Member States have not transposed the time-limit, namely Italy, Luxembourg and Slovakia.

Article 10 also specifies that a *certificate of application* for the card should be issued *immediately*. Only 8 Member States have not transposed or have incorrectly transposed this requirement.⁶⁹ In Belgium, the certificate is not issued on the spot, but only when the parental link has been established.

For the card to be issued, Member States can only require the presentation of a limited number of supporting *documents*. We will only highlight the cases where these documents are different from the ones asked from family members who are Union citizens themselves, of which an overview is included in the comments on Article 8(5) and of Article 3(2)(a) and (b).

It should be noted that it is not contrary to the Directive to require more documents from third country family members than from Union citizens. Only the Irish transposition is found to be contrary to the Directive.

Table 2.8 Supporting documents for family members who are not Union citizens

Member State	Supporting documents for family members who are not Union citizens (inasmuch as they differ from Article 8(5), 3(2)(a) and (b))
BE	Not required to provide registration certificate of the EU citizen whereas the Circular requires this for EU family members of EU citizens
EE	- document attesting family relationship - document attesting that the person is a family member in the meaning of Article 3 of the Directive
ES	- document establishing family link - registration certificate of Union citizen family member

⁶⁸ It should be noted that Lithuania and Slovenia use the term “residence permit of a Union citizen family member”.

⁶⁹ Austria, Denmark, Estonia, Latvia, Lithuania, Luxembourg and Slovakia.

	<ul style="list-style-type: none"> - document attesting dependency - document issued by CA in country of origin or country from which they are arriving that they are dependants or members of the household - proof of the existence of serious health grounds which strictly require the personal care of the family member by the Union citizen - document attesting a durable relationship
FR	<ul style="list-style-type: none"> - registration certificate of EU citizen family member - proof of dependency for the child
IE	<ul style="list-style-type: none"> - personal questions to be answered and supported with documentary evidence, where necessary: information included involves info on criminal convictions, immigration history in IE, etc.
NL	<ul style="list-style-type: none"> - document showing the family relationship or permanent relationship - registration certificate of Union citizen with whom he is residing - statement issued by the CA in the country from which they are arriving that he or she is a dependant of or will be residing with the Union citizen - proof of serious health reasons that require personal care by Union citizen - proof of state of the relationship (format to be determined by the Minister)
SK	<ul style="list-style-type: none"> - document attesting to family relationship - for persons under Article 3(2)(a) and (b): same document as above

- **Validity of residence cards (Article 11)**

Article 11 provides for the period of validity of residence cards and ensures that certain temporary absences will not render the card invalid. A problem was found in the Estonian transposition of Article 11(1) as the Estonian authorities give out ID-cards instead of residence cards. This is not in line with the Directive which does not accept an ID-card issued by any other Member State than the Member State of origin as a valid travel document.

Austria and Belgium transposed Article 11(1) in a more favourable manner by making the residence card valid for a longer duration, 10 and 6 years, respectively.

The provision regarding temporary absences was incorrectly transposed in a number of Member States, because the validity of the card in Article 11(2) was substituted with the duration of residence (*i.e.*, Bulgaria, Czech Republic, Denmark, Estonia, Hungary, Latvia, the Netherlands, Slovakia and UK). In Austria and Poland, this provision on temporary absences was not transposed.

2.3.3 Retention of the right of residence (Articles 12-13)

One of the novelties introduced by the Directive is the retention of the right of residence for family members. Under Article 12 and 13 of the Directive family members can retain the right of residence in the event of death or departure of the Union citizen and in case of divorce, annulment of marriage or termination of the marriage/registered partnership. The general aliens regime can only apply to them for family reunification purposes.

The following problems have been identified in the transposition of the specific conditions listed in Articles 12 and 13.

(a) Retention of the right of residence for family members who are themselves Union citizens

In general, the transposition of Articles 12(1) and 13(1) is correct in most Member States⁷⁰ although some peculiarities and problems have been identified.

⁷⁰ Cyprus, Czech Republic, Denmark, Germany, Estonia, Greece, Finland, France, Italy, Luxembourg (in the proposed legislation), Latvia, Lithuania, Malta, the Netherlands, Poland, Portugal, Sweden and Spain.

In Member States where family members who are themselves Union citizens have an independent right of residence (see comments on the transposition of Article 7(1) of the Directive), this provision has obviously not been transposed. This is the case of Slovakia and Slovenia. In Austria, where in principle the right of residence for family members derives from being a family member, the provision has not been transposed. Although it could be argued that in these cases there is no legal basis for terminating the right of residence in the events described in Articles 12(1) and 13(1), the Austrian legislation does not offer sufficient legal certainty and this may lower the level of protection granted by the Directive. In the UK, the transposition is ambiguous due to the legal drafting; it does not refer to retention of the right of residence but rather defines residence.

In Ireland, the transposition is considered incorrect because it provides that the right is retained on an individual and personal basis even for family members who are EU citizens themselves.

Some Member States (*e.g.*, Belgium, Bulgaria) have interpreted Article 12(1) and 13(1) as making the retention of the right of residence conditional upon meeting the conditions of Article 7. This approach is not correct. The Directive does not subject the retention of the right of residence to any conditions (apart from being a family member). The Directive only provides that it is in relation to the acquisition of the right of permanent residence that the conditions of Article 7(1) will apply. It is clear that the Directive also envisages a situation in which a family member will retain the right of residence in the first instance, and then have a period of time during which to satisfy the conditions of Article 7, so as to be eligible to acquire the status of permanent residence.

In three Member States the transposition is more favourable. In Estonia and Spain, since the right of residence is unconditional for all Union citizens, the legislation does not impose any condition for the acquisition of the right to permanent residence. Poland follows the same approach.

(b) Retention of the right of residence for third country family members

Transposition of Article 12(2) and 13(2) is problematic in many Member States. Several problems have been identified:

1. Personal basis and exclusion of third country family members from the scope of application of the Directive

Many Member States have not transposed the obligation to retain the right of residence on a personal basis under Article 12(2) and 13(2) of the Directive. It follows from these Articles that the Directive allows Member States to apply general aliens legislation to family reunification in these cases (*i.e.*, reunification of family members of persons who retained the right of residence under Article 12(2) and 13(2) of the Directive). In that respect, Member States that have not transposed the last sentence of Articles 12(2) and 13(2) could be considered as having created a more favourable treatment since the Directive's family reunification rules could continue to apply even in these cases. However, it is important to verify whether the general aliens regime also applies to family members who retained the right of residence in cases other than family reunification and which should be subject to the Directive's regime. If this is the case, the national legislation would no longer be in line with the Directive. For example, applying the expulsion grounds of the general aliens legislation to family members who retain the right of residence would not be in line with the Directive.

In some cases, the application of general aliens law only for family reunification can be deduced from the text of the legislation (*e.g.*, this is the conclusion in Czech Republic, Estonia and Germany⁷¹). In other cases, the lack of transposition has been considered incomplete and not as a

⁷¹ Germany is probably the only country which has made clear that “personal basis” within this context also implies that the family member who retained the right of residence can only exercise the right of reunification

more favourable regime⁷², mainly because it was not entirely clear that the general aliens' regime would not apply to these persons retaining the right of residence. The gap creates in those cases at least legal uncertainty. In addition, Spain has directly excluded family members who retained the right of residence from the scope of application of the legislation transposing the Directive. These family members have to request a residence card under the general aliens' regime and will be subject from there on to this general legislation for all aspects, not only for family reunification purposes. This has not been expressly indicated in other Member States but it cannot be excluded that in other countries the same situation applies.

2. Non-transposition of “being members of a family already constituted in the host Member State”, or non-transposition of evaluation of “sufficient resources”

Regarding the transposition of Articles 12(2) and 13(2) second subparagraphs, some Member States have omitted the reference to “being members of a family already constituted in the host Member State” which narrows down the possibilities for retention of the right of residence. This is the case in Bulgaria, Denmark, Ireland, Latvia and Slovakia. In some cases the problem derives from the fact that these countries made a general reference to the provision transposing Article 7(1) of the Directive, which lists the condition of workers, the self-employed, students and non-economic activities. On the one hand this approach is more favourable, since it also includes the possibility of retaining the right as a student. On the other hand this approach is incomplete since it does not allow the retention of the right of residence for being the member of a family already constituted in the Member State. The possibility of retaining the right for being a family member is very important in the case of a surviving partner who is the father/mother of a Union citizen's child (when not covered under Article 12(3) of the Directive).

Regarding sufficient resources, many Member States have not transposed the obligation to evaluate sufficient resources within this context⁷³ according to the conditions laid down in Article 8(4) of the Directive. This lack of transposition was considered not to present a serious problem of conformity. However, it should be pointed out that, in theory, the gap could result in general aliens law being applied for the evaluation of sufficient resources, which would undoubtedly be stricter and less flexible than under the Directive. This problem was indicated in Cyprus, Finland, Luxembourg, the Netherlands and Sweden.

Two countries have adopted a more favourable system requiring fewer conditions for the retention of the right of residence by third country family members. In Poland, no conditions have to be met for retaining the right. The right is retained in the event described in the Directive without needing to show that the family member is a worker, self-employed and so on. In Portugal, the legislation does not require one year of residence in the host Member State in the event of death.

(c) Specific problems identified in the transposition of Article 12(3) and Article 13(2) situations

Apart from the problems of a general nature described above, more specific problems have been found in the transposition of the specific conditions included in Articles 12(3) and 13(2) of the Directive.

- *Actual custody of children who are studying in host MS (Article 12(3))*

under general alien law, but remains protected by the legislation transposing the Directive in the remaining aspects.

⁷² Belgium, Bulgaria, Denmark, Italy, Latvia, Lithuania, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Sweden.

⁷³ In some countries the lack of transposition was not considered a problem because the concept of sufficient resources was introduced in a general provision applying to the entire text transposing the Directive.

Under Article 12(3), the Union citizen's departure from the host Member State or his/her death shall not entail loss of the right of residence of his/her children or of the parent who has actual custody of the children, irrespective of nationality, if the children reside in the host Member State and are enrolled at an educational establishment for the purpose of studying there until the completion of their studies.

Problems have been identified in eight Member States. In Austria and Slovenia the provision has not been transposed. In Estonia, the transposition does not cover departure, only death. In Poland, only custody determined by a court verdict is covered, therefore narrowing the scope of the Directive which refers to "actual custody".

In Luxembourg, in addition to the conditions under Article 12(3), the family member has to comply with the conditions listed in Article 12(2) of the Directive (being a worker, self-employed, having sufficient resources). The transposition is incorrect since those conditions do not apply to the situations described under Article 12(3) of the Directive.

Some problems relate to the duration of the studies accepted for the retention of residence. The notion "completion of studies" in the Directive is meant to cover all studies, not only a course of study. The following problems were identified. In Hungary, the enrolment has to be continuous with obligations to report at the beginning of each semester to confirm that the child is actually studying. In addition, it only covers children up to 18 years old. Therefore, it would not cover university studies or when the person reaches 18 years, although still in a secondary educational establishment. In Bulgaria and Ireland the expression "completion of their studies" has been transposed or interpreted as "completion of the course of study" which implies that right of residence terminates where the child moves from one level of study to another. In France, the right only covers up to secondary school (not university). This transposition derives from the French version of the Directive which is stricter than the English version. Finally, in Sweden, the concept of children is limited to the age of 21. This is not in line with the Directive as the completion of their studies could extend beyond the age of 21.

- ***Limitation of the scope of persons entitled to retain the right of residence in the event of divorce/annulment of marriage or termination of partnership***

In four Member States (Germany, Hungary, Estonia and Romania), the retention of the right of residence under Article 13 is only recognised for spouses and not for other family members, as required by the Directive.

In Spain, Article 13 also applies in case of legal separation, which is not in line with the Directive because in this case the marital link still exists. This implies that family members will no longer be subject to the Union citizens' regime but to the aliens regime.

Finally, Austria has not transposed Article 13 of the Directive.

- ***Limitation of the situations enabling the retention of the right of residence***

Two types of problems have been identified in relation to Article 13(2). Firstly, the Member States mentioned below do not accept "agreements between partners and spouses" (Article 13(2)(b) and (d)) as a means to establish custody, and secondly, there are Member States who have incorrectly transposed the concept of "particularly difficult circumstances" under Article 13(2)(c).

In Cyprus, Czech Republic, Lithuania, Slovenia and Slovakia, agreements between partners are not included as a possibility to establish custody or right of access to the minor child. These agreements have to be incorporated into a court order or may not even be possible. This limitation narrows the scope of the Directive.

Under Article 13(2)(c) the family member can retain the right of residence if it “is warranted by particularly difficult circumstances, such as having been a victim of domestic violence while the marriage or registered partnership was subsisting”. Domestic violence is only one example of particularly difficult circumstances. However Bulgaria, Hungary and Slovenia have included domestic violence as the only cases for which the retention of residence is warranted. In Czech Republic, the provision has not been transposed. Slovakia only refers to “specific circumstances”. It is not clear what would be covered by this term and whether it would correspond to “particularly difficult circumstances” under the Directive.

Italy has transposed this provision as “being an offended party in a criminal proceeding, which is still ongoing or has been concluded with a conviction judgment regarding crimes against the person committed within the family environment”. Not only is the concept “particularly difficult circumstances” larger, it also does not necessarily require a court intervention, which makes the Italian transposition manifestly incorrect. In the Netherlands, the provision has been transposed as “compelling reasons of humanitarian nature”, which is much stricter than “particularly difficult circumstances”.

Sweden effectively transposes the requirement to retain the right of residence if warranted by particularly difficult circumstances, but does not include a reference to domestic violence. This was seen as a minor problem of conformity.

In Lithuania and Romania, the provision has been transposed as “if the divorce occurred through the fault of the other spouse”, excluding any reference to “particularly difficult circumstances”. Although the Lithuanian and Romanian legislation would cover domestic violence it would not cover other situations that could also be considered as “particularly difficult”, such as paedophilia, incest, or other acts committed against other members of the family that may lead to the termination of the relationship.

2.3.4 Losing the right of residence (Article 14))

Article 14 provides for the circumstances in which persons retain the right of residence granted by Article 6 and Article 7 respectively. Article 14 also regulates the situations that lead to the end of the right of residence due to failure to meet the conditions.

(a) Residence for less than 3 months (Article 14(1))

All but five MS have explicitly transposed Article 14(1) of the Directive⁷⁴. The assessment of conformity may differ, however, depending on the entire system for granting residence, the analysis of expulsion provisions and whether they have made use of exception of Article 24(2). The lack of transposition is considered to be a gap in Austria whereas it is seen as effective in Bulgaria, Czech Republic, Spain and Estonia.

In Bulgaria and Czech Republic the transposition is assessed as correct since the only possibilities to be expelled from not meeting the conditions are linked to Article 7, 12 and 13 of the Directive. In Czech Republic, for example, there is a very thorough system to assess whether a person is a reasonable burden which only applies for residence of more than 3 months. In Spain and Estonia, this provision has not been transposed since the right is unconditional and the concept of “reasonable burden” does not exist in these two countries. Union citizens and family members can only be expelled on grounds of public order, public security and public health (which cannot be invoked to serve economic purposes). For this reason the transposition is considered correct.

(b) Residence for more than 3 months (Article 14(2))

⁷⁴ Austria, Bulgaria, Czech Republic, Estonia and Spain. The transposition has been assessed as incorrect in the cases of Denmark and Hungary.

The possibility to terminate the right of residence for not meeting the conditions under Article 7, 12 and 13 has generally been correctly transposed.

In Spain⁷⁵ and Estonia, the provisions have not been transposed because the right is unconditional and therefore the right of residence can only terminate if the person is no longer a family member or is no longer a Union citizen.⁷⁶ Even in those cases, the person may retain the right of residence under general aliens law, if the conditions laid down therein are met. “Having sufficient resources” is not a condition for the right of residence and the concept of “reasonable burden” does not exist in those countries. In Austria, the provision has not been transposed but overall the system does not grant the same level of protection against expulsion as the Directive. For this reason, the transposition is considered incomplete. In Bulgaria, the transposition has only made a reference to Article 7 of the Directive, which may imply that persons who retained the right of residence are subject to a different regime or less protected. In the Netherlands, even though the substance and the intention of the transposition is correct, the overall assessment of the transposition is incorrect because Articles 7, 12 and 13 of the Directive have not been transposed into the national legislation and also because there is an additional condition for the lawfulness of residence, namely that the person is not absent for more than 6 months. In Slovenia, the transposition is considered incorrect, because the wording of the national legislation is too vague (it refers to the “registration of residence” instead of the “right of residence”) which may grant the competent authorities a higher margin of discretion.

More problems have been detected in the transposition of Article 14(2) second subparagraph according to which checks on compliance with the conditions should not be systematic. Only eight countries have effectively transposed this provision (*i.e.*, Bulgaria⁷⁷, Cyprus, Greece, Finland, Luxembourg, Malta, the Netherlands, Poland and Portugal). Eight Member States did not transpose this article in any way,⁷⁸ while the remaining eleven countries transposed incorrectly. In some Member States the system is based on the obligation to report changes in the circumstances (*i.e.*, Czech Republic, Ireland, Hungary or Spain) and in other cases they do not contain explicit guarantee that the verification shall not be carried out systematically (*i.e.*, Belgium, Estonia, Germany, Malta, Romania, Slovakia and the UK). This does not grant the same level of protection as the Directive since it does not ensure that checks will not be systematic. In some Member States, the system of reporting may be extremely burdensome (*e.g.*, the case of Hungary for proving student status under Article 12(3) of the Directive).

Finally, the new legislation in Italy promoting a census of the Roma population of Romanian origin, apart from possible violations of human rights law, may lead to a continuous monitoring of EU nationals which would imply systematic controls, against provisions of the Directive.

(c) Protection against expulsion (Article 14(3)-(4))

- ***Recourse to the social assistance system (Article 14(3))***

This provision has been correctly transposed in most Member States⁷⁹. Seven Member States (*i.e.*, Austria, Belgium, Bulgaria, Hungary, Ireland, Italy and Latvia) have not transposed this provision and

⁷⁵ However, please note the comments made on third country citizens who retained the right of residence. For those family members, general immigration rules apply. The persons will have the right for as long as they meet the conditions.

⁷⁶ The right of residence can also be terminated on the grounds of public order, public security and public health; these grounds cannot be invoked to serve economic ends.

⁷⁷ Bulgaria did not transpose this article, which results in the situation of more favourable treatment.

⁷⁸ Austria, Denmark, France, Italy, Latvia, Lithuania, Slovenia and Sweden.

⁷⁹ The transposition of this provision is correct in the following Member States: Cyprus, Czech Republic, France, Greece, Lithuania, Luxembourg (project), Malta, the Netherlands, Poland, Portugal, Slovenia and the UK. In Estonia and Spain, the non-transposition of this provision has also been assessed as effective. In Finland, the transposition is estimated as ambiguous.

this has been considered incorrect here because it does not grant the same level of protection as the Directive. Though Estonia and Spain⁸⁰ also did not transpose this provision, in these two countries the right of residence is unconditional and expulsion is only possible on grounds of public security and public order, which cannot be invoked to serve economic ends. Therefore, in these two cases, the non transposition is considered correct (see comments above).

In Denmark, Germany, Romania, Sweden and Slovakia the transposition did not guarantee that the recourse to the social assistance regime would not lead to an automatic expulsion for being an unreasonable burden.

Czech Republic provides a very detailed mechanism to assess whether a person may become an unreasonable burden which includes evaluation of social benefits obtained. From the assessment system it is very clear that expulsion cannot be an automatic consequence of recourse to the social assistance system.

- ***Workers, self-employed persons and job seekers (Article 14(4))***

Most of the problems identified were linked to the Article 14 protection for job seekers. Austria, Bulgaria, Denmark, Hungary and Ireland did not transpose the provision. The experts indicate that the system does not offer enough guarantees against expulsion in these cases. In Belgium, Czech Republic, Lithuania,⁸¹ Latvia, Romania and Slovakia the system did not grant the same level of protection for job seekers. In Greece, the provision did not protect family member of jobseekers. In Greece and Malta the protection does not extend to self-employed/workers' family members.

In Estonia and Spain, even though the provision has not been transposed, it is still considered as being effective in the national system.. The Estonian and Spanish systems extend the protection to all Union citizens and their family members since expulsion measures can only take place on the basis of public policy and public security.

(d) Expiry of passport or identity card and expulsion (Article 15(2)) and prohibition of a ban on entry (Article 15(3))

Article 15(2) provides that expiry of an ID card or passport cannot be a ground for expulsion. Article 15(3) provides that MS cannot use an expulsion decision as the basis for a ban on entry.

Most Member States correctly transposed these two provisions⁸². In Bulgaria, Denmark and Poland, Article 15(2) has not been expressly transposed into the national legislation. However, given that these countries give an exhaustive list of the possible expulsion grounds which does not contain the expiry of an ID card or a passport, the transposition is considered as effective by using an *a contrario* reasoning.

In Ireland and Italy, Article 15(2) has not been transposed; thus in these cases an invalid or expired ID card may be a legal ground for expulsion. The UK and Hungary also fall within this same category: the UK because both the definition of extended family members and appeal rights are based on a valid ID card, and Hungary because an invalid ID card is linked to invalidity of a residence card, thus

⁸⁰ The concept of unreasonable burden does not exist under the Spanish law (either Community regime or general immigration regime). The possibility of becoming an unreasonable burden is not foreseen by the Aliens Act and cannot be used as justification to terminate the right of residence. Access to social assistance is a fundamental right.

⁸¹ Although in Czech Republic and Lithuania the transposition protects workers, Article 7(3) has not been correctly transposed, which implies that certain categories of workers may be not covered by the provision.

⁸² Both Articles 15(2) and 15(3) have been correctly transposed in Austria, Bulgaria, Cyprus, Finland, France, Germany, Greece, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

triggering the Article on expulsion. In Latvia the transposing provision is not very precise and only implies that the expiry of an ID card or passport alone shall not provide ground for expulsion.

In Czech Republic and Hungary an expulsion measure includes an entry ban, which contradicts Article 15(3). The UK also fails to conform to Article 15(3), but in its case this is because the high level of administrative discretion means that prior expulsion is a potential factor in assessing entry. Notwithstanding that in Belgium a ban is possible, this possibility is also incompatible with the Directive's clear proscription of any entry ban for no longer meeting the conditions for residence.

In Denmark and Poland, even though the situations when a ban on entry applies are quoted in the national legislation and do not contain that of an expulsion decision, the relating provision has not been expressly transposed and thus may create legal uncertainty. Latvian legislation does not contain this provision while Estonia has transposed neither of these two provisions.

2.4 Right of permanent residence

2.4.1 General rule for Union citizens and their family members (Article 16: Eligibility)

Article 16 of the Directive recognises the right of permanent residence for Union citizens and their family members who have resided legally for a continuous period of five years. The right is no longer subject to the conditions of Chapter III.

An unconditional right of permanent residence

The rights in Article 16 are not subject to the conditions of Chapter III; therefore the provisions in Bulgaria, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Poland, Slovenia and Slovakia that do leave the possibility open to subject these rights to Chapter III conditions are not in compliance with the Directive. In Luxembourg, the transposing legislation ensures that the conditions of Article 7(1) do not apply anymore. However, Chapter III also includes Articles 12(1) and 13(1) on retention of the right of residence, which makes the transposition in Luxembourg incomplete.

A particular problem in this respect arises in Austria, where a permanent residence card is granted as of three months of residence, thus appearing to create a more favourable treatment for Union citizens and their family members. However, the way the provision is drafted does not grant sufficient guarantees that the conditions of Chapter III would no longer apply when the person resides in Austria for five years or that temporary absences would not affect their residence, making the transposition finally incorrect.

In Lithuania, the provision's wording "last 5 years" does not align with the Directive's expressions of a "continuous period of 5 years". In Belgium the period of 5 years of continuous residence is decreased to 3 and the clock begins on first contact with the commune. In Slovenia the 5 years are counted on the basis of a registration certificate and therefore the first three months are not counted.

And finally, in Poland and Slovenia there is simply no transposition.

Legally residing

Article 16 grants the right of permanent residence to persons who have *legally* resided in the MS, for a continuous period of five years. Legally residing in this context, means "in accordance with Community law on free movement of Union citizens" as it is Community law that grants the right of residence to Union citizens and their family members, not the national transposing legislation. In five Member States, issues were detected with the transposition of Article 16 for this reason.

In Belgium, Ireland, Latvia and the UK, the term ‘legally’ has been linked to the national legal framework as opposed to Community law. The provisions of these countries are phrased, for example, “residing on the basis of the provisions of the chapter on permanent residence of the national law” (Belgium), “in accordance with these Regulations” (Ireland), “in accordance with the conditions specified in paragraph 20 of these Regulations [Article 7 of the Directive]” (Latvia) or “under these Regulations” (UK).

In Bulgaria, imprecise drafting has made the transposition of Article 16 incorrect. The way in which the provision is structured seems to imply that the duration of 5 years and the conditions of Article 17 are cumulative conditions, which is obviously an incorrect approach. In addition, akin to the approach taken in Article 7, the transposing legislation never refers to the right of permanent residence, but to the issuance of the certificate of permanent residence.

Continuity

Article 16(3) states that temporary breaks in residence will not affect continuity of residence provided that the total absence(s) does not exceed six months in a year, or longer for compulsory military service, or by one maximum absence of 12 months for important reasons. These important reasons include pregnancy and childbirth, serious illness, study or vocational training or a posting to another MS or third country. Twenty Member States have correctly transposed Article 16(3).⁸³

Denmark has wrongly transposed the term “important reasons”. The Danish transposing legislation states that the continuity of residence should not be broken except for “wholly exceptional circumstances”, which is more stringent than “important reasons”. It appears that continuity would be broken far more easily in Denmark than allowed by the Directive.

The Hungarian legislation sets forth the reasons that “shall not constitute an interruption” instead of referring to “continuity of residence” as found in the Directive. These refer to equal notions. However, the Hungarian legislation does not specify the destination of posting (“another Member State or a third country”) and this might lead the competent authorities to different interpretations and practice.

The transposing Dutch provision does not explicitly mention what important reasons justify an absence of a maximum of 12 consecutive months except for one (posting in another country). Thus, legal certainty that for instance pregnancy constitutes an important reason is lacking. Similarly, in Slovakia, while, strictly speaking, the lack of transposition of the examples provided by the Directive does not necessarily create a problem of conformity, the lack of indication of what could be considered to be important reasons leaves a large margin of discretion for the Member State, which is not acceptable for reasons of legal certainty.

Slovenia has created a differential treatment between Union citizens and family members. In the case of Union citizens, continuity of residence will not be affected by temporary absences, as mentioned in the Directive. However, for family members, this rule has not been transposed, which means that their right of permanent residence could be jeopardised if they leave the country.

Finally, in Austria and Lithuania, the same issues of conformity apply as mentioned above, namely the certificate of permanent residence as of three months in Austria, and the continuity during the last five years in Lithuania.

Loss of the right of permanent residence through absence of a period exceeding two consecutive years

⁸³ Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Italy, Ireland, Latvia, Luxembourg, Malta, Poland, Portugal, Romania, Sweden and the UK. In Spain the assessment is found to be slightly ambiguous.

Most Member States have correctly transposed the optional provisions of Article 16(4), allowing for loss of the right of permanent residence through absence of more than two years⁸⁴. Czech Republic and Germany create an even more favourable treatment, by specifying that the loss will not be automatic, but account must be taken of the personal life (*i.e.*, Czech Republic), or that right will be lost only if the absences are not of a temporary nature (*i.e.*, Germany). The Polish provisions are more favourable since they do not provide for the possibility to cancel right of permanent residence of the Union citizen.

The most serious problem of conformity was identified in Latvia, where the certificate of permanent residence can be cancelled on the same conditions as for temporary residence, namely, becoming an unreasonable burden, no longer meeting the conditions of Chapter III, or providing false statements.

In Slovenia and Slovakia, the transposing legislation indicates that the right of permanent residence will be lost when the person acquires the nationality of the host Member State. This loss of permanent residence is not in line with Community law, and particularly with ECJ case *Garcia Avello*⁸⁵, which determines that the Union citizen should be able to benefit from both regimes. In Czech Republic, a similar problem was identified, with the difference that it is the validity of the residence card that will be affected when obtaining Czech nationality.

Finally, Hungary does not merely attach the loss of the permanent residence right to an absence of two consecutive years, but also includes the possibility to apply a ban on entry or residence.

2.4.2 Acquisition of the right of permanent residence for workers/self-employed persons and their family members (Article 17)

Article 17(1) describes the situations under which workers and self-employed persons can acquire the right of permanent residence. Under Article 17(2) the Directive establishes exceptions on the length of residence and employment for some of the situations described when the worker's or self-employed person's spouse is a national of the host Member State or has lost nationality of that Member State upon marriage to that worker or self-employed person.

These provisions are generally effectively and even literally transposed in the Member States. Nevertheless, only 13 Member States⁸⁶ have carried out an overall effective transposition of Article 17 of the Directive. In other Member States, some gaps or incorrect transpositions occurred.

Austria has not transposed Article 17 on the basis of the reasoning noted above in 2.4.1, namely that the permanent residence card is granted immediately. However, since it is not explicit that the residence will be unconditional from that moment, the provisions of Article 16 and 17 should have been transposed to provide the necessary guarantees. In Bulgaria as well, the same errors of transposition of Article 16(1) lead to the incorrect transposition of Article 17.

In Ireland, the persons concerned by Article 17 of the Directive do not automatically obtain the right of permanent residence when fulfilling the conditions. The transposing legislation merely gives them a right to apply for the residence certificate, which creates a serious problem of conformity with the Directive.

⁸⁴ The following countries have correctly transposed Article 16 (4) of the Directive: Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Italy, Ireland, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Spain, Sweden and the UK. Austria has not transposed this provision and the transposition is incorrect in Bulgaria, Hungary, Latvia, Slovakia and Slovenia.

⁸⁵ Case C-148/02 *Garcia Avello* [2003] ECR I-11613.

⁸⁶ Czech Republic, Finland, France, Greece, Italy, Finland, France, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Spain and the UK.

In Poland, when determining the persons concerned, the transposing legislation uses the word “finished working”, which means a definite termination of activity and is in this regard contrary to the Directive, which refers to workers and self-employed persons who have “stopped working”.

Latvia did not transpose Article 17(3) which says that the family members, irrespective of nationality, who are residing with a worker or self-employed person who acquires the right of permanent residence earlier than 5 years, shall acquire the right of permanent residence together with the EU citizen. This lack of transposition significantly affects the protection of family members of a Union citizen.

Specific gaps in the transposition of one of the situations mentioned in Article 17, such as the acquisition of permanent residence by frontier workers or the inclusion of periods of involuntary unemployment, were found in the transposing legislation of Belgium, Bulgaria, Cyprus, Germany, Estonia, Hungary, Sweden, Slovakia and Slovenia.

The lack of transposition of Article 17(2) relating to the loss of nationality through marriage was found not to be a gap in the legal order of most Member States. The national expert for Cyprus expressed his concerns about the situation of prohibition of dual nationality in his country, which entails that a spouse in Cyprus can lose his or her Cypriot nationality via marriage. As such, the lack of transposition in this case constitutes a gap. In Denmark, the provisions regarding the family members residing with the worker or self-employed person who is the primary beneficiary of the right of permanent residence have not been transposed.

2.4.3 Acquisition of the right of permanent residence by family members who are not nationals of a MS and retained their right of residence (Article 18)

Article 18 grants the right of permanent residence to family members who retained the right of residence under Article 12 and 13 of the Directive after a legal and continuous residence of 5 years. In the majority of Member States, the transposition of Article 18 did not lead to major problems of conformity.⁸⁷

In Belgium and the UK, the same national approach of legality of residence was found as for Article 16. In Austria, the problem of conformity is also due to the overall transposition approach of Articles 16, 17 and 18.

In Estonia, the provision has been incorrectly transposed, as the national legislation contains the additional requirement of residence based on temporary right of residence. In Bulgaria and Finland, the direct transposing provisions are missing, but in both cases there is indirect transposition of this Article.

In Poland, the transposing provisions do not provide for any conditions for acquiring the right of permanent residence apart from the 5 years of residence. However, the Polish provisions incorrectly impose on third country family members the requirement of residing with an EU citizen in order for the right of permanent residence to be retained. Similarly, the transposing provisions require third country family members to live together with the EU citizen in order to obtain the permanent residence in Sweden as well, which is not in line with the Directive.

The transposition in Spain is at least ambiguous, and possibly incorrect. There is no specific provision on third country family members who retained their right of residence under Articles 12(2) and 13(2), and the way they acquire the permanent right of residence. This could mean that these persons would

⁸⁷ Article 18 of the Directive has been effectively transposed in the following Member States: Cyprus, Czech Republic, Denmark, France, Germany, Greece, Hungary, Italy, Ireland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Slovakia, In Bulgaria this article has not been transposed, but the expert has not considered this as a conformity problem.

be covered by the general aliens regime. Even if the duration of residence to acquire permanent residence is the same under both regimes, i.e., five years, the conditions for continuity are not the same.

Finally, the transposition in Slovenia is also incorrect since acquisition of permanent residence by third country family members who retained the right of residence on grounds of Articles 12(2) and 13(2) is made conditional upon the conditions of Chapter III.

2.4.4 Documents certifying permanent residence (Articles 19-20)

(a) Documents certifying permanent residence for Union citizens (Article 19)

Article 19 establishes that upon application the Member State shall issue Union citizens entitled to permanent residence with a document certifying permanent residence, after having verified duration.

All Member States except Austria issue a document certifying permanent residence after a continuous duration of residence of five years, or less in the situations established in Article 17 of the Directive. Austria grants a document called “certificate of permanent residence” after the initial three months of residence, which seems to create a more favourable treatment for Union citizens than is required by the Directive. However, the Austrian right of residence attested by the certificate is subject to the conditions of Chapter III. Since the rights attested by the two certificates mentioned in the Directive have very different implications, the Austrian transposition may create a less favourable treatment of Union citizens than regulated in the Directive. It could thus be understood that the Directive requires the issuance of two separate certificates, in order to indicate the rights they attest in an unequivocal manner.

In Hungary and Romania the document issued to Union citizens certifying permanent residence, is called the “permanent residence card”, which is not in line with the Directive. Since residence cards need to be renewed every 10 years under Hungarian legislation, this requirement will also apply to Union citizens residing in Hungary, and not only to third country family members. Similarly, the document on further permission is issued for 10 years in Slovakia, which is contrary to the requirement that the validity of the document issued to EU citizens must be unlimited.

In Bulgaria, the transposing provisions do not contain an indication that the residence document is to be issued “upon application” and the transposing provisions do not require that the residence document will be issued “after having verified duration of residence”. Similarly, the Slovenian transposing legislation does not require the verification of the duration of residence.

In Sweden, the residence permit sticker is entered directly into the passport and this makes the transposition incorrect.

All national experts were asked to check the actual documents that need to be presented. In a number of Member States, the national experts were able to identify the documents that are required for attesting the duration of residence, in order to obtain the certificate of permanent residence (or the permanent residence card, for third country family members). The Czech, Irish, Lithuanian, Latvian, Spanish and UK experts included this information in the national reports. However, many experts encountered difficulties in obtaining the relevant information. Therefore, it was decided not to include this information in the horizontal report, as the information obtained does not concern a sufficient number of Member States to make broad conclusions. It can be noted that in Czech Republic, Latvia, Spain and Ireland, the documentation requested is not in line with the Directive.

The models of the application forms were attached to each of the national reports, when available.

Article 19(2) adds that the document certifying permanent residence should be issued as soon as possible. The table below provides an overview of the transposition of this concept in the Member States. More than half of the Member States have literally transposed this provision, or in similar wording (such as “forthwith”, “as quickly as possible”, “without delay” or “immediately”), while 11 Member States have introduced a specific time-limit of their understanding of the term “as soon as possible”. Five Member States have not transposed this requirement.

Table 2.9 Time-limit for issuing the certificate of permanent residence to EU citizens

Member State	Time-limit for issuing the certificate of permanent residence
AT	6 months
BE	5 months after the application has been transferred from the commune to the Foreigners Office.
BG	Not transposed
CY	As soon as possible
CZ	60 days
DE	Forthwith
DK	As quickly as possible
EE	Not transposed
EL	Not transposed
ES	As soon as possible
FI	Without delay
FR	Not transposed
HU	3 months
IE	As soon as is practicable
IT	30 days
LT	1 month
LU	Not transposed (to be determined by implementing regulation)
LV	90 days
MT	As soon as possible
NL	As soon as possible
PL	Immediately
PT	15 days
RO	30 days
SE	As soon as possible
SI	1 or 2 months, depending on complexity of decision
SK	30 or 60 days. Delays are to be notified to the applicant
UK	As soon as possible

(b) Permanent residence card for family members who are not nationals of a MS (Article 20)

Similarly, Article 20 of the Directive requires Member States to issue the family members of a Union citizen who are themselves not nationals of a Member State with a permanent residence card which will be automatically renewed every 10 years. The application is to be submitted before the residence card expires. Interruption in residence not exceeding 2 years will not affect the validity of the card. Member States can impose sanctions for failure to comply with this requirement.

In the UK, the application for a permanent residence card is not compulsory. The national expert highlighted nevertheless that there is an obligation on the Secretary of State to issue a card when it is applied for. In 12 Member States, permanent residence cards should be issued within the six months imposed by the Directive. Eleven Member States have reduced the time-limit for the competent authorities to issue the permanent residence card to less than six months, in favour of the family member. In two Member States, the transposing legislation allows for the possibility to issue the card later than 6 months after the application by setting a possibility to extend the time-limit. In Lithuania the time-limit has not been transposed and in Luxembourg, an implementing regulation is awaited that will determine these issues.

Table 2.10 Time-limit for issuing the permanent residence card to third country family members

Member State	Time-limit for issuing the permanent residence card
AT	6 months
BE	5 months after the application has been transferred from the commune to the Foreigners Office.
BG	1 month
CY	6 months
CZ	60 days
DE	6 months
DK	6 months
EE	3 months, which can be prolonged for 3 months each time
EL	6 months
ES	3 months
FI	6 months
FR	6 months
HU	3 months
IE	6 months
IT	90 days
LT	Not transposed
LU	Not transposed (to be determined by implementing regulation)
LV	90 days after submission of all documents
MT	6 months
NL	6 months, possible extension of another 6 months
PL	6 months
PT	3 months
RO	90 days
SE	6 months
SI	1 or 2 months, depending on complexity of the decision
SK	90 days
UK	6 months after submission of documents

The permanent residence card should be automatically renewable every 10 years. In Germany and Finland, there is no limitation of the validity of a permanent residence card. Once issued, it remains valid. Other Member States renew the permanent residence card in a similar manner as a passport or ID-card, after 10 years without a re-examination of the conditions and documents. Even though it is not mentioned in the text of the transposing legislation, practice shows that in Hungary all documents attesting the right of permanent residence will have to be submitted and re-examined for the renewal of the card.

In violation of Article 20 of the Directive, Belgium, Estonia and Portugal have reduced the minimum validity of the permanent residence card introduced by the Directive to five years. In the Netherlands, the card is also valid for only five years.

Austria, Belgium, Estonia, Italy, Latvia, the Netherlands, Slovakia and Slovenia have not transposed the requirement that the permanent residence card shall be “renewable automatically every 10 years”.

The application for the permanent residence card should in almost all Member States be made before the expiration of the residence card. A number of Member States (*i.e.*, Bulgaria, Cyprus, Estonia, France, Luxembourg, Slovakia and Spain) have specified that the application should be made one or two months before the expiration. In Austria, Czech Republic, Germany, Latvia, Lithuania, Luxembourg, Romania, Slovenia and UK this requirement was not transposed.

The Directive allows the Member States in Article 20(2) to impose sanctions for failure to apply for a permanent residence card when this is required by national law. A number of Member States (*i.e.*,

Austria, Bulgaria, Czech Republic, Germany, Italy, Latvia, Luxembourg, the Netherlands, Romania, Slovakia Sweden and the UK) have decided not to make use of this option. On the other hand, the sanctions in Denmark, Estonia, France, Greece, Portugal and Slovenia, were found to be disproportionate or discriminatory. In Hungary, the transposing provisions require the applicant to “present valid excuses” concerning why he did not present the application before the expiry of the document. This leaves a margin of appreciation to national authorities that might lead to the verification of the entitlement again. More specific information on the exact sanctions imposed in each Member State can be found in the assessment of Article 36.

Article 20(3) determines that interruption in the residence of no more than two consecutive years shall not affect the validity of the residence card. Four Member States⁸⁸ have wrongly transposed this Article by referring to the validity of the right of residence or the residence instead of the validity of the card. In addition, Austria and Estonia have not transposed the provision, which could be problematic in view of legal certainty.

2.4.5 Continuity of residence (Article 21)

Article 21 states that for the purpose of the Directive, continuity of residence may be attested by any means of proof in use in the host Member State. Continuity of residence is broken by any expulsion decision duly enforced against the person concerned. Fourteen Member States have correctly transposed this provision.⁸⁹

The possibility to restrict the means of proof a person can use to prove continuity of residence was detected in the transposing legislation of a number of Member States. Sometimes the guarantee to use any means of proof was not transposed or not in a sufficiently clear manner (*i.e.*, Belgium, Bulgaria, Germany, Denmark, Estonia, Spain, Italy, Sweden and the UK). Cyprus and Hungary explicitly restrict the means of proof.

Secondly, thirteen Member States⁹⁰ have not transposed the provision that continuity of residence will be broken by any expulsion decision duly enforced. However, the fact that continuity of residence is not broken by an expulsion decision results in a more favourable treatment of EU citizens and their family members.

2.5 Common provisions

2.5.1 Territorial scope (Article 22)

Article 22 of the Directive requires that residence rights in respect of a particular Member State apply to its entire territory. Restrictions are permissible, but must also equally apply to nationals of that Member State.

The legislation in the vast majority of Member States is fully in accord with the Directive, applying the same territorial rights to foreigners and nationals. Only three Member States’ laws do not comply with this requirement. These three countries are: France and Austria (where territorial restrictions that apply only to foreigners are possible) and Denmark (where there is no corresponding provision in the transposing legislation or elsewhere in the national laws).

Some permissible limitations are commonplace such as a restriction of one’s territorial rights in relation to another (*e.g.*, restraining orders in cases of domestic violence etc.) or for protecting

⁸⁸ Belgium, Denmark, Latvia and the Netherlands.

⁸⁹ Austria, Czech Republic, Greece, Finland, France, Ireland, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia and Slovenia.

⁹⁰ Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Germany, Latvia, Lithuania, Malta, Romania, Slovenia and Sweden.

witnesses. These particular examples were raised by the Spanish expert, and the Czech expert also outlined similar restrictions on movement as a criminal sanction, as well as for nature protection.

2.5.2 Right to take up employment by family members (Article 23)

Article 23 requires that family members of a Union citizen (who also have a residence right) be entitled to work or be self-employed in that Member State.

Most Member States comply with this requirement: a few by literally transposing the provision into their law⁹¹ but the majority by “effective transposition”⁹² (*i.e.*, an equivalent provision(s) in the transposing body of legislation). Notably, some Member States, such as Germany, Ireland and Luxembourg still impose transitional provisions for countries that acceded as a Member State in 2004.

There is an issue in Spain where, by virtue of the definition of “dependants” in *Lebon*⁹³, such persons must need the Union citizen’s material support. Despite the natural assumption that this would limit a dependant’s right to take up employment, the Spanish law allows access to the labour market provided it is not for one’s main source of living.

Non-compliance by Member States is due to a variety of reasons. These countries are: Austria (where self-employed family members are potentially not included); Belgium (where registered partnerships are not included); France (where “rights” have insufficient clarity); Latvia (which conditions the right on having a job; not just a simple right); Hungary (where, while indirect conformity might be deduced, the specific clause only concerns the residence right of family members who are third country nationals in the event of death or departure of the EEA national); Ireland (where the exemption from the work permit requirement is not stated clearly) and the UK (where this article has not been transposed in the national legislation, though arguably other provisions of the Immigration Act operate in substitution). It should be noted that in Italy, the transposing provisions contain an ambiguous reference to the EC Treaty regarding the jobs that only Italian citizens can carry out.

2.5.3 Equal treatment (Article 24)

Article 24 has two parts. Article 24(1) refers to equal treatment for Union citizens – the benefit of which must extend to the Union citizen’s family members who have a residence right. However, Article 24(2) permits a Member State to restrict the equal treatment right in certain areas. These areas include: social assistance, and grants or loans for students. A Member State can choose whether or not to adopt rules akin to Article 24(2), but if adopted, restrictions may only exist for the first three months of residence.

Some exceptions to the above rules are contained within Article 24. For example, job-seekers may have limited access to social assistance for a period longer than three months; and conversely, workers or the self-employed should have access to grants or loans for students immediately.

In terms of Article 24(1) regarding equal treatment, a large number of countries have not included such a provision in the transposing legislation. Instead, Member States simply refer to the general principles of equal treatment, either as part of Community law or national equality laws⁹⁴. While this

⁹¹ Cyprus, Greece and Portugal.

⁹² Bulgaria, Czech Republic, Denmark, Estonia, Finland, Germany, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Romania, Slovakia, Slovenia and Sweden.

⁹³ Case 316/85 *Lebon* [1987] ECR 281.

⁹⁴ References to general principles of equal treatment may be found in the legislation of Belgium, Czech Republic, Denmark, Hungary and Luxembourg. In Finland, there is no explicit reference to general principles, but nationality discrimination is generally banned in the Equality Act and the Criminal Code.

may lead to compliance in practice, there is no clear promulgation of the right with regard to workers, which is especially important to a Union citizen's family members. (An exception is Luxembourg where equal treatment is effectively and rigorously applied by virtue of the constitutional guarantee.) Where Article 24(1) is transposed in the Member States' legislation, both Union citizens and their family members are covered⁹⁵.

In Member States that have not (or not completely/correctly) transposed Article 24(1),⁹⁶ equal treatment rights are unclear. Notably, in France, where Article 24(1) is not transposed, housing benefits are available to French nationals only. In Estonia only those non-nationals who have the right of temporary or permanent residence are equated with Estonian citizens. The UK adopted a piecemeal approach amending specific pieces of legislation. This approach could be problematic since there is no general principle of equal treatment in UK law, even if no real omissions were identified so far.

Transposition has been correctly achieved in fourteen Member States,⁹⁷ while another ten Member States have not made use of the option to restrict the equal treatment right, as set forth in Article 24(2) of the Directive.⁹⁸ Transposition is incorrect in Estonia, Germany, Italy, and Portugal. In Germany and Italy, Article 24(2) has been transposed, but is limited in terms of its application to certain groups. Nothing in the Estonian legislation supports workers or the self-employed, and in Germany these groups are not specified in the transposing legislative provision. In Portugal, the derogation of social assistance in the first two months of residence seems to apply to workers and self-employed persons as well.

2.5.4 General provisions concerning residence documents (Article 25)

Article 25 contains two provisions relating to official registration and residence documents. Article 25(1) prescribes that the presentation of various official residence documents is a precondition for the exercise of a right or the completion of administrative formalities. Article 25(2) requires that all such documents contained in paragraph (1) be issued free of charge, or with fees that are equal to those charged to nationals for the issuance of similar documents.

Article 25(1) is generally not well transposed⁹⁹. Incorrect transpositions in Bulgaria, Lithuania, Sweden and Slovakia are due to documents being made a precondition for the exercise of a right or the completion of administrative formality, thus directly contravening Article 25(1). In Austria, France, Hungary, Italy, Ireland and Spain, the transposition is incomplete or insufficiently clear as to be in accordance with the Directive. Czech Republic, Denmark, Estonia, Finland, Germany, Latvia, Poland and Slovenia did not transpose the provision.

The second paragraph of Article 25 is well transposed by nearly all of the Member States. Fees, if charged, are generally the same as for nationals. The cases of non-conformity (*i.e.*, Cyprus, Hungary, Ireland, Latvia, Slovenia and Romania) are minor, save for Hungary where there are no fees for nationals.

In Cyprus, even though no relevant national provision exists, these documents are not issued free of charge in practice. It should also be noted that in Luxembourg, the conditions regarding fees to be charged for issuing documents have not been set, but the pending *règlement grand-ducal* is expected to establish them when adopted.

⁹⁵ Article 24(1) is directly transposed in Bulgaria, Cyprus, Greece, Italy, Lithuania, Malta, the Netherlands and Portugal.

⁹⁶ Austria, Estonia, France, Germany, Ireland, Latvia, Poland, Romania, Slovakia, Slovenia, Spain, Sweden and the UK.

⁹⁷ Article 24(2) has been explicitly and correctly transposed in: Belgium, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Lithuania, Malta, the Netherlands, Poland, Spain, Sweden and the UK.

⁹⁸ Austria, Bulgaria, Denmark, Estonia, Hungary, Latvia, Luxembourg, Romania, Slovakia and Slovenia.

⁹⁹ Article 25(1) has been effectively transposed only in Belgium, Cyprus, Finland, Greece, Luxembourg (proposed legislation), Malta, the Netherlands, Portugal, Romania and the UK.

The table below gives an overview of the fees charged for registration and residence documents. Please note that figures have been translated into Euros where appropriate.

Table 2.11 Fees charged for registration and residence documents

Member State	Registration certificate	Residence card family member (and submission of application)	Document proving permanent residence (EU citizens)	Permanent residence card (third country family member)
AT	€15	€56	€56	€56
BE	<i>Free or to cover administrative costs not exceeding amount for nationals</i>			
BG	€3.60	€3.60-€5.10	€3.60	€5.10
CY	?	?	?	?
CZ	FREE	FREE	FREE	FREE
DE	FREE	€8	€8	€8
DK	<i>Danish administrative authorities can charge but only in a non-discriminatory manner</i>			
EE	€10	€10	€10	€10
EL	FREE	FREE	FREE	FREE
ES	€6.80	€6.80	€6.80	€6.80
FI	€40	€40	€40	€40
FR	FREE	FREE	FREE	FREE
HU	€4.35	€6.50	€6.50	€6.50
IE	<i>No set fees, but situation unclear</i>			
IT	€14.62	€14.62	€14.62	€14.62
LT	?	?	€3	?
LU	<i>Fees not yet set</i>			
LV	FREE	FREE	FREE	FREE
MT	FREE	FREE	FREE	FREE
NL	FREE	?	€30	€30
PL	€0.30	€9.35	€9.35	€9.35
PT	€7	€7	€7	€7
RO	?	?	?	?
SE	?	€52.80-€105.65	€26.40-€52.80	€26.40-€52.80
SI	€2	€2	€2	€2
SK	FREE	FREE	FREE	FREE
UK	FREE	FREE	FREE	FREE

2.5.5 Checks (Article 26)

Article 26 permits Member States to carry out checks on compliance with their national legislative requirements for non-nationals. Such checks are permitted provided that the same applies to nationals in terms of their identity card laws. Moreover, sanctions must also be less or equal to those for nationals for not carrying their identity card.

Transposition of Article 26 by Member States can be broadly categorized into three groups: (1) Member States that apply different standards to their own nationals (*i.e.*, Austria, Czech Republic, France, Hungary, Luxembourg, Slovakia and Sweden); (2) Member States that effectively transpose Article 26, applying the same standards to non-nationals as for nationals (*i.e.*, Belgium, Bulgaria, Cyprus, Germany, Greece, Italy, Malta, the Netherlands, Portugal, Romania, Slovenia and Spain); and, (3) Member States that do not require checks or associated sanctions, thus providing more favourable conditions (*i.e.*, Denmark, Estonia, Finland, Ireland, Latvia, Lithuania, Poland and the UK). It is axiomatic that only the first category leads to non-conformity

2.6 Restrictions on grounds of public policy, public security and public health

2.6.1 Transposition of the general principles (Article 27 and Article 28(1))

Articles 27(1)-(2) and 28(1) lay down specific principles that have to be taken into account by the competent authorities when restricting freedom of movement or residence based on public policy, public security and public health. These principles are essential assessment tools to ensure that expulsion measures adopted by competent authorities and/or reviewed by courts comply with EC law and are not arbitrary or disproportionate. These provisions consolidate an abundant and constant jurisprudence of the ECJ in this area.

Despite the importance of these principles, the transposition carried out by Member States especially of Articles 27 and 28 is far from satisfactory. On the positive side, three Member States (Greece, Malta and Portugal) have correctly transposed Articles 27 and 28 while the Cypriot transposition of the two Articles only contains one gap.

Some countries have not transposed Article 27, while other Member States have only partially transposed the provisions. Finally, other countries have transposed the provisions but with additional grounds or the situations that may be considered as public order and public security grounds are extremely broad. These problems are identified in detail below.

Despite the problems identified in the transposition of the provisions, their implementation and application seem to be in line with the Directive, with some exceptions. It should be noted, however, that because the Directive was transposed very late, or because the national legislation is being continuously amended few decisions have been taken on the basis of the new legislation transposing the Directive. As a consequence, it was not possible to obtain a comprehensive picture of the application of Article 27 and Article 28 in all Member States.

- **Restriction of free movement and residence on grounds of public policy, public security and public health. Non invocation to serve economic ends (Article 27(1))**

Article 27 sets forth exhaustive grounds for restricting a Union citizen or his or her family member's freedom of movement and residence. The transposition of this Article is correct and effective in Belgium, Cyprus, Germany, Greece, Luxembourg, Malta, Poland, Portugal and Spain.

The conformity issues in the various Member States relate to many different aspects. Sixteen Member States¹⁰⁰ have failed to transpose the obligation not to invoke public policy, public security and public health grounds to serve economic ends. The Danish law does not contain specific provisions dealing with expulsion of Union citizens and their family members in particular, but the general legislation relating to aliens applies. This makes it possible, for example, to establish an automatic link between a criminal conviction and an expulsion measure. Ireland has transposed Article 27(1) to only refer to restrictions of free movement within Ireland. Slovakia has added an additional ground for restricting a person's freedom of movement, namely being a *persona non-grata*, and in Czech Republic the provision refers to "undesirable persons". Slovakia also foresees the possibility to restrict free movement when the person cannot present a valid travel document or visa.

Hungary seems to have extended the possibility to restrict a person's freedom of movement in an unacceptable manner, leaving open a way to expel a person who no longer fulfils the residence criteria of the Directive. Austria's legislation is very unclear, especially regarding the application of the grounds to decisions regarding visas. In Estonia, it is difficult to make an accurate assessment of the

¹⁰⁰ Austria, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Hungary, Italy, Lithuania, Latvia, the Netherlands, Romania, Sweden, Slovenia and Slovakia.

transposition since the provisions seem to have been transposed in only very general terms for refusals of entry but not for other restrictions of free movement.¹⁰¹

The most serious transposition problems in relation to the grounds of expulsion were found in Italy. This legislation is in constant evolution. The latest modifications, before finalising this report, were however still not in line with the provisions of the Directive.

- **The assessment of conduct (principle of proportionality, personal conduct, past criminal convictions, justification isolated from the particulars of the case) (Article 27(2))**

Eight countries did not transpose Article 27(2).¹⁰² However, the national courts took those principles into account and even referred to the ECJ jurisprudence in the review of expulsion decisions. Nevertheless, some transposition gaps were identified.

The principle of proportionality was not always expressly transposed but it is a general principle of law, especially in criminal and penal law in most of the Member States. However, in Estonia, France, Ireland, Luxembourg, Latvia and Slovenia concerns were raised about the lack of transposition of the principle within this context. In Italy, the principle of proportionality of Article 27(2) was transposed literally. Nevertheless, the expert raised the concern that the circumstances that can lead to expulsion in Italy are very broad, which indicates that ultimately expulsion measures do not appear to be as proportionate after all.

The principle that previous criminal convictions shall not in themselves constitute grounds for expulsion decisions was not transposed in Bulgaria, Czech Republic, Denmark, Estonia, France,¹⁰³ Hungary, Lithuania, the Netherlands,¹⁰⁴ Slovakia, Slovenia and Sweden. In fact in Sweden, past criminal convictions are expressly used as a basis for assuming whether the person may constitute a threat to public order and public security.¹⁰⁵ Although this approach is not against the Directive as such, the lack of transposition of this particular principle lowers the level of protection for Union citizens and their family members in Sweden. The principle can be used as an element to balance the assessment carried out by the competent authority and to avoid decisions exclusively based on past convictions and not on the analysis of other circumstances. In Italy, again, the principle is transposed literally. However, it is contradicted by the new provisions of the Criminal Code which expressly provide for expulsion sanctions for Union citizens if they were convicted and sentenced to more than 2 years of imprisonment.

Seventeen countries did not transpose the principle according to which “justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted”.¹⁰⁶ Moreover, in Italy the transposition omitted the qualification that the person must

¹⁰¹ Since no EU citizens or family member has ever been expelled from Estonia, there is no administrative practice nor case-law that could be identified to provide more guidance.

¹⁰² Czech Republic, Denmark, Estonia, France, Lithuania, Slovenia, Slovakia and Sweden.

¹⁰³ In France this transposition gap was addressed by the Council of State which recognised that criminal convictions should not legally justify by themselves an expulsion measure, but that the administrative authority should always check whether the presence of the person concerned on the French territory constitutes a threat to the public order, taking into account all the circumstances of the case.

¹⁰⁴ Note however that this provision is included in a Circular. The transposition was assessed as not correct given that a Circular is not accepted as a means for transposing Directive.

¹⁰⁵ “An alien may be refused entry [...] if it can be assumed, on the basis of previous imprisonment or some other particular circumstance, that he or she will commit a criminal offence in Sweden or in some other Nordic country”. Chapter 1 Section, 8, Chapter 8 Section 2 of the Aliens Act (2005:716).

¹⁰⁶ Bulgaria, Czech Republic, Denmark, Germany, Estonia, France, Hungary, Ireland, Latvia, Lithuania, the Netherlands, Poland, Romania, Slovakia, Spain, Sweden and Slovenia.

represent a “serious” threat. Finally, Ireland did not transpose the second subparagraph of Article 27(2) in any way.¹⁰⁷

As mentioned above, in Austria, it is unclear whether these principles would also apply to entry and visa decisions.

- **Criteria under Article 28(1) of the Directive**

Article 28 of the Directive lists a range of criteria that should be taken into account when adopting an expulsion decision against Union citizens or their family members. These considerations include length of residence in the host Member State, age, health, family and economic situation, social and cultural integration into the host Member State, or the extent of his/her links with the country of origin.

Most Member States have transposed this provision and in some cases (*e.g.*, Hungary or Sweden) Member States have added other considerations. The provision has not been transposed in Belgium and France. In Austria, Czech Republic, Denmark and the Netherlands, the provisions only refer to general considerations such as family life, which do not provide the same guidance as the Directive. Some countries have made the list exhaustive (*i.e.*, Cyprus, Estonia and Ireland), limiting the possibility of taking into account other circumstances. In Slovenia, social and cultural considerations do not seem to be taken into account. Finally, in Slovakia, these considerations only apply to expulsion decisions for permanent residents instead of to all expulsion decisions.

2.6.2 The grounds of public order and public security (Article 27 and Article 33) and protection against expulsion (Article 28)

Most Member States have not defined public order and public security in the transposing legislation. The concepts are left open to allow a case-by-case decision. However, some Member States have listed crimes or circumstances that are considered against public order and public security, or have referred to general acts as tools to identify behaviours that may be considered against public order and public security.

Both approaches seem correct provided the principles of the Directive are transposed (and applied) and provided that Member States do not qualify less serious offences as “imperative” or “serious” grounds of public policy and public security. A trivialisation of imperative and serious grounds would undermine the gradation system and different protection levels based on length of residence established by the Directive, and ultimately discredit the implementation by Member States.

- **Transposition of protection of expulsion under for permanent residents (Article 28(2))**

Most Member States have transposed this provision correctly,¹⁰⁸ although it was not possible to identify specific grounds that may be considered as “serious” (see below). However, important cases of non-conformity have been identified. The provision was not transposed in Austria, Estonia and Hungary. In Lithuania and Latvia the legislation omitted the specific gradation to only allow expulsion of permanent residence under “serious” grounds.

In Italy, the legislation included a reference to “State security and other serious grounds” which makes the reference extremely broad given the definition of State security in Italy (see below). In Bulgaria, serious grounds are considered as “national security” issues, and the Slovenian legislation used the

¹⁰⁷ The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.

¹⁰⁸ Belgium, Cyprus, Czech Republic, Germany, Greece, Finland, France, Ireland, Luxembourg (proposed legislation), Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Spain, Sweden and the UK.

ambiguous term “compromises public policy”. Sweden includes “a danger to public safety” as a ground for expulsion, in addition to “serious threats to public safety, public policy and health.”

- **Transposition of protection for expulsions for and person who have lived for more than 10 years in the country**

The transposition of this provision was also generally correct. However, in Lithuania and Slovenia the provision has not been transposed. The Bulgarian transposition refers to “exceptional cases” which does not correspond to the notion of “imperative grounds”.

In Denmark the provision is not transposed as such and the Danish system establishes specific protection after nine years of residence but not under the same conditions as the Directive. The Danish system lists the cases where an alien might be expelled. For example, an alien who has had legal residence in the country for more than nine years and an alien with a residence permit in accordance with §7 or §8, (1 and 2) who has had legal residence in the country for more than eight years can be expelled if, for instance, the alien is sentenced to at least four years imprisonment or other forms of punishment for the same period for a criminal act/offence. Many other cases where the Danish law allows for expulsion are listed. The lack of transposition of the obligation to expel only for “imperative grounds” implies that the authority or court may not necessarily apply this specific gradation to the final decision, but rather the general considerations under Article 27 of the Directive. It is as if, *a priori*, the Danish law had defined the cases considered serious enough as to allow for the expulsion of persons who have been residing for more than nine years in the country. As will be shown below, the practice of the Danish courts shows that they take the length of the imprisonment condemnation into account more than the specific personal circumstances of the case. For example, a Union citizen was expelled for a conviction of five years and a half for drugs trafficking, even though the person was married to a Danish national and had two Danish children.¹⁰⁹

In Austria, the person needs to reside continuously for ten years in the country to benefit from the protection, which seems stricter than the Directive. In Estonia the provisions only apply to residence and are difficult to assess. The transposing provision’s wording is less strict than “imperative grounds” in Czech Republic, Hungary, Slovakia and Italy.

In Italy, the provision includes “State security” in addition to imperative grounds. State security is very broadly defined in Italy as well as imperative grounds are also defined. What is relevant for an expulsion decision to be taken in this context is the that “conduct of the person concerned” has to represent “a concrete, real and serious threat to the fundamental right of the person or to the public safety,[...]”. This is in line with the ECJ settled case law.¹¹⁰ However, the definition also specifies that the expulsion (on imperative public security grounds) is “urgent because the stay of the person concerned in the territory is incompatible with “civil and safe coexistence”. This last sentence implies a broad and generic definition of imperative grounds allowing for a significant number of circumstances to be subsumed within the concept (*e.g.*, robbery).

In Finland, although the provision is correctly transposed, imperative grounds “are considered to exist where an EU citizen is guilty of an act which is punishable by no less than one year of imprisonment, and where he or she, on grounds of the seriousness of the crime or of continued criminal activity, is considered a danger to public security, or where there are grounds for suspecting that he or she is seriously endangering the national security of Finland or another State”. As the expert points out, the requirement of a minimum one year imprisonment seems fairly low as a standard for imperative grounds but actually includes a limited number of serious offences, mostly offences against the person (*e.g.* rape, aggravated sexual abuse of a child, aggravated assault, aggravated drug offences, more

¹⁰⁹ High Court ruling of 25 August 2006 no. U.2007.1340H.

¹¹⁰ See *e.g.*, C-493/01 *Orfanopoulos* par. 67 [...] the existence of a previous criminal conviction can justify an expulsion only in so far as the circumstances which gave rise to that conviction are evidence of personal conduct constituting a present threat [...]. The same is stated in Case C-50/60 *Commission v Netherlands*, par 41, and others (Case C-384/96 *Calfa*).

serious terrorism-related offences). The provision also requires that the person who has been found guilty of an act punishable by no less than one year is also considered a danger to public security. This approach is not in line with the Directive.

Regarding the protection of the rights of the child, in addition to the Member States that have not transposed the provision, the transposition is weaker in Bulgaria, Ireland and Sweden since the provisions only refer to “the interest of the child” instead of the “best interest” of the child. Note that many Member States have not transposed the reference to the UN Convention on the Rights of the Child but all Member States are party to the Convention and in some cases even refer to it in the national Constitutions.

- **The application by the courts and practice**

In some Member States, especially in the old Member States, information could be obtained regarding application of public order and public security grounds. Practice differs from Member State to Member State but in general the courts refer to the ECJ jurisprudence specifically quoting *R v. Bouchereau*,¹¹¹ *Calfa*¹¹² and other relevant cases. The courts incorporate the principles included in the Directive and some have applied Article 27 as a provision with direct effect.

In general, the reasoning of courts repeats the formula that “the person does not represent a serious threat to one of the fundamental interests of society” and that “previous criminal convictions shall not in themselves constitute grounds for expulsion”. Therefore, even in countries where public order is defined in very broad terms, the principles are used to temper the intensity of the measure.

However, in some countries, even if applying the principles, decisions were taken which may not be proportionate. For example, Denmark’s High Court ruled in 2005 that a French national who has resided in Denmark for six years could be expelled on the basis of a criminal conviction for robbery that was punished with four years of imprisonment.

In most countries, drug trafficking, weapon trafficking, activities within organised crime, terrorist activities, spying or crimes against the State, and continuous recidivism are among the recurrent cases that may lead to a decision based on public order and public security (*e.g.*, Estonia, Spain, Finland, Slovenia, Portugal, etc). In other countries sexual crimes are also expressly referred to (*e.g.*, Sweden, Denmark, and Italy) and others refer to less serious cases like theft, racket and other economic crimes (*e.g.*, Italy).

In many countries the identification of public policy and public security is achieved through a generic reference to conducts punished with serious penalties (such as imprisonment). In some cases one year is enough (*e.g.*, Finland), whereas in other countries different gradation systems have been established (*e.g.*, Denmark). But in general, many Member States prefer not to define the terms (*e.g.*, France, Germany) to allow for a case-by-case decision. However, in the end type of conducts are similar to the ones described above. In all these cases, the courts are essential for the correct application of the principles anchored in the Directive.

The most problematic country is Italy with a very long list of crimes that may lead to an expulsion measure for almost anything and where State security is defined in very broad terms (as shown above). Whereas the long list of situations is not a problem as such, the recent reform to the Criminal Code has introduced two cases of automatic expulsion: new Article 235 implies that any EU citizen convicted and sentenced to for more than two years of prison will be expelled from the territory of Italy; new Article 312 implies that any EU citizen convicted for crimes against the person of the State and punished with a penalty involving restrictions of freedom (therefore, not only imprisonment) can also be expelled. This is an automatic expulsion that is clearly against EC law. In addition, the new text

¹¹¹ Case 30/77 [1977] ECR 1999.

¹¹² Case C-348/96 *Calfa* [1999] ECR I-11.

aimed at amending the transposing legislation considers failure to request a residence card or the registration certificate as a threat to public order and public security, which is clearly a violation of the Directive.

Because the Directive is relatively recent, no specific national case law has been developed applying the gradation system on “serious” and “imperative grounds”, although some examples have been found as shown above (*e.g.*, Finland and Italy).

2.6.3 Public health (Article 29)

In general, in many Member States public health can only be used as a ground to restrict entry. The main problems identified are in relation to listing more diseases than the ones in the WHO lists of contagious diseases or including too broad formulations. This was the case in Austria, Denmark, Germany, Estonia, Hungary, Ireland, Lithuania, Latvia, Luxembourg and Romania. In Bulgaria, restrictions can also be imposed in the case of doubt that the person is suffering from one of these diseases. Other problems have been identified in Sweden, Slovenia and Slovakia.

Eight countries have not transposed the prohibition of Article 29(2) to expel a Union citizen or his or her family member on grounds of public health if the disease occurs three months after the date of arrival.¹¹³

Austria, Bulgaria, Czech Republic, Denmark, Estonia, Ireland, Italy, Latvia, Lithuania, Poland and Slovenia have not transposed Article 29(3). The lack of transposition can be but is not always more favourable¹¹⁴. In Belgium, Bulgaria, Germany, Hungary, the Netherlands and Slovakia, the obligation not to carry out the test as a matter of routine has not been transposed. In Sweden there are no guarantees that the check will be free of charge.

2.6.4 Expulsion as a penalty or legal consequence (Article 33)

Article 33(1) states that expulsion orders may not be issued by the host Member State as a penalty or legal consequence of a custodial penalty, unless they conform to the requirements of Articles 27, 28 and 29. Where expulsion orders are enforced more than two years after being issued, Article 33(2) of the Directive provides that Member States must check whether the individual concerned is currently and genuinely a threat to public policy or public security. Member States must include in this determination whether there has been any material change in the circumstances since the expulsion order was issued.

In Austria, Estonia and Lithuania the expulsion orders issued as a penalty or as a legal consequence of a custodial penalty, if any, are required to conform to the requirements of Articles 27, 28 and 29. Consequently, the absence of explicit transposition of Article 33(1) by these Member States was not considered as a transposition gap.

In the other Member States Article 33(2) will also apply.¹¹⁵ Eight MS have not transposed or incorrectly transposed this provision: Belgium, Cyprus, Denmark, Estonia, Italy, Romania, Slovenia and Slovakia. In the case of Slovakia, there is no issue for EU citizens, but third country nationals are not expressly protected as per Article 33(2). In other Member States, there is no express protection as per Article 33(2). The Irish transposition is incorrect as it does not include the same test for assessing

¹¹³ Austria, Bulgaria, Denmark, Estonia, Lithuania, Sweden, Slovenia and Slovakia.

¹¹⁴ For example, in Bulgaria, the lack of transposition is based on the fact that actual restrictions on free movement can be imposed in case of doubt that the person is suffering from one of these contagious diseases, instead of a mere medical examination.

¹¹⁵ Article 33(2) applies to the “persons referred to in paragraph 1”.

the individual's situation. Instead of assessing whether the individual is currently and genuinely a threat to public policy and public security, as required by the Directive, the Irish legislation merely requires a check as to whether the circumstances giving rise to the order still exist. Not only is this larger than the test used by the ECJ, it also includes the possibility to continue an expulsion order on the basis of public health.

Bulgaria, Czech Republic, Hungary and Sweden fall into a grey area. For Bulgaria, the transposition is incomplete because the requirement for the Member States to consider whether the individual concerned is 'genuinely and currently' a threat is not transposed. Incorrect transpositions in Czech Republic and Hungary allow permanent expulsion as a criminal sanction. And lastly, in Sweden the reference to Articles 27 and 28 is unclear to the extent that one cannot make an authoritative judgement as to conformity with the Directive.

2.6.5 Information exchange (Article 27(3)) and readmission (Article 27(4))

Article 27(3) allows Member States to request information from other Member States concerning previous police records. Ten Member States did not transpose Article 27(3) at all although exchange of information takes place under the Schengen Information System.¹¹⁶ Belgium, Bulgaria, Cyprus, Spain, Luxembourg, Latvia, the Netherlands, Poland, Spain, Sweden and Slovakia transposed the provision but not the obligation to give a reply within 2 months. In addition, in Bulgaria, the Netherlands and Sweden, the transposition did not clearly indicate that these enquiries could not be made a matter of routine.

Under Article 27(4) Member States are obliged to accept re-entry of a national who is expelled on grounds of public policy, public security, or public health from another Member State even if his/her nationality is in dispute. Although the readmission of own nationals is an obligation under international law, the obligation has been transposed (or legislation already contained this obligation) only in Austria, Cyprus, Czech Republic, Greece, Finland, Ireland, Luxembourg, Malta, the Netherlands, Portugal and Slovakia. Belgium¹¹⁷, Bulgaria, Denmark, Germany, Estonia, France, Italy, Latvia, Lithuania, Romania and Sweden did not transpose this provision. However, in all of these Member States, the requirement is included in Article 3 of the Protocol 4 to the European Convention of Human Rights, which is ratified in their country¹¹⁸. Poland and Spain mentioned that they were not Parties to the Protocol.

In Hungary, Slovenia and UK the national provisions were too general and did not cover persons whose nationality is disputed.

2.7 Procedural safeguards against decisions restricting free movement

2.7.1 Links between Article 15 and Articles 30-31

Articles 30-31 of the Directive include a range of procedural guarantees that need to be respected in the application of expulsion measures as well as in the adoption of decisions to restrict free movement not based on public order, public security and public health (Article 15 of the Directive).

¹¹⁶ Austria, Czech Republic, Denmark, Germany, Estonia, Finland, France, Hungary, Italy, Romania, Slovenia and UK.

¹¹⁷ The Belgian Conseil d'Etat commented that it is not clear which provision of the Belgian transposing legislation transposes Article 27(4).

¹¹⁸ Article 3 of Protocol No. 4 provides that: 1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national. 2. No one shall be deprived of the right to enter the territory of the state of which he is a national.

In 20 Member States,¹¹⁹ the transposing legislation applies the procedural guarantees to all administrative decisions. In these cases, the assessment of the transposition of Article 30 and 31 will by analogy apply to Article 15.

Denmark, Hungary, Ireland and Italy have not ensured the applicability of the procedural guarantees of Articles 30 and 31 for decisions restricting free movement not based on public order, public security and public health, thus creating a gap in transposition. The procedural safeguards included for these decisions do not provide the same level of protection as Articles 30 and 31. The same applies for Lithuania and Belgium, but only with regard to Article 30 on notification. In these two Member States, the procedural guarantees of Article 31 are entirely applicable to the decisions of Article 15.

In Spain, the guarantees of Article 30 and 31 do not directly apply to the decisions covered in Article 15, mainly because there are hardly any such decisions adopted in Spain as residence is unconditional. The only reason for being denied the right to reside in Spain would be for not being a Union citizen or family member. However, even if they are limited in those cases, the procedural guarantees of the Directive should still be ensured, which is not the case under the current legal system. The situation creates a legal loophole that affects the transposition of the Directive.

2.7.2 Notifications of the decisions (Article 30)

Article 30 includes the obligation to notify the person concerned in writing of any decision taken restricting free movement in such a way that they are able to comprehend its content and the implication for them (Article 30(1)), and be informed precisely and in full concerning the grounds on which the decision is taken unless contrary to the interest of the State security (Article 30(2)). Furthermore, they are to be informed of the specific court or administrative authority competent for appeal, the time limit for appeal, and where applicable, the time allowed to leave the territory of the State, which cannot be less than a month save in duly substantiated cases or urgency (Article 30(3)).

In many countries not all requirements included in Article 30 have been specifically transposed in the legislation transposing the Directive. Administrative procedural law is in many cases applied on a subsidiary basis for aspects such as notification in writing, motivation and information regarding the grounds or information regarding appeal procedures. The experts analysed whether these administrative rules were sufficient to guarantee the same level of protection as the Directive. This was not always the case. For example, in some cases, exceptions to notification in writing or to be informed precisely and in full of the grounds on which the decision was taken were possible under administrative procedural rules.

The main recurrent problem was the lack of transposition of the obligation to ensure that the notification is done in such a way the person concerned is able to comprehend its content and its implication (Article 30(3)). All these problems are analysed more in detail below.

- **Notification in writing and comprehension**

The obligation to notify in writing is correctly transposed in almost all Member States. In only four Member States problems have been detected. In Austria, the obligation to notify in writing only applies to visa refusals while for other decisions taken on the grounds of public policy and public security, the legislation does not grant the same level of protection as the Directive.

In Sweden, the competent authority will decide whether the decision is issued orally, in writing or by any other adequate means. In Belgium and Bulgaria, some decisions can be notified orally and the person may receive either the certification of having been orally notified or a transcription of the decision. In Finland, even if decisions may be notified orally in cases of urgency, the person will

¹¹⁹ Austria, Bulgaria, Cyprus, Czech Republic, Germany, Estonia, Greece, Finland, France, Luxembourg, Latvia, Malta, Netherlands, Poland, Portugal, Romania, Sweden, Slovenia, Slovakia and UK.

always receive a complete transcription of the decision. In this case, transposition was considered effective.

The situation regarding the obligation of comprehension (to be notified in such a way that the person concerned is able to comprehend the content and the implication of the decision) is different. Fourteen Member States have transposed effectively the provision.¹²⁰ In some cases the transposition is literal (e.g., Austria,¹²¹ Cyprus, Italy, Estonia, Greece, Luxembourg, Malta and Portugal). In other cases, there is a general obligation to notify in a language the person understands (e.g., Hungary, Ireland, Lithuania and Poland)¹²² or to provide translators and/or interpreters in the administrative and judicial procedures (e.g., Czech Republic, Estonia, Italy, Slovenia, Slovakia and Spain).¹²³ Notice that in the UK interpreters and translators are provided but only in court proceedings. For this reason the transposition was considered incorrect.

The remaining Member States have not transposed this obligation or explicitly state that notification has to be done in the national language (i.e., Belgium, Bulgaria).

- **Motivation: to be informed precisely and in full of the grounds**

This obligation has been in general correctly transposed. In fact, in many countries the effectiveness of this obligation was already ensured by administrative procedural law. However, in eleven Member States¹²⁴ the transposition was not considered entirely correct. In Austria and Finland the provision has only been explicitly transposed for visa refusals. For other decisions general administrative rules apply which, according to the national experts, do not provide the same level of protection as the Directive. In Belgium, Bulgaria, Ireland, Italy and Romania, administrative law ensures motivation of decisions but again the experts considered that these provisions do not ensure that in all cases the person concerned will be informed precisely and in full of all the grounds.

More serious are the problems identified in Germany, France and Sweden. In Germany, the person concerned may only be informed of the *main* grounds, which is obviously not equivalent to “being informed precisely and in full”. In France, in cases of absolute urgency, no procedural guarantees apply. Therefore, the person concerned does not receive any notification, information or motivation. In Sweden, the motivation can be omitted in cases of urgency (note that the Directive only allows a non-motivated decision when this is contrary to the interests of State security, which is stricter than the Swedish approach).

Finally, in Hungary, although the person is notified of the facts assessed to reach a decision, the grounds as such are not explicitly required to be included in the decision notified.

- **Information on appeal procedures**

This obligation has been correctly transposed in all Member States with five exceptions. First, France has not required including information on appeal procedures for expulsion decisions taken in the case of absolute urgency. Secondly, the legislation in Hungary and Romania does not include an obligation to inform of the details and modalities for appeal. In Denmark and Ireland, this obligation has not been transposed at all.

- **Time-limit to leave the country**

¹²⁰ Cyprus, Czech Republic, Estonia, Greece, Hungary, Italy, Luxembourg, Lithuania, Malta, Poland, Portugal, Slovakia, Spain and Slovenia.

¹²¹ In this case only for visa decisions.

¹²² Experts raised concerns about the fact that being notified in a language the person understands will not always ensure that the person concerned comprehends the content and implications of the decision.

¹²³ In these countries it is considered as a basic element of the right of defence.

¹²⁴ Austria, Belgium, Bulgaria, Germany, Finland, France, Hungary, Ireland, Italy, Romania and Sweden.

Eighteen countries have not correctly transposed this provision.¹²⁵ Some countries have not specified in the legislation that the time allowed to leave the country should be no less than one month (*e.g.*, Czech Republic for administrative expulsion, Denmark, Ireland, Malta, Romania, Slovenia, France for criminal expulsion). In other Member States the rule is that the time allowed to leave the country is systematically less than one month. For example, in Hungary the general rule is 72 hours. In Slovakia the time limit to leave the country is decided by the authority but it will always be either 30 days or less even if not substantiated cases of urgency.

Other Member States have transposed the obligation to give at least one month to leave the country. However, for decisions taken on grounds of public policy and public security less than a month becomes the rule and in some cases the rule is an immediate expulsion. In Austria the authorities can impose a time limit of less than a month if the decision is taken on any ground of public policy and public security. The same applies in Bulgaria, the Netherlands and Poland. In Italy, some expulsion decisions can be enforced immediately.

In addition, some Member States have interpreted “duly substantiated cases of urgency” as national defence or security (*i.e.*, Estonia and the Netherlands), national security, social order and public health (*i.e.*, Bulgaria), imperative security grounds or other exceptional grounds (*i.e.*, Italy and Sweden). This interpretation restricts the meaning of “cases of urgency”.

Finally, in France and Finland there are concerns about how cases of urgency will be substantiated in practice.

2.7.3 Procedural safeguards under Article 31

Article 31 includes different procedural guarantees. This provision has been correctly transposed for decisions taken on the grounds of public order and public security but transposition often is ambiguous with respect to Article 15 of the Directive.

- **Access to judicial and administrative appeal (Article 31(1))**

Article 31(1) determines that the persons concerned by the Directive should have access to judicial and, where appropriate, administrative redress procedures to appeal against the decisions taken against them on the grounds of public policy, public security or public health.

Almost all Member States have transposed this provision correctly. Most systems provide for both judicial and administrative review procedures. Only Hungary has excluded administrative redress for decisions taken by the Office for Migration and Nationality, but there is always a possibility for judicial review, which is in line with the Directive. Nevertheless, the appeal system in Hungary is complicated and it is unsure whether appeal will be possible in all cases. In Denmark, the provision has not been transposed, but will apply in practice on the basis of Danish legal tradition.

In the legislation of two Member States, more serious problems were identified. In France, the appeal in cases of absolute urgency, where (as mentioned above) not all procedural guarantees apply, can only be lodged after the expulsion measure has been enforced. The effective right to appeal cannot be considered as effective since the rights of the defence are not ensured. The judicial procedure is an accelerated procedure which lasts no more than 72 hours. In the UK, judicial review does not exist in all cases. Certain decisions can only be appealed before the Special Immigration Appeals Commission, not before a court.

- **Suspension of the order of expulsion (Article 31(2))**

¹²⁵ The only Member States having transposed this obligation effectively are Belgium, Cyprus, Germany, Greece, Portugal, Lithuania, Luxembourg, Spain and the UK.

In most Member States, the appeal against an expulsion decision has suspensory effect. The Directive requires suspensory effect to be made possible, upon request of an interim order, except in three cases:

- where the decision is based on a previous judicial decision;
- where the persons concerned have had previous access to judicial review;
- where the expulsion decision is based on imperative grounds of public security under Article 28(3).

In Belgium, Cyprus, Denmark, Sweden and UK, the appeals always have suspensory effect, without any exceptions, which grants an even more favourable treatment to those persons who are the object of an expulsion decision. Other Member States also introduce a more favourable treatment by only making use of the last exception, for imperative grounds of public security (*i.e.*, Luxembourg, Latvia, Poland and Romania).

Two Member States have reduced the number of exceptions, but have ambiguously or incorrectly transposed this exception, by excluding suspensory effect for decisions based on national security (*i.e.*, Bulgaria and Italy) or all grounds of public security (*i.e.*, Czech Republic), instead of *imperative grounds* of public security.

In Hungary, the judicial review procedure will always have suspensory effect. However, administrative redress is not always possible and the right to appeal was considered to be complex and generally unclear by the expert. As such, it was concluded that this could affect the other procedural guarantees of the Directive.

A number of other problems were identified in other Member States. In Austria, for instance, appeals generally have suspensory effect. However, in this particular case, it is not clear whether all appeals against a removal decision will have suspensory effect. The specific provision of the Directive has not been transposed in Austria. In Estonia and Slovakia¹²⁶, the provision has not been transposed either and appeals do not generally have suspensory effect. In France, in cases of absolute urgency, the procedural guarantees will not apply and expulsion will take place immediately. As such, this procedure does not have suspensory effect. Finally, in Slovenia, administrative decisions always have suspensory effect. However, in judicial review procedures, there seems to be an almost entire discretion for the court on whether to allow the suspensory effect of the expulsion decision.

- **Revision of facts and law (Article 31(3))**

In general, the revision of the legality of the decision, the facts and proportionality during the redress procedures follows from administrative and judicial procedural law or practice. Some of the national experts nevertheless raised concerns.

For example, in Belgium, the national expert highlighted that there is no express guarantee that the facts can be assessed during the appeal procedures. However, since proportionality will be checked, it is probable that the facts will be assessed during the review. In Germany, Greece, Ireland, Luxembourg and Malta, the judicial review procedure does not expressly include an assessment of the facts, which creates problems in view of Article 31(3) of the Directive. In Denmark, the provision has not been transposed, but is respected on the basis of legal tradition.

In France, the review of a decision against third country family members will only cover an evident error in judgement. Finally, Slovakia raised a specific concern as it is unclear whether the appeal can review the illegality of the public security, public policy or public health grounds, since these are not specifically notified to the person concerned in the decision.

¹²⁶ In Slovakia, there will only be suspensory effect for serious reasons.

- **Exclusion of the individual concerned (Article 31(4))**

In many Member States, the right to defend him or herself in person stems from fundamental procedural rights and guarantees in the national legal order. Nevertheless, it was considered that the specific case under the Directive should be unambiguously covered in the national legal order. The transposition was effective in almost all Member States.

In Austria, Germany, Denmark and Latvia, the principle is included in general procedural rights, but the national experts considered that the specific situation of the Directive was not unambiguously covered.¹²⁷ In Estonia and the United Kingdom, the provision was not transposed.

In France, the same situation applies as above, namely in cases of absolute urgency, an expulsion decision is enforced immediately, and most of the procedural guarantees required by the Directive will not apply. In Hungary a specific concern also arises, since it is not clear whether the possibility to allow for defence in person is a right or should be explicitly granted by the judge. Finally, in Slovenia, the guarantee is not relevant in administrative procedures, since a pending administrative decision is not enforceable. However, during the court procedure, the right to present his or her defence in person is not guaranteed.

2.7.4 Exclusion orders (Article 32)

Article 32(1) of the Directive provides that the persons excluded on grounds of public policy or public security may submit an application for lifting of the exclusion order after a reasonable period, depending on the circumstances, and in any event after three years from enforcement of the final exclusion order which has been validly adopted in accordance with Community law, by putting forward arguments to establish that there has been a material change in the circumstances which justified the decision ordering their exclusion.

Article 32(2) of the Directive indicates that the person concerned shall have no right of entry to the host Member State while their application is being considered.

Overall, ten Member States have transposed this Article entirely in an effective or more favourable manner.¹²⁸

A number of Member States, namely Austria, Finland, Malta, Poland, Sweden and Slovakia, allow an application for lifting a ban on entry at any time, in all cases, which creates a more favourable treatment of the persons concerned. In some Member States, the time-limit for deciding on the application is less than 6 months and more favourable, (*i.e.*, Spain, Hungary, Lithuania, Poland and Slovenia).

The problems in transposition in various Member States relate mainly to Article 32(1). For instance, in some Member States a fixed minimum time period is introduced before which no request for lifting an entry ban will be considered (*i.e.*, Belgium and Spain: 2 years; Bulgaria, Czech Republic, Ireland and Slovenia: 3 years; France and Lithuania: 5 years; Italy and Romania: at least half of the duration of the ban). In these Member States, even a material change in circumstances will not allow an entry ban to be lifted before that minimum period has expired. A particular problem was identified in Hungary, where the request to lift an entry ban can be introduced after one year, but only in the very limited circumstance where there has been a severe change in the applicant's health conditions, implying that, in other cases, no application for lifting an entry ban can be submitted. In the UK, the possibility to make an application for lifting an entry ban has not been transposed.

¹²⁷ In Bulgaria, the right to defend him or herself in person stems from general procedural law, and is in this case judged to be sufficient to effectively transpose the Directive's requirement.

¹²⁸ Cyprus, Germany, Greece, Finland, Luxembourg, Malta, the Netherlands, Poland, Portugal and Slovakia.

Another gap concerns the time-limit of six months for a decision on the application, which has not been transposed in a number of Member States, thus creating the possibility for the authorities to take more than six months to assess the request for lifting an entry ban. This is the case in Austria, Czech Republic, Denmark, Estonia, France, Latvia, Romania, Sweden and UK. In France, a silence of two or four months, depending on the case, is equivalent to a refusal. When refusal is silent, it is also unmotivated.

The transposition of Article 32(2) does not create serious problems of conformity, since a lack of transposition of this provision could create a more favourable treatment, by granting a right that it is not supposed to grant on grounds of the Directive.¹²⁹ In some Member States, the transposition is not explicit, but indirect. For example, the UK transposition is not a direct transposition, but achieves the same effect by simply providing that anyone who enters the country contrary to a deportation order is treated as an illegal entrant under general immigration law and is thus removable. Another example is Slovakia, where the provision is not transposed, but the person will be treated as a *persona non grata*, in which case, the police authority may deny these persons the right to enter Slovakia.

2.8 Final provisions (Chapter VII)

2.8.1 Publicity (Article 34)

Article 34 requires Member States to disseminate information concerning the rights and obligations of Union citizens and their family members in terms of this Directive. In particular, the Directive suggests awareness-raising campaigns through national and local media as an example of the means of communicating this information to the public.

Cyprus is the only Member State to transpose this provision, whereas other Member States see the provision as not requiring transposition but rather action. Most Member States do disseminate information on such rights and obligations via websites (including relevant forms etc.), and to a lesser degree, brochures. A commendable example is Spain, where brochures are available in Spanish, French, English, German, Bulgarian and Romanian, as well as web-based information portals. In Bulgaria a brochure was published entitled “My New Rights”.

While at least some information is available in all Member States, it should be noted that very little information was in practice available in Cyprus, Czech Republic, Hungary, Italy, Luxembourg, Latvia, Malta, Poland, Romania and Slovenia. Furthermore, and despite the Directive’s clear envisaging of widespread awareness-raising, not one of the Member States experts identified any significant public information campaigns.

2.8.2 Abuse of rights (Article 35)

Abuse of rights is mostly transposed by Member States as specific anti-‘marriage of convenience’ provisions, or by more generally proscribing ‘marriages of conveniences’ as an example of an abuse of rights. The effect of the latter is a broader scope of application.

The sanctions applied range from possible revocation or non-issue of the right of residence to the more severe and exemplary sanctions such as imprisonment or substantial fines. By way of example, in France even a mere ‘attempt’ of an abuse of rights is punishable by up to five years imprisonment or

¹²⁹ Nevertheless it should be noted that some experts considered that the lack of transposition was a gap because, even though there was no provision stating that a person did not have the right to enter during the application procedure, it appeared that the person in fact had no right to enter the territory during this period. In Austria, finally, the transposition was not transposed, but the expert noted that there did not seem to be a right of entry in these cases, so transposition could not be considered as more favourable.

€15,000. The sanction is even stricter for groups, who face imprisonment of up to 10 years or a fine up to €750,000. These sanctions are considered disproportionate.

A softer but still effective sanction is seen in the case of Germany where those who enter Germany purely for social assistance are simply denied such assistance. This kind of sanction is also used in Germany for marriages of convenience which are generally voidable, thus limiting the spouses' rights. Notably, Hungary applies a rather soft regime where only marriages of convenience are sanctioned by refusal of the right of residence, not extending to any fraudulent or other abuse of rights unforeseen by the transposing legislation.

A final noteworthy example concerning proportionality is Slovenia. 'Work' itself is a precondition for temporary residence in Slovenia; without a job (or if working illegally) one cannot have temporary residence, and if one does have it then the residence will be revoked. Whether or not this fits with the principle of proportionality is intrinsically linked to what labour condition is actually being violated. Overall, this creates an ambiguous situation in terms of the Slovenian transposition and implementation of Article 35.

2.8.3 Sanctions (Article 36)

Article 36 of the Directive is a general provision on sanctions. It requires Member States to adopt a sanction regime for any breaches of the Directive, consisting of effective and proportionate sanctions. In addition to this general provision on sanctions, we have seen that some other Articles of the Directive contain a specific requirement for Member States to make the violation of the specific obligation of that Article subject to sanctions. These Articles include the additional requirement to create sanctions that are not discriminatory or disproportionate.

Article 5(5) allows Member States to place reporting requirements on persons entering their territory and allows proportionate and non-discriminatory sanctions to be imposed for non-compliance. The sanctions for reporting one's presence are for the most part correctly and completely transposed – in 25 of 27 Member States – though seventeen of these Member States achieve this by simply opting out and not transposing the provision, therefore creating more favourable circumstances.

Germany and Italy are the only two Member States whose transpositions do not comply with the Directive. Germany's sanctions are disproportionate, ranging from €500 to €2500 in some states, while in Hamburg no upper limit is prescribed. Notably, most other Member States impose a maximum fine around the €200 mark; the only Member State with high maximum fines is Poland where the maximum is €1,428. The Italian regime discriminates between Schengen state nationals and non-Schengen state nationals.

It should be noted that Member States place different emphases on reporting, registering or obtaining a residence card. These different emphases alter a Member States' view of other sanctions. For example, in Czech Republic the emphasis is on reporting and the residence card; therefore registration is less important and correspondingly lack of registration carries no sanction. This also goes some way to explaining why so many Member States above simply opted out of a reporting requirement and associated sanctions.

Article 8(2) permits proportionate and non-discriminatory sanctions for non-registration. Member States generally require registration within 3 months of arrival. Bulgaria, Czech Republic, Ireland, Slovakia and the UK are the only Member States which have no such requirement. The sanctions imposed by Member States for non-registration range from no sanction to a €1500 fine. In the Netherlands and Portugal the transposing laws create discriminatory sanctions, imposing stricter sanctions on non-nationals. Moreover, in the Netherlands' case the stricter sanction of up to 6 months imprisonment amounts to a disproportionate sanction. (Note that although the sanction is considered

proportionate, some Member States have incorrectly transposed Article 8(2), for the reasons set out in the earlier discussion of that Article.

Article 9(3) requires family members who are not nationals of a Member State to apply for a residence card. There are differences in approach to sanctions: some MS such as Bulgaria, Germany, Estonia,¹³⁰ Latvia, Malta, Slovakia and the UK do not sanction non-application whereas others such as Cyprus, Denmark, France, the Netherlands, Portugal and Slovenia take non-application much more seriously. The latter group impose fines of around €1500 or in the Netherlands' case, 6 months imprisonment. In Ireland, it should be noted that although a 12-month prison sentence is technically possible, it is highly unlikely. The jail sentence imposed by the Netherlands and the crime attributed to non-application in Denmark are considered the most disproportionate sanctions. The Greek sanction for non-application, further qualified by not submitting all documents within one year, is that the residence card will not be issued. The Directive does not allow Member States to impose sanctions such as this that are equivalent to the deprivation of a relevant right. Finally, the Slovenian sanctions appear to be discriminatory as they are double of the sanctions for similar violations for Slovenian nationals.

The last category of sanctions is for not carrying a residence card or registration certificate, and is covered by the Directive under Article 26, entitled 'checks'. Most Member States correctly and completely transpose these provisions. In nine Member States, there is simply no such requirement, and therefore no sanction. In the main, where such a requirement is imposed by the Member States, the same sanctions apply to both nationals and non-nationals alike. In Austria, Czech Republic, France and Slovakia, however, the sanctions are applied differently, amounting to discrimination. In Austria and France, for example, only non-nationals must carry such identification and in Slovakia a maximum fine of SKK 50,000 (about €1650) applies only to non-nationals; Slovakian nationals may be arrested, but not imprisoned.

In summary, about half of Member States have correctly and completely transposed the relevant provisions on sanctions that fall within the scope of the Directive.¹³¹ Discrimination between nationals and non-nationals as well as disproportionate sanctions are the main areas for concern. The issues, including those from the above discussion, are further outlined in the table below.

Table 2.12 Sanctions for non-compliance with the obligations of the Directive

Member State	Not reporting presence	Non-registration	Not applying for residence card	Not carrying residence card or registration certificate
AT	√ - Everyone must register; within 3 months or max €200 fine. Non discriminatory (ND).	√ - Fine max €200. Proportionate (P) & ND.	√ - Max fine €200. P&ND.	I – Discriminatory because Austrians do not have to carry residence card. Fine max €218.
BE	√ - Within 10 days. Fine max €200.	√ – Fine max €200.	√ - Effective transposition.	√ - Sanctions are the same as for BE nationals.
BG	√ - (Not transposed; no sanction)	√ - No sanction. Registration is voluntary.	√ - No sanction.	√ - No sanction. Checks are the same as for BG nationals.
CY	√ - (Not transposed; no sanction)	√ - (Effective transposition) Within 4 months. Sanction is criminal defence; fine max £1500. Since similar sanctions apply for CY nationals, the expert considered that transposition is effective.	√ - (Literal transposition) Sanction is criminal offence; fine max £1500. Since similar sanctions apply for CY nationals, the expert considered that transposition is effective.	√ - (Effective transposition) Also applies to CY nationals. Fine max £1000.

¹³⁰ Note that Estonia does not issue a residence card but an ID-card, which is not correct transposition of the Directive.

¹³¹ Belgium, Bulgaria, Cyprus, Estonia, Finland, Lithuania, Malta, Poland, Romania, Spain and the UK.

Member State	Not reporting presence	Non-registration	Not applying for residence card	Not carrying residence card or registration certificate
CZ	√ - (Effective transposition) Within 30 days. Sanctions same for CZ nationals: fine max CZK3000 (≈ €130). P&ND.	√ - Registration is voluntary.	√ - (Effective transposition) Fine max CZK3000. P&ND compared to other offences and sanctions.	I – Because the fine for non-nationals is CZK3000 but only CZK1000 for CZ nationals. (One does not need specific documents, rather these fines are for not being able to show some sort of ID.)
DE	I – Disproportionate sanctions, ranging between a maximum of €500 to €2500 (to unlimited!) depending on state. Same for nationals so not discriminatory. Must report immediately in some states, while other allow up to 2 weeks.	√ - (Not transposed; no sanction)	√ - (Not transposed; no sanction)	√ - DE and non-nationals must carry. Sanctions for both are max €2500 fine.
DK	√ - (Not transposed; no sanction)	I – Disproportionate: it is a crime to not apply for a residence card	I – Disproportionate: it is a crime to not apply for a residence card	√ - (Not transposed; no sanction)
EE	√ - (Not transposed; no sanction)	√ - Registration is voluntary.	√ - No sanctions.	√ - (Not transposed; no sanction)
EL	√ - (Not transposed; no sanction)	√ - Within 3 months; fine max €59.	I – Because of requirement that all documents should be submitted within one year. Sanction is €150 or for those over one year mark, a residence card will not be issued. Directive does not allow MS to impose sanctions equivalent to the deprivation of a relevant right.	√ - (Effective transposition) No information on specific sanctions except that they are the same for EL nationals, and details are found in Art 27 of the transposing law.
ES	√ - (Not transposed; no sanction)	√ - up to 300€	√ - up to 300€	√ - up to 300€
FI	√ - (Not transposed; no sanction)	√ - (Effective transposition) Within 3 months; fine max 120 fine units.	√ - (Effective transposition) Within 3 months; fine max 120 fine units.	√ - (Not transposed; no sanction)
FR	√ - (Not transposed; no sanction)	I – Because non-registration is interpreted as not living in France, which is disproportionate because it limits the person's rights which are based on length of stay. There is also an ambiguous parallel system that creates confusion. Registration must be within 3 months; fine max €750.	I - (Incorrect transposition) Max €1500 fine is disproportionate.	I – Because all non-nationals must carry ID, which does not apply to FR nationals.
HU	√ - (Not transposed; no sanction)	I - ≈ 200€ Considered incorrect/disproportionate because the fine is the same even for those that	I - ≈ 200€ Considered incorrect/disproportionate because the fine is the same even for those that	I – because ID and residence documents always required in practice, which is not permitted by the

Member State	Not reporting presence	Non-registration	Not applying for residence card	Not carrying residence card or registration certificate
		falsify documents.	falsify documents.	Directive.
IE	√ - (Not transposed; no sanction)	√ - (Not transposed; no sanction)	I - (Incorrect transposition) Disproportionate despite the fact that a 12-month imprisonment and a €5,000 fine is technically possible, it is considered unlikely.	√ - (Not transposed; no sanction)
IT	I – Discriminatory as immediate requirement for non-nationals but 8 days for Schengen nationals. Disproportionate because sanction is expulsion.	√ - (Effective transposition) Within 3 months. Max €516 fine. Same for IT nationals.	√ - (Not transposed; no sanction) However, proposed legislation could create a serious infringement of this requirement.	√ - (Effective transposition) Only a de facto requirement. Sanction is that public security authorities will/may subject/report them. [Note Art 27 effects.]
LT	√ - (Not transposed; no sanction)	√ - 45-290€ Fines are proportionate and applied equally to all persons.	√ - Fine not specified by subject to the Code of Administrative Offences, therefore no issues arise. Curiously for a permanent residence card one can only reapply after the old one has expired.	√ - (Not transposed; no sanction)
LU	√ - (Not transposed; no sanction)	I - because not issued immediately. Max fine is 25-250€.	√ - (Effective transposition) Max fine is 25-250€.	I – because obligation does not apply to nationals.
LV	√ - (Not transposed; no sanction)	I – Because too stringent, requiring many details such as personal identification numbers. Deadline is within 90 days. Sanctions unknown.	√ - (Effective transposition; no sanctions).	√ - (Not transposed; no sanction)
MT	√ - (Effective transposition). Fine max €200. Same for MT nationals.	√ - (Effective transposition). Non-registration not specifically an offence, but failure to present proof of registration when asked is. Fine max €232,94.	√ - (Effective transposition). No details of sanctions except as where checked by Police.	√ - (Effective transposition). Fine max €240 when card requested by Police. [Note that Art 27 is transposed by MT, but little info in TOC.]
NL	√ - (Not transposed; no sanction)	I – Disproportionate sanction as up to one or six months imprisonment is possible. Also discriminatory as only non-EU citizens face the longer of the imprisonment options.	I – Disproportionate sanction as up to one or six months imprisonment is possible. Also discriminatory as only non-EU citizens face the longer of the imprisonment options.	√ - (Effective transposition) Category 2 fine; same for NL nationals.
PL	√ - (Effective transposition). Max fine is €5.70-1,428.	√ - (Effective transposition). Max fine is €5.70-1,428.	√ - (Effective transposition). Max fine is €5.70-1,428.	√ - (Not transposed; no sanction)
PT	√ - (Effective transposition). Max fine is €160.	I – Discriminatory because €1500 max fine for non-nationals, but only €750 for PT nationals. Deadline is within 30 days after 3 months.	I – Discriminatory because €1500 max fine for non-nationals, but only €750 for PT nationals. Deadline is within 30 days after 3 months.	√ - (Effective transposition)
RO	√ - (Effective	√ –Max fine is €14.	√ - (Effective	√ - (Effective

Member State	Not reporting presence	Non-registration	Not applying for residence card	Not carrying residence card or registration certificate
	transposition). Max fine is €14; proportionate.		transposition). Max fine is €14.	transposition)
SE	√ - (Not transposed; no sanction)	√ - (Effective transposition). Within 3 months; no prescribed fine, but possible by application of SE Migrant Board to the Migration Court who make proper assessment.	G – Because not stated explicitly in the legislation that the ‘conditional financial penalty’ is assessed for proportionality and non-discrimination by the Migration Court, the transposition is incomplete.	√ - (Not transposed; no sanction)
SI	√ - (Not transposed; no sanction)	I – Because registration certificate is not issued immediately; instead the legislation states within 3 months.	I - (Incorrect transposition). Max fine is €1200, which is double the sanction for SI nationals.	√ - Max fine SIT 50,000 (≈ €208), which is the same for SI nationals.
SK	√ - (Effective transposition). Within 3 or 10 days otherwise fine max SKK 5,000 (≈ €167).	√ - (Effective transposition). No registration requirement after initial reporting.	√ - (Not transposed; no sanction)	I – Because disproportionate: Max fine SKK 50,000 (≈ €1650) for non-nationals, but for SK nationals the sanction is that they can be arrested but not imprisoned.
UK	√ - (Not transposed; no sanction)	√ - (Not transposed; no sanction)	√ - (Not transposed; no sanction)	√ - (Not transposed; no sanction). ID can be established by a variety of means.

3 CONCLUSIONS

This assessment of the transposition of Directive 2004/38/EC on the free movement of Union citizens and their family members has identified errors and gaps identified in the transposing legislation of almost all Member States. In addition, transposition was often late, followed by several amendments.

The Directive regulates an area of Community Law that is at the heart of the European Union, and that is given great attention by public opinion. Correct transposition of the Directive is of crucial importance for the achievement of the free movement of Union citizens and their family members in the European Union, but is controversial in some Member States. For quite a few Member States covered by this study, the transposing legislation was modified at least once during the time period covered. In particular issues were found with regard to the limitation of expulsion measures on the grounds of public policy, public security and public health. As a consequence, only two Member States have transposed Articles 27, 28 and 29 dealing with this issue in a fully correct manner.

The complexity of both the Directive and its history have clearly had an influence on the quality of the transposition process. For instance, some errors in transposition were most likely based on the misunderstanding of certain provisions by the national legislators. These areas will most likely be very easily adapted by Member States authorities.

These errors do create many additional burdens for Union citizens, and especially for their third country family members when moving inside the European Union, which reflects a certain degree of mistrust towards family reunification for European citizens.

Overall, the study shows that an enormous amount of work is ahead for the Member States, and for the European Union, if the full and free movement of its citizens and their family members is to be achieved. A joint effort will need to be undertaken to ensure the full transposition and application of Directive 2004/38/EC.

ANNEX I: List of transposing legislation per Member State

1. Austria

- AuslBG Ausländerbeschäftigungsgesetz, BGBl Nr 218/1975 – Aliens Employment Act, Federal Law Gazette No 218/1975
(<http://www.ris2.bka.gv.at/GeltendeFassung.wxe?QueryID=Bundesnormen&Gesetzesnummer=10008365>)
- AVG Allgemeines Verwaltungsverfahrensgesetz, BGBl Nr 51/1991 – General Administrative Procedure Act, Federal Law Gazette No 51/1991
(<http://www.ris2.bka.gv.at/GeltendeFassung.wxe?QueryID=Bundesnormen&Gesetzesnummer=10005768>)
- EGVG Einführungsgesetz zu den Verwaltungsverfahrensgesetzen 1991, BGBl Nr 50/1991 – Introductory Act to the Administrative Procedure Acts 1991, Federal Law Gazette Nr 50/1991
(<http://www.ris2.bka.gv.at/GeltendeFassung.wxe?QueryID=Bundesnormen&Gesetzesnummer=10005767>)
- EMRK Konvention zum Schutz der Menschenrechte und Grundfreiheiten vom 4. November 1950 (Europäische Menschenrechtskonvention 1950), BGBl Nr 210/1958 idF BGBl III Nr 30/1998 – Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (European Human Rights Convention of 1950), Federal Law Gazette No 210/1958, as amended by Federal Law Gazette III No 30/1998
(<http://www.ris2.bka.gv.at/GeltendeFassung.wxe?QueryID=Bundesnormen&Gesetzesnummer=10000308>)
- Prot Nr 4 EMRK Protokoll Nr. 4 zur Konvention zum Schutze der Menschenrechte und Grundfreiheiten, durch das gewisse Rechte und Freiheiten gewährleistet werden, die nicht bereits in der Konvention oder im ersten Zusatzprotokoll enthalten sind, vom 16. September 1963 (4. Zusatzprotokoll zur Europäischen Menschenrechtskonvention), BGBl Nr 434/1969 idF BGBl III Nr 30/1998 – Protocol No 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto of 16 September 1963 (Protocol No 4 to the European Human Rights Convention of 1963), Federal Law Gazette No 434/1969, as amended by Federal Law Gazette III No 30/1998
(<http://www.ris2.bka.gv.at/GeltendeFassung.wxe?QueryID=Bundesnormen&Gesetzesnummer=10000465>)
- FPG Bundesgesetz über die Ausübung der Fremdenpolizei, die Ausstellung von Dokumenten für Fremde und die Erteilung von Einreisepapieren (Fremdenpolizeigesetz 2005), BGBl I Nr 100/2005 – Federal Act relating to the practice of the aliens police, the issuing of documents for aliens and the granting of entry permits – Austrian Aliens Police Act 2005, Federal Law Gazette I No 100/2005
(<http://www.ris2.bka.gv.at/GeltendeFassung.wxe?QueryID=Bundesnormen&Gesetzesnummer=20004241>)
- FPG-DV Verordnung der Bundesministerin für Inneres zur Durchführung des Fremdenpolizeigesetzes 2005 (Fremdenpolizeigesetz-Durchführungsverordnung), BGBl II 450/2005 – Regulation of the Federal Minister of the Interior implementing the Austrian Aliens Police Act 2005, Federal Law Gazette II No 450/2005
(<http://www.ris2.bka.gv.at/GeltendeFassung.wxe?QueryID=Bundesnormen&Gesetzesnummer=20004469>)
- GebührenG Gebührengesetz 1957, BGBl Nr 267/1957 – Fees and Duties Act 1957, Federal Law Gazette No 267/1957
(<http://www.ris2.bka.gv.at/GeltendeFassung.wxe?QueryID=Bundesnormen&Gesetzesnummer=10003882>)
- GewO Gewerbeordnung 1994, BGBl Nr 314/1994 – Trade, Commerce and Industry Regulation Act, Federal Law Gazette No 314/1994
(<http://www.ris2.bka.gv.at/GeltendeFassung.wxe?QueryID=Bundesnormen&Gesetzesnummer=10007517>)
- MeldeG Bundesgesetz über das polizeiliche Meldewesen (Meldegesetz 1991), BGBl Nr 9/1992 – Federal Act relating to the procedure for reporting to the police, Federal Law Gazette No 9/1992
(<http://www.ris2.bka.gv.at/GeltendeFassung.wxe?QueryID=Bundesnormen&Gesetzesnummer=10005799>)

- NAG Bundesgesetz über die Niederlassung und den Aufenthalt (Niederlassungs- und Aufenthaltsgesetz 2005), BGBl I Nr 100/2005 – Federal Act relating to settlement and residence in Austria, Federal Law Gazette I No 100/2005
(<http://www.ris2.bka.gv.at/GeltendeFassung.wxe?QueryID=Bundesnormen&Gesetzesnummer=20004242>)
- NAG-DV Verordnung zur Durchführung des Niederlassungs- und Aufenthaltsgesetzes (Niederlassungs- und Aufenthaltsgesetz-Durchführungsverordnung 2005), BGBl II Nr 451/2005 Regulation relating implementing the Federal Act relating to settlement and residence in Austria, Federal Law Gazette II No 451/2005
(<http://www.ris2.bka.gv.at/GeltendeFassung.wxe?QueryID=Bundesnormen&Gesetzesnummer=20004470>)
- PassG Bundesgesetz betreffend das Passwesen für österreichische Staatsbürger (Paßgesetz 1992), BGBl Nr 839/1992 – Federal Act relating to passport affairs of Austrian citizens, Federal Law Gazette No 839/1992
(<http://www.ris2.bka.gv.at/GeltendeFassung.wxe?QueryID=Bundesnormen&Gesetzesnummer=10005798>)
- StGG Staatsgrundgesetz vom 21. Dezember 1867 über die allgemeinen Rechte der Staatsbürger für die im Reichsrat vertretenen Königreiche und Länder, RGBl No 142/1867 – Basic Law of 21 December 1867 on the General Rights of Nationals in the Kingdoms and Laender represented in the Council of the Realm, Realm Law Gazette No 142/1867)
(<http://www.ris2.bka.gv.at/GeltendeFassung.wxe?QueryID=Bundesnormen&Gesetzesnummer=10000006>)
- StudFG Bundesgesetz über die Gewährung von Studienbeihilfen und anderen Studienförderungsmaßnahmen (Studienförderungsgesetz 1992), BGBl No 305/1992, idF des Zweiten Schuldrechtsänderungspakets 2005, BGBl I No 20/2006 – Student Support Act 1992, Federal Law Gazette No 305/1992, as amended by the Second School Law Package 2005, Federal Law Gazette I No 20/2006
(<http://www.ris2.bka.gv.at/GeltendeFassung.wxe?QueryID=Bundesnormen&Gesetzesnummer=10009824>)
- SchBG Bundesgesetz über die Gewährung von Schulbeihilfen und Heimbeihilfen (Schülerbeihilfengesetz 1983), BGBl No 455/1983 idF des Zweiten Schuldrechtsänderungspakets 2005, BGBl I No 20/2006 – Pupils' Grants Act, Federal Law Gazette No 305/1992, as amended by the Second School Law Package 2005, Federal Law Gazette I No 20/2006
(<http://www.ris2.bka.gv.at/GeltendeFassung.wxe?QueryID=Bundesnormen&Gesetzesnummer=10009531>)

2. Belgium

- la loi du 25 avril 2007 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (Moniteur belge du 10 mai 2007) ; (« LAT »)
- l'arrêté royal du 7 mai 2008 modifiant l'arrêté royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (Moniteur belge du 13 mai 2008) (« AR 08 ») ;
- l'arrêté royal du 7 mai 2008 fixant certaines modalités d'exécution de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (Moniteur belge du 13 mai 2008) (« AR 08/1 »).
- Circulaire 'Citoyens de l'Union et membres de leurs familles' (« Circ.).
- Loi du 30 avril 1999 relative à l'occupation des travailleurs étrangers (M.B., 21.05.1999)
- Arrêté royal du 9 juin 1999 portant exécution de la loi du 30 avril 1999 relative à l'occupation des travailleurs étrangers (M.B., 26.06.1999)
- Loi du 19 février 1965 relative à l'exercice, par les étrangers, des activités professionnelles indépendantes (M.B., 26.02.1965)
- Arrêté royal du 3 février 2003 dispensant certaines catégories d'étrangers de l'obligation d'être titulaires d'une carte professionnelle pour l'exercice d'une activité professionnelle indépendante (M.B., 04.03.2003)
- Art. 2 de la Loi du 14 mars 1968 abrogeant les lois relatives aux taxes de séjour des étrangers, coordonnées le 12 octobre 1953. (M.B., 5 avril 1968)
- Art. 5 de la Loi du 19 juillet 1991 relative aux [registres de la population, aux cartes d'identité, aux cartes d'étranger et aux documents de séjour] et modifiant la loi du 8 août 1983 organisant un Registre national des personnes physiques (M.B., 03.09.1991)

- Art. 41, §1 des lois sur l'emploi des langues en matière administrative, coordinated by the Royal decree of 18 July 1966 (M.B., 2 August 1966)
- Arts. 2 and 3 of the Loi du 29 juillet 1991 relative à la motivation formelle des actes administratifs (M.B., 12.09.1991)
- Loi du 16 juillet 2004 portant le Code de droit international privé (M.B., 27.07.2004)
- Loi du 26 mai 2002 concernant le droit à l'intégration sociale (M.B., 31.07.2002)

3. Bulgaria

All transposing legislation can be accessed at: <http://www.dir.bg>

Main transposing legislation:

- Act on the Entrance, Residence and Departure of Citizens of the European Union and Members of their Families of the Territory of the Republic of Bulgaria (AERD) (Закон за влизането, пребиваването и напускането на Република България на гражданите на Европейския съюз и членовете на техните семейства)(promulgated: State Gazette, No 80/ 3 October 2006, in force as of the date of entry into force of the Treaty of Accession of the Republic of Bulgaria to the European Union – 1 January 2007);
- Bulgarian Citizenship Act (Закон за българското гражданство)(BCA) (promulgated: State Gazette, No 136 of 18 November 1998; amended and supplemented: No 41/ 2001; No 54/ 2002; No 52/2007);
- Foreigners in the Republic of Bulgaria Act (FA) (Закон за чужденците в Република България)(promulgated: State Gazette, No 153 of 23 December 1998; amended and supplemented.: No 20 and 70/1999; No 42 and 112/2001; No 45 and 54/2002; No 37/2003; No 37 and 70/2004; No 11, 63 and 88/2005; No 30/2006;
- Bulgarian Identity Documents Act (Закон за българските документи за самоличност)(BIDA) (promulgated: State Gazette, No .93 of 11 August 1998, amended and supplemented: No .53, 67, 70, and 113/ 1999; No 108/ 2000; No .42/2001; No 45 and 54/ 2002; No 29 and 63/ 2003; No 96, 103 and 111/ 2004; No 43, 71, 88, 105/ 2005; No 30, 82, 105/2006; No 29, 46, .52/2007);
- Ministry of Interior Act (MIA) (Закон за Министерството на вътрешните работи) (promulgated: State Gazette, No 17 of 24 February 2006; amended No 30, 102 and 105/2006; No 11, 31, 41, 46, 57, 64 and 109/2007 ; No 28/2008)
- Rules for the Implementation of the Foreigners in the Republic of Bulgaria Act (RI/FA) (Правилник за прилагане на Закона за чужденците в България)(promulgated: State Gazette, No 43 of 26 May 2000; amended and supplemented: No 15/2004);
- Regulation on the Conditions for the Issuing of Visas (Reg-Visas) (Наредба за условията и реда за издаване на визи)(SG No 49 of 17 May 2002; am. No 118/2002);
- Tariff No 4 on the Charges, Collected in the System of the Ministry of the Interior (Tariff- 4) (Тарифа No 4 за таксите, които се събират в системата на Министерството на вътрешните работи по Закона за държавните такси) (promulgated: State Gazette, No 27 of 10 March 1998; supplemented and amended: No 9, 33 and 78/1999; No 43, 65 and 86/2000; No 27, 106 and 108/2001; No 24, 34, 39, 106 and 111/2003; No 15, 24, 32 and 36/2004; No 21/2007).
- Administrative Procedure Code (APC) (Административнопроцесуален кодекс) (promulgated: State Gazette, No 30 of 11 April 2006; amended No 64/2007)

Other relevant legislation:

- Family Code (Семеен кодекс) (promulgated: State Gazette, No 41 of 28 May 1985; amended and supplemented: No 11/1992; No 15/1992;No 63 and 84/2003 ; No 42/2005 ; No 30/2006)
- Promotion of Employment Act (Закон за насърчаване на заетостта) (promulgated: State Gazette, No 112 of 29 December 2001; amended and supplemented : No 54 and 120/2002; No 26,86 and 114/2003; No 52, and 81/ 2004; No 27 and 38/2005 ; No 18, 30, 33 and 48/2006 ; No 46/2007 ; No 26/2008)
- Rules for the Implementation of the Promotion of Employment Act (Правилник за прилагане на Закона за насърчаване на заетостта) (promulgated: State Gazette, No 58 of 27 June 2003 ; amended and supplemented : No.82 and 84/2004 ; No 26 and .95/ 2005 ;No .42/2006)
- Social Assistance Act (Закон за социално подпомагане) (promulgated: State Gazette, No 56 of 19 May.1998 ; amended and supplemented : No 45 and 120/2002 ; No 18, 30 and 105/2006 ; No 52 and 59/2007 ; No 58/2008)
- Rules for the Implementation of the Social Assistance Act (Правилник за прилагане на Закона за социално подпомагане) (promulgated: State Gazette, No 133 of 11 November 1998 ; amended and supplemented: No 38 от 23.04.1999 ; No 42 and 112/1999 ; No 30, 48, 98 and 100/2000 ; No 19 and

97/2001 ; No 26, 46, 81 and 118/2002 ; 40/2003 ; No 115/2004 ; No 31 and 103/2005 ; No 54 and 93/2006 ; No 101/2007)

- Protection of the Child Act (Закон за закрила на детето)(promulgated: State Gazette, No 48 of 13 June 2000 ; amended and supplemented : No 75 and 120/2002; No.36 and 63/2003 :No 70 and 115/ 2004 : No 28, 94 and 103/2005 ; No 30, 38 and 82/2006; No 59/2007)
- Integration of Disabled Persons Act (Закон за интеграция на хората с увреждания) (promulgated: State Gazette, No 81 of 17 September 2004 amended and supplemented : No 28, 88, 94, 103 and 105/2005; No 18, 30, 33, 37, 63, 95 97 and 108/2006 ; No 31 and 46/)
- Protection from Discrimination Act (Закон за защита от дискриминация) (promulgated: State Gazette, No 86 oo 30 September 2003 ; amended and supplemented : No 70/2004 ; No 105/2005 ; No 30 and 68/2006; No 59/2007)
- Regulation on the Conditions and Procedure for the Performance of Border Health Control in the Republic of Bulgaria (Наредба за условията и реда за провеждане на граничен здравен контрол на Република България) (promulgated :SG No 85 of 20 October 2006).

4. Cyprus

- Ο περί του Δικαιώματος των Πολιτών της Ένωσης και των Μελών των Οικογενειών τους να Κυκλοφορούν και να Διαμένουν Ελεύθερα στην Επικράτεια της Δημοκρατίας Νόμος του 2007, N. 7(I)/2007 The Right of Union Citizens and their Family Members to Move and Reside Freely within the Territory of the Republic Law of 2007, L. 7(I)/2007
- Αρχείου Πληθυσμού Νόμος του 2002 N. 141(I)/2002 Archive Population Law of 2002, Law No. 141(I)/2002

5. Czech Republic

Main act transposing the Directive:

- Act no 326/1999 Coll. on the residence of aliens in the territory of the Czech Republic, as amended, “Alien Act”, latest amendment: Act no 379/2007 Coll., latest consolidated version published under no. 42/2008 Coll. (Zákon 326/1999 Sb. ze dne 30. listopadu 1999 o pobytu cizinců na území České republiky a o změně některých zákonů, ve znění pozdějších předpisů, úplné znění vyhlášené pod č. 326/1999 Sb.) http://www.avcr.cz/data/zho/ostatni/zakon_326_99.pdf
The Directive was transposed through amendments to this act.

Other transposing legislation:

Constitutional safeguards:

- Constitutional Act no. 2/1993 Coll., as amended “Charter of Fundamental Rights and Freedoms” (Usnesení předsednictva České národní rady ze dne 16. prosince 1992 o vyhlášení LISTINY ZÁKLADNÍCH PRÁV A SVOBOD jako součásti ústavního pořádku České republiky, ve znění pozdějších předpisů) <http://www.psp.cz/docs/laws/constitution.html>

Social assistance acts:

- Act no. 100/1988 Coll. on social assistance, as amended (Zákon 100/1988 Sb. ze dne 16. června 1988 o sociálním zabezpečení, ve znění pozdějších předpisů) <http://business.center.cz/business/pravo/zakony/socialzab/>
- Act no. 108/2006 Coll. on social services, as amended (Zákon 108/2006 Sb. ze dne 14. března 2006 o sociálních službách, ve znění pozdějších předpisů) <http://www.sagit.cz/pages/sbirkatxt.asp?cd=76&typ=r&zdroj=sb06108>
- Act no. 111/2006 Coll. on assistance in material need, as amended (Zákon 111/2006 Sb. ze dne 14. března 2006 o pomoci v hmotné nouzi ve znění pozdějších předpisů) <http://www.vyplata.cz/zakony/z111-2006sb.php>

Acts regulating employment and business

- Act no. 435/2004 Coll. on the employment, as amended (Zákon 435/2004 Sb. ze dne 13. května 2004 o zaměstnanosti ve znění, pozdějších předpisů) <http://business.center.cz/business/pravo/zakony/zamestnanost/>
- Act no. 455/1991 Coll. on business licences, as amended (Zákon 455/1991 Sb. ze dne 2. října 1991 o živnostenském podnikání (živnostenský zákon), ve znění pozdějších předpisů) <http://business.center.cz/business/pravo/zakony/zivnost/>

- Act no. 262/2006 Coll, Labour Code (Zákon č. 262/2006 Sb. ze dne 21. dubna 2006 zákoník práce, ve znění pozdějších předpisů) <http://business.center.cz/business/pravo/zakony/zakonik-prace/>

Acts related to identity cards and passports and prove of identity

- Act no. 328/1999 Coll. on identity cards, as amended (Zákon 328/1999 Sb. ze dne 30. listopadu 1999 o občanských průkazech, ve znění pozdějších předpisů) <http://www.sagit.cz/pages/sbirkatxt.asp?cd=76&typ=r&zdroj=sb99328>
- Act no. 283/1991 Coll. on the Police of the Czech Republic, as amended (Zákon 283/1991 Sb. České národní rady ze dne 21. června 1991 o Policii České republiky, ve znění pozdějších předpisů) <http://zakony-online.cz/?s32&q32=>
- Act no. 329/1999 Coll. on travel documents, as amended (Zákon 329/1999 Sb. ze dne 30. listopadu 1999 o cestovních dokladech a o změně zákona č. 283/1991 Sb., o Policii České republiky, ve znění pozdějších předpisů, (zákon o cestovních dokladech) ve znění pozdějších předpisů) <http://www.sagit.cz/pages/sbirkatxt.asp?zdroj=sb08252&cd=76&typ=r>

Procedural Acts

- Act no. 500/2004 Coll. as amended, Code of Administrative Procedure (Zákon 500/2004 Sb. ze dne 24. června 2004 správní řád, ve znění pozdějších předpisů) http://business.center.cz/business/pravo/zakony/spravni_rad/
- Act no. 150/2002 Coll. as amended, Code of Administrative Justice (Zákon 150/2002 Sb. ze dne 21. března 2002 soudní řád správní, ve znění pozdějších předpisů) http://business.center.cz/business/pravo/zakony/soudni_rad_spravni/

Acts on offences (administrative and criminal)

- Act no. 140/1961 Coll. as amended, Criminal Code (Zákon 140/1961 Sb. ze dne 29. listopadu 1961 Trestní zákon, ve znění pozdějších předpisů) http://business.center.cz/business/pravo/zakony/trestni_zakon/
- Act no. 200/1990 Coll. on administrative offences, as amended (Zákon 200/1990 Sb. České národní rady ze dne 17.května 1990 o přestupcích, ve znění pozdějších předpisů) <http://business.center.cz/business/pravo/zakony/prestupky/>
- Act no. 218/2003 Coll. on criminal justice with regard to minors, as amended (Zákon 218/2003 Sb. ze dne 25. června 2003 o odpovědnosti mládeže za protiprávní činy a o soudnictví ve věcech mládeže a o změně některých zákonů (zákon o soudnictví ve věcech mládeže), ve znění pozdějších předpisů) <http://zakony-online.cz/?s88&q88=all>

- Decree no. 274/2004 Coll laying down a list of diseases which could threaten public health and list of diseases and disabilities which could seriously threaten public order (Vyhláška ze dne 28. dubna 2004, kterou se stanoví seznam nemocí, které by mohly ohrozit veřejné zdraví, a seznam nemocí a postižení, které by mohly závažným způsobem ohrozit veřejný pořádek) <http://web.mvcr.cz/archiv2008/sbirka/2004/sb088-04.pdf>
- Act no. 634/2004 Sb. on administrative fees (Zákon ze dne 26. listopadu 2004 č. 634/2004 Sb.o správních poplatcích) <http://business.center.cz/business/pravo/zakony/spravni-poplatky/>
- Act no. 111/1998 Coll on universities, as amended (zákon ze dne 22. dubna 1998 o vysokých školách, ve znění pozdějších předpisů) http://www.msmt.cz/Files/vysokeskoly/Legislativa/Zakon111_uplne_zneni_552.htm

6. Denmark

- BEK nr. 300 af 29/04/2008 om ophold i Danmark for udlændinge, der er omfattet af Den Europæiske Unions regler (EU-opholdsbekendtgørelsen)/ the Executive Order No. 300 of 29. April 20068 on Residence in Denmark for Aliens falling within the Rules of the European Union (the EU Residence Order)
- LBK nr. 808 af 08/07/2008 Bekendtgørelse af Udlændingeloven (Lovbekendtgørelse af Udlændingeloven)/ Aliens Act LBK Nr. 808 of 08/07/2008 codified version
- LBK nr. 1460 af 12/12/2007 Bekendtgørelse af lov om aktiv socialpolitik (Lovbekendtgørelse af Lov om Aktiv Socialpolitik)/ Act. no 1460 of 12 December 2007 on Active Social Policy (consolidated version)
- LBK nr. 1365 af 07/12/2007 Bekendtgørelse af Forvaltningsloven/ Executive Order nr. 1365 of 07/12/2007 on Administrative Procedure Act
- BEK nr. 810 af 20/06/2007 Bekendtgørelse om Udlændinges adgang her til landet (Udlændingebekendtgørelsen)/ Executive Order no. 810 of 20 June, 2007 on Aliens' Access to Denmark (Aliens Order) (latest amendments up to BEK nr. 635 of 24/06/2008 are included)

- BEK nr. 904 af 04/07/2007 Bekendtgørelse om meddelelse af opholds- og arbejdstilladelse til studerende/ Executive Order no. 904 on the Issue of Residence and Work permits for students
- BEK nr. 1003 of 06/10/2006 (Passport Order), cf. LBK nr 586 af 01/09/1986 med senere ændringer (Passport Act)/ Executive Order no 1003 of 06/10/2006 (Passport Order)
- Circular Nr 107 of 12/12/2006 (Passport Circular)
- The text of the national legislation is available at www.retsinfo.dk
- The list of High Court Judgments is available at <http://www.rigsadvokaturen.dk/Default.aspx?id=178&recordid178=858>

7. Estonia

- Euroopa Liidu Kodaniku seadus (Citizen of European Union Act) – 17.05.2006 – (ELKS) - <https://www.riigiteataja.ee/ert/act.jsp?id=1034665>
- Riigipiiriseadus (State Borders Act) – 30.06.1994 (as amended) – (RPS) - <https://www.riigiteataja.ee/ert/act.jsp?id=12961202>
- Väljasõidukohustuse ja sissesõidukeelu seadus (Expulsion and Prohibition on Entry Act) - 21.10.1998 (as amended) – (VSS) - <https://www.riigiteataja.ee/ert/act.jsp?id=12899671>
- Isikut tõendavate dokumentide seadus (Identity Document Act) – 15.02.1999 (as amended) – (ITDS) - <https://www.riigiteataja.ee/ert/act.jsp?id=12899636>
- Government of the Republic regulation - The procedure for application, grant and extension of a temporary right of residence of family members of citizens of the European Union, and the procedure for application for registration of permanent right of residence and termination of right of residence of citizens of the European Union and their family members – 20.07.2006 – ETAP - <https://www.riigiteataja.ee/ert/act.jsp?id=12767075>
- Halduskohtumenetluse seadustic (Code of administrative court procedure) – 25.02.99 (as amended) – HKS - <https://www.riigiteataja.ee/ert/act.jsp?id=12895630>
- Haldusmenetluse seadus (Administrative procedure act) – 06.06.2001 (as amended) – HMS - <https://www.riigiteataja.ee/ert/act.jsp?id=12805992>
- Rahvastikuregistri seadus (Population Register Act) – 31.05.2000 (as amended) – RRS - <https://www.riigiteataja.ee/ert/act.jsp?id=12806791>
- Riigilõivuseadus (State fees Act) – 07.12.2006 (as amended) – RLS - <https://www.riigiteataja.ee/ert/act.jsp?id=12951193>
- Ravikindlustuse seadus (Health Insurance Act) – 19.06.2002 (as amended) – RKS - <https://www.riigiteataja.ee/ert/act.jsp?id=12806799>
- Õppetoetuste ja õppelaenu seadus (Study Allowances and Study Loans Act)– 07.08.2003 (as amended) – ÕTLS - <https://www.riigiteataja.ee/ert/act.jsp?id=12778201>
- Looduskaitse seadus (Nature Protection Act) – 21.04.2004 (as amended) – LKS - <https://www.riigiteataja.ee/ert/act.jsp?id=12889994>
- Eriolukorra seadus (Emergency Situation Act) – 10.01.1996 (as amended) – ES - <https://www.riigiteataja.ee/ert/act.jsp?id=189806>

8. Finland

- Aliens Act 301/2004, as amended by Act 360/2007 (this Act is the principal transposing instrument) <http://www.finlex.fi/fi/laki/ajantasa/2004/20040301>
- Law on Registered partnerships (Laki rekisteröidystä parisuhteesta) 950/2001 <http://www.finlex.fi/fi/laki/ajantasa/2001/20010950>
- Administrative Act (Hallintolaki) 434/2003 <http://www.finlex.fi/fi/laki/ajantasa/2003/20030434>
- Constitution of Finland (Suomen Perustuslaki) 1999/731 <http://www.finlex.fi/fi/laki/ajantasa/1999/19990731>
- Passport Act (Passilaki) 671/2006 <http://www.finlex.fi/fi/laki/ajantasa/2006/20060671>
- Identity Card Act (Henkilökorttilaki) 829/1999 <http://www.finlex.fi/fi/laki/ajantasa/1999/19990829>
- Act (1994/1540) on Finland's accession to the European Union <http://www.finlex.fi/fi/laki/ajantasa/1994/19941540>
- Equality Act (Yhdenvertaisuuslaki) 21/2004 <http://www.finlex.fi/fi/laki/ajantasa/2004/20040021>
- Act on Social Assistance (Laki toimeentulotuesta) 1412/1997 <http://www.finlex.fi/fi/laki/ajantasa/1997/19971412>
- Act on Student Support (Opintotukilaki) 65/1994 <http://www.finlex.fi/fi/laki/ajantasa/1994/19940065>

- Act on Grounds for Payments in Administration (Valtion maksuperustelaki) 150/1992
<http://www.finlex.fi/fi/laki/ajantasa/1992/19920150>
- Administrative Judicial Procedure Act (Hallintolainkäyttölaki) 586/1996
<http://www.finlex.fi/fi/laki/ajantasa/1996/19960586>

9. France

Accessible via <http://www.legifrance.gouv.fr/home.jsp>

- Code on Entry and Stay of Foreigners and Right to Asylum (Code de l'entrée et du séjour des étrangers et du droit d'asile), as amended by Law No 2006-911 of 24 July 2006 on immigration and integration (Loi n°2006-911 sur l'immigration et l'intégration), Law n° 2007-1631 of 20 November 2007 and Decree n° 2007-371 of 21 March 2007 (Ceseda)
- Social Action and Family Code (Code de l'action sociale et des familles), consolidated version of 3 April 2008 (Social Action and Family Code)
- Social Security Code (Code de sécurité sociale), consolidated version of 1st April 2008
- Criminal Code (Code pénal), consolidated version of 7 March 2008 (Criminal Code)
- Criminal Procedure Code (Code de procédure pénale), consolidated version of 30 April 2008 (Criminal Procedure Code)
- Administrative Justice Code (Code de justice administrative), consolidated version of 6 January 2008 (CJA)
- General Tax Code (Code général des impôts), consolidated version of 3 April 2008
- Law n° 99-944 of 15 November 1999 on Civil Pact of Solidarity (Loi n°99-944 relative au pacte civil de solidarité) (Law 99-944)
- Décret n° 55-1397 du 22 octobre 1955 modifié instituant la carte nationale d'identité (Decree 55-1397)
- Loi n°79-587 du 11 juillet 1979 relative à la motivation des actes administratifs et à l'amélioration des relations entre l'administration et le public (Law 79-587)
- Circulaire N°DSS/DACI/2007/418 of the Social Security Directorate of 23 November 2007 on granting Universal Health Insurance (Couverture Maladie Universelle – CMU) or Complementary Universal Health Insurance (Couverture Maladie Universelle complémentaire – CMUc) to European Union, European Economic Space and Switzerland who are residing or wish to reside in France as inactive, students or job seekers (Circulaire relative au bénéfice de la couverture maladie universelle de base (CMU) et de la couverture maladie universelle complémentaire (CMUc) des ressortissants de l'Union Européenne, de l'Espace économique européen et de la Suisse résidant ou souhaitant résider en France en tant qu'inactifs, étudiants ou demandeurs d'emploi)
- Circulaire NOR/INT/D/06/00115/C of 22 December 2006 on conditions of admission for stay and expulsion of Romanian and Bulgarian nationals from 1st January 2007 (Circulaire sur les modalités d'admission au séjour et d'éloignement des ressortissants roumains et bulgares à partir du 1er janvier 2007).
- Circulaire N°IMIDO0768184C of the Ministry of Immigration, Integration, National Identity and Co-Development of 12 October 2007 on justifications requested from European Union citizens and assimilated persons to benefit, at their own request, of a residence card (Circulaire relative aux justificatifs exigibles des ressortissants de l'Union européenne et assimilés pour bénéficier, à leur demande, d'un titre de séjour)
- Circulaire N° NOR/INT/D/04/00134/C of 30 October 2004 of the Ministry of Interior, Internal Security and local freedoms 'Conditions of examination of applications for being admitted to stay submitted by aliens in illegal situation in the framework of the provisions of the Ordinance of 2 November 1945 as modified (Circulaire du Ministère de l'intérieur, de la sécurité intérieure et des libertés locales 'Conditions d'examen des demandes d'admission au séjour déposées par des ressortissants étrangers en situation irrégulière dans le cadre des dispositions de l'ordonnance du 2 novembre 1945 modifiée).
- Circulaire N° 2008-1013 of 12 June 2008 of the Ministry of Education on Conditions for granting grants for higher education on the basis of social criteria and support based on merit and for international mobility ('Modalités d'attribution des bourses d'enseignement supérieur sur critères sociaux et des aides au mérite et à la mobilité internationale - année 2008-2009', NOR : ESRS0800122C, RLR : 452-0 ; 452-4, B.O. n° 26 du 26 juin 2008).
- Circulaire n°2008-024 of 18 June 2008 of the National Caisse d'Allocations Familiales on European Citizens' right of residence (Circulaire de la Direction des politiques familiale et sociale de la CNAF 'Droit au séjour des ressortissants communautaires').

10. Germany

Main transposing legislation:

- Gesetz über die allgemeine Freizügigkeit von Unionsbürgern (Freizügigkeitsgesetz/EU - FreizügG/EU; "Freizügigkeitsgesetz/EU vom 30. Juli 2004 (BGBl. I S. 1950, 1986), zuletzt geändert durch Artikel 2 des Gesetzes vom 19. August 2007 (BGBl. I S. 1970)"; Act on the General Freedom of movement for EU Citizens.
- Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Aufenthaltsgesetz - AufenthG); "Aufenthaltsgesetz vom 30. Juli 2004 (BGBl. I S. 1950), zuletzt geändert durch Artikel 1 des Gesetzes vom 19. August 2007 (BGBl. I S. 1970)"; Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory.
- Aufenthaltsverordnung (AufenthV); "Aufenthaltsverordnung vom 25. November 2004 (BGBl. I S. 2945), zuletzt geändert durch Artikel 7 Abs. 4 des Gesetzes vom 19. August 2007 (BGBl. I S. 1970)"; Ordinance Governing Residence.

Other relevant legislation:

- Grundgesetz für die Bundesrepublik Deutschland (GG); "Grundgesetz für die Bundesrepublik Deutschland in der im Bundesgesetzblatt Teil III, Gliederungsnummer 100-1, veröffentlichten bereinigten Fassung, zuletzt geändert durch das Gesetz vom 28. August 2006 (BGBl. I S. 2034)"; Basic Law for the Federal Republic of Germany.
- Bundesgesetz über individuelle Förderung der Ausbildung (Bundesausbildungsförderungsgesetz - BAföG); "Bundesausbildungsförderungsgesetz in der Fassung der Bekanntmachung vom 6. Juni 1983 (BGBl. I S. 645, 1680), zuletzt geändert durch Artikel 1, 15, 16 u. 18 Nr. 1 des Gesetzes vom 23. Dezember 2007 (BGBl. I S. 3254)"; Federal Training Assistance Act.
- Verordnung über die Zulassung von neuinreisenden Ausländern zur Ausübung einer Beschäftigung (Beschäftigungsverordnung - BeschV); "Beschäftigungsverordnung vom 22. November 2004 (BGBl. I S. 2937), zuletzt geändert durch Artikel 1 der Verordnung vom 28. Juni 2007 (BGBl. I S. 1224)"; Employment Ordinance.
- Verordnung über das Verfahren und die Zulassung von im Inland lebenden Ausländern zur Ausübung einer Beschäftigung (Beschäftigungsverfahrensordnung - BeschVerfV); "Beschäftigungsverfahrensordnung vom 22. November 2004 (BGBl. I S. 2934), geändert durch Artikel 7 Abs. 5 des Gesetzes vom 19. August 2007 (BGBl. I S. 1970)"; Employment Procedure Ordinance.
- Bürgerliches Gesetzbuch (BGB); "Bürgerliches Gesetzbuch in der Fassung der Bekanntmachung vom 2. Januar 2002 (BGBl. I S. 42, 2909; 2003 I S. 738), zuletzt geändert durch Artikel 1 des Gesetzes vom 13. März 2008 (BGBl. I S. 313)"; German Civil Code.
- Einführungsgesetz zum Bürgerlichen Gesetzbuche (EGBGB); "Einführungsgesetz zum Bürgerlichen Gesetzbuche in der Fassung der Bekanntmachung vom 21. September 1994 (BGBl. I S. 2494; 1997 I S. 1061), zuletzt geändert durch Artikel 3 Abs. 6 des Gesetzes vom 21. Dezember 2007 (BGBl. I S. 3189)"; Introductory Act to the German Civil Code.
- Gesetz zur Verhütung und Bekämpfung von Infektionskrankheiten beim Menschen (Infektionsschutzgesetz - IfSG); "Infektionsschutzgesetz vom 20. Juli 2000 (BGBl. I S. 1045), zuletzt geändert durch Artikel 2 des Gesetzes vom 13. Dezember 2007 (BGBl. I S. 2904)"; Law on Prevention of Infections.
- Gesetz zu den Internationalen Gesundheitsvorschriften (2005) (IGV) vom 23. Mai 2005; "Gesetz zu den Internationalen Gesundheitsvorschriften (2005) (IGV) vom 23. Mai 2005 vom 20. Juli 2007 (BGBl. 2007 II S. 930)"; Law on International Health Regulations 2005.
- Gesetz über die Eingetragene Lebenspartnerschaft (Lebenspartnerschaftsgesetz - LPartG); "Lebenspartnerschaftsgesetz vom 16. Februar 2001 (BGBl. I S. 266), zuletzt geändert durch Artikel 2 des Gesetzes vom 21. Dezember 2007 (BGBl. I S. 3189)"; Act on the Registered Life Partnership.
- Melderechtrahmengesetz (MRRG); "Melderechtrahmengesetz in der Fassung der Bekanntmachung vom 19. April 2002 (BGBl. I S. 1342), zuletzt geändert durch Artikel 26b des Gesetzes vom 20. Dezember 2007 (BGBl. I S. 3150)"; Registration Framework Law; + Landesrecht (cf. Art. 5.5)
- Gesetz über Ordnungswidrigkeiten (OWiG); "Gesetz über Ordnungswidrigkeiten in der Fassung der Bekanntmachung vom 19. Februar 1987 (BGBl. I S. 602), zuletzt geändert durch Artikel 2 des Gesetzes vom 7. August 2007 (BGBl. I S. 1786)"; Administrative Offences Act.
- Passgesetz (PassG); "Paßgesetz vom 19. April 1986 (BGBl. I S. 537), zuletzt geändert durch Artikel 1 des Gesetzes vom 20. Juli 2007 (BGBl. I S. 1566, 2317)"; Passport Law.
- Verordnung zur Durchführung des Passgesetzes (Passverordnung - PassV); "Passverordnung vom 19. Oktober 2007 (BGBl. I S. 2386)"; Ordinance on Implementation of Passport Law.

- Gesetz über Personalausweise (PersAuswG); "Gesetz über Personalausweise in der Fassung der Bekanntmachung vom 21. April 1986 (BGBl. I S. 548), zuletzt geändert durch Artikel 2 des Gesetzes vom 20. Juli 2007 (BGBl. I S. 1566)"; Act on Identity Cards.
- Sozialgesetzbuch (SGB) Zweites Buch (II); "Zweites Buch Sozialgesetzbuch - Grundsicherung für Arbeitsuchende - (Artikel 1 des Gesetzes vom 24. Dezember 2003, BGBl. I S. 2954), zuletzt geändert durch Artikel 2 des Gesetzes vom 10. Oktober 2007 (BGBl. I S. 2329)"; Social Code, Second Book.
- Sozialgesetzbuch (SGB) Drittes Buch (III); "Drittes Buch Sozialgesetzbuch - Arbeitsförderung - (Artikel 1 des Gesetzes vom 24. März 1997, BGBl. I S. 594), zuletzt geändert durch § 22 Abs. 4 des Gesetzes vom 12. Dezember 2007 (BGBl. I S. 2861)"; Social Code, Third Book.
- Sozialgesetzbuch (SGB) Fünftes Buch (V); "Fünftes Buch Sozialgesetzbuch - Gesetzliche Krankenversicherung - (Artikel 1 des Gesetzes vom 20. Dezember 1988, BGBl. I S. 2477), zuletzt geändert durch § 22 Abs. 7 des Gesetzes vom 12. Dezember 2007 (BGBl. I S. 2861)"; Social Code, Fifth Book.
- Sozialgesetzbuch (SGB) Achtes Buch (VIII); "Achtes Buch Sozialgesetzbuch - Kinder und Jugendhilfe - (Artikel 1 des Gesetzes vom 26. Juni 1990, BGBl. I S. 1163) in der Fassung der Bekanntmachung vom 14. Dezember 2006 (BGBl. I S. 3134), geändert durch Artikel 2 Abs. 23 des Gesetzes vom 19. Februar 2007 (BGBl. I S. 122)"; Social Code, Eighth book.
- Sozialgesetzbuch (SGB) Zwölftes Buch (XII); "Zwölftes Buch Sozialgesetzbuch - Sozialhilfe - (Artikel 1 des Gesetzes vom 27. Dezember 2003, BGBl. I S. 3022), zuletzt geändert durch Artikel 5 des Gesetzes vom 23. Dezember 2007 (BGBl. I S. 3254)"; Social Code, Twelfth Book.
- Verwaltungsgerichtsordnung (VwGO); "Verwaltungsgerichtsordnung in der Fassung der Bekanntmachung vom 19. März 1991 (BGBl. I S. 686), zuletzt geändert durch Artikel 13 des Gesetzes vom 12. Dezember 2007 (BGBl. I S. 2840)"; Administrative Courts Ordinance.
- Verwaltungsverfahrensgesetz (VwVfG); "Verwaltungsverfahrensgesetz in der Fassung der Bekanntmachung vom 23. Januar 2003 (BGBl. I S. 102), geändert durch Artikel 4 Abs. 8 des Gesetzes vom 5. Mai 2004 (BGBl. I S. 718)"; Law on Administrative Proceedings.

11. Greece

- Presidential Decree (P.D.) no. 106/2007 (Decree)
<http://www.synigoros.gr/allodapoi/pdfs/PD106.pdf>
- Law (L.) 3386/2005 <http://www.synigoros.gr/allodapoi/docs/n3386.pdf>
- Presidential decree (P.D.) 283/1985 (Penal Code)
http://www.elinyae.gr/el/lib_file_upload/106a_85.1161679152370.pdf
- Ministerial Decision (M.D.) no. 24103/2005
http://www.synigoros.gr/allodapoi/docs/meta_n3386_dikaiologitika.pdf
- Legislative Decree 356/1974 (Public Income Collection Code)
http://lawdb.intrasoftnet.com/nomos/2_nomothesia_rs_sub.php
- Law (L.) 2690/1999 http://lawdb.intrasoftnet.com/nomos/2_nomothesia_rs_sub.php
- Joint Ministerial Decision (J.M.D.) 7004/3/40-0/23.4.2004
http://lawdb.intrasoftnet.com/nomos/2_nomothesia_rs_sub.php
- Joint Ministerial Decision (J.M.D.) 4000/4/32-1β'/4.9.2006
<http://www.synigoros.gr/allodapoi/docs/KYA4000.pdf>
- Presidential decree (P.D.) 25/2004 http://lawdb.intrasoftnet.com/nomos/2_nomothesia_rs_sub.php
- Legislative Decree (L.D.) 127/1969
http://lawdb.intrasoftnet.com/nomos/2_nomothesia_rs_sub.php
- Law (L.) 3103/2003 http://lawdb.intrasoftnet.com/nomos/2_nomothesia_rs_sub.php
- Ministerial Decision (M.D.) 302//2005
http://lawdb.intrasoftnet.com/nomos/2_nomothesia_rs_sub.php
- Circular no. 10 of Ministry of Interior, Public Administration & Decentralization (Ministry of Interior) on P.D. 106/2007 http://www.ypes.gr/allodapoi/content/GR/egiklioi/egiklios10_08.doc

12. Hungary

- Act I of 2007 on the entry and residence of persons having the right to move and reside freely /a szabad mozgás és tartózkodás jogával rendelkező személyek beutazásáról és tartózkodásáról szóló 2007. évi I. törvény/
- Act CXIV of 2006 amending certain acts on vocational training and adult education /egykes szakképzési és felnőttképzési tárgyú törvények módosításáról szóló 2006. évi CXIV. törvény/

- Government Decree 113/2007 (V. 24) on the implementation of the FMA /a szabad mozgás és tartózkodás jogával rendelkező személyek beutazásáról és tartózkodásáról szóló 2007. évi I. törvény végrehajtásáról szóló 113/2007. (V. 24.) Korm. rendelet/
- Government Decree 115/2007 (V. 24) modifying certain Government Decrees in relation with the FMA and Act II. Of 2007 on the entry and residence of third country nationals /a szabad mozgás és tartózkodás jogával rendelkező személyek beutazásáról és tartózkodásáról szóló 2007. évi I. törvénnyel, valamint a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról szóló 2007. évi II. törvénnyel összefüggő egyes kormányrendeletek módosításáról szóló 115/2007. (V. 24.) Korm. rendelet/
- Government Decree 38/2007 (III. 7.) on the modification of Government Decree 152/2005 (VIII. 2.) on Scholarship Programme 'Útravaló' /az Útravaló Ösztöndíjprogramról szóló 152/2005. (VIII. 2.) Korm. rendelet módosításáról szóló 38/2007. (III. 7.) Korm. rendelet/
- Decree of the Minister of Justice and Law enforcement 25/2007 (V. 31.) on the implementation of the FMA and the Act II. of 2007 on the entry and residence of third country nationals /a szabad mozgás és tartózkodás jogával rendelkező személyek beutazásáról és tartózkodásáról szóló 2007. évi I. törvény, valamint a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról szóló 2007. évi II. törvény végrehajtásáról szóló 25/2007. (V. 31.) IRM rendelet/
- Decree of the Minister of Justice and Law enforcement 28/2007 (V. 31.) on the procedural tariffs of the procedures on the entry and residence of persons benefiting from the free movement right and of third country nationals /a szabad mozgás és tartózkodás jogával rendelkező személyek, valamint a harmadik országbeli állampolgárok beutazásával és tartózkodásával kapcsolatos eljárások díjáról 28/2007. (V. 31.) IRM rendelet/
- Government Decree 387/2007. (XII. 23.) on the social supplies of persons whose health is damaged /387/2007. (XII. 23.) Korm. rendelet az egészségkárosodott személyek szociális járadékairól/
- Government Decree 339/2007. (XII. 15.) on the modification of some Government Decrees on social issues /339/2007. (XII. 15.) Korm. rendelet egyes szociális tárgyú kormányrendeletek módosításáról/
- Government Decree 391/2007. (XII. 23.) modifying Government Decree 12/2001 (I. 31) on State subsidy for housing /a lakáscélú állami támogatásokról szóló 12/2001. (I. 31.) Korm. rendelet/

The following acts have been modified with regard to Article 40. of the Directive:

- Act II of 1989 on the Freedom of Association
- Act III of 1989 on the Right of Assembly
- Act on XCIII of 1990 on the fees
- Act IV of 1991 on the Promotion of Employment and Benefits to the Unemployed
- Act XXIII of 1992 on the Legal Status of Civil Servants
- Act LXXIX of 1992 on the Protection of Foetal Life
- Act III of 1993 on Social Administration and Social Assistance
- Act LXXIX of 1993 on Public Education
- Act LXXX of 1994 on the Status of Public Prosecutors and their Data Management
- Act XXXII of 1995 on Patent Lawyers
- Act LVIII of 1996 on Professional Chambers for Design and Expert Engineers and Architects
- Act XXXI of 1997 on Child Protection and Custody Administration
- Act LXVIII of 1997 on the Employment of Judicial Workers
- Act LXXVIII of 1997 on the Formation and Protection of the Built Environment
- Act LXXX of 1997 on Persons Entitled to Social Security Provision and Private Pensions and on Funding These Services
- Act CLIX of 1997 on Armed Security Guards and Environmental Protection and Rural Guards
- Act XI of 1998 on Lawyers
- Act XXVI of 1998 on the Rights of and Equal Opportunities for Disabled Persons
- Act LXXXIV of 1998 on Family Support
- Act C of 2001 on the Recognition of Foreign Certificates and Degrees
- Act LXXX of 2003 on Legal Aid
- Act II of 2004 on Motion Pictures
- Act LXXVIII of 2005 on the Organisation, Tasks, Powers and Procedures of the National Accreditation Agency
- Act CXXXIII of 2005 on the Rules of Personal and Property Protection Activities and Private Investigation
- Act CXXXIX of 2005 on Higher Education
- Act CI of 2001 on Adult Education

- Act CXIV of 2006 amending certain acts on vocational training and adult education
- Government Decree 115/2007 (V. 24) modifying certain Government Decrees in relation with the FMA and Act II. Of 2007 on the entry and residence of third country nationals
- Government Decree 35/1995 (IV. 5) on Fairs and markets
- Government Decree 113/1998 (VI. 10) on the authorisation by the competent building authority, the actuation and the control of elevators and escalators and on the inspectors
- Government decree 125/1999 (VIII. 6.) on the central trainee system organised for students participating in medical higher studies
- Government Decree 188/1999 (XII. 16.) on the authorisation of Social institutes offering personal care and domestic care service in villages and on the authorisation of social entrepreneurship
- Government Decree 141/2000 (VIII. 9.) on the qualification and review of serious disability and on the rules of granting disability allowances
- Government Decree 93/2002 (V. 5.) on the registering of accountants
- Government Decree 254/2002 (XII. 13) on the rules of usage, trusteeship and fund registry of the National Agricultural Land Fund
- Government Decree 259/2002 (XII. 18) on the authorization of activities for child protection, child well being and on the certificate for self employed for activities of child protection
- Government decree 90/2004 (IV. 25) on the rules of using territorial and regional provisions
- Government Decree 179/2005 (IX. 9.) on public agents
- Government Decree 104/2006 (IV. 28) on the planning of localities, architectural and technical planning and on the rules of entitlement for becoming technical expert in the building sector
- Government Decree 244/2006 (XII. 5) on the rules of exercising the activities of technical inspector in the building sector and of responsible technical director
- Government Decree 85/2007 (IV. 25) on travel reductions in public passenger transport
- Government Decree (152/2005 (VIII. 2.) on the Study grant programme “Útravaló”
- Government Decree 38/2007 (III. 7.) on the modification of Government Decree 152/2005 (VIII. 2.) on Scholarship Programme ‘Útravaló’
- Government Decree 9/1976 (IX. 5.) on the experts participating in the expropriation procedure
- Decree of the Minister of Justice and Law enforcement 25/2007 (V. 31.) on the implementation of the FMA and the Act II. Of 2007 on the entry and residence of third country nationals
- Government Decree 22/2006 (IV. 25) on the rules governing the activities of human- and values protection and private detectives

13. Ireland

Main transposing legislation:

- SI 226/2006 European Communities (Free Movement of Persons) Regulations 2006
- SI 656/2006 European Communities (Free Movement of Persons) (No 2) Regulations 2006

Other transposing legislation:

- SI 227/2007 (since amended by SI 657/2006)
- Immigration Act 1999, section 1
- Employment Permits Act 2003
- Employment Permits Act 2006
- Immigration Act 2004, section 17
- Social Welfare (Consolidation) Act 2003, Part III
- Immigration Act 2003, section 1
- Immigration Act 1999, section 1

The Acts of the Oireachtas are all available on www.irishstatutebook.ie. In Ireland, publication and collection of statutory instruments is more erratic. SI 656/2006 and SI 657/2006 are available at <http://www.inis.gov.ie/en/INIS/Pages/WP07000068>. The two earlier instruments (now revoked) do not appear to be available on any public access website. For the purposes of this study, they were accessed at www.firstlaw.ie, a subscription service.

14. Italy

Main transposing legislation:

- D.Lgs n. 30/07: Decreto Legislativo 6 febbraio 2007, n. 30 "Attuazione della direttiva 2004/38/CE relativa al diritto dei cittadini dell'Unione e dei loro familiari di circolare e di soggiornare liberamente nel territorio degli Stati membri", pubblicato nella *Gazzetta Ufficiale* n. 72 del 27 marzo 2007 . Legislative Decree of 6 February 2007, n. 30 on the transposition of Directive 2004/38/EC concerning the right of citizens of the Union and their family member to move and reside freely within the territory of the Member States", published in the Official Journal (O.J.) n. 72 of 27 March 2007.
- D.Lgs n. 286/98: Decreto Legislativo 25 luglio 1998, n. 286 "Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero", pubblicato nella *Gazzetta Ufficiale* n. 191 del 18 agosto 1998 - Supplemento Ordinario n. 139. Legislative Decree of 25 July 1998, n. 286 on Laws on the regulation of immigration and provisions on the conditions of the foreigner national, published in the O.J. n. 191 of 18 August 1998, Supplemento Ordinario, n. 139.
- Law 28 May 2007, n. 68: Legge 28 maggio 2007, n. 68 "Disciplina dei soggiorni di breve durata degli stranieri per visite, affari, turismo e studio ", pubblicata nella *Gazzetta Ufficiale*, Serie generale, n. 126, del 1 giugno 2007. Law 68/2007 on the residence for short periods of foreigner nationals for visits, business tourism and study, published in the O.J. n. 126, of June 2007.
- D.Lgs n. 32/08: Decreto legislativo 28 febbraio 2008, n. 32 "Modifiche e integrazioni al decreto legislativo 6 febbraio 2007, n. 30, recante attuazione della direttiva 2004/38/CE relativa al diritto dei cittadini dell'Unione e loro familiari di circolare e di soggiornare liberamente nel territorio degli Stati membri", pubblicato nella *Gazzetta Ufficiale* n. 52 del 1 marzo 2008. Legislative Decree of 28 February 2008 amending and supplementing Legislative Decree of 6 February 2007, n. 30 transposing Directive 2004/38/EC concerning the right of citizens of the Union and their family member to move and reside freely within the territory of the Member States, published in the O.J. n. 52 of 1 March 2008.
- Law Decree 92/2008: Decreto legge 23 maggio 2008, n. 92 Misure urgenti in materia di sicurezza pubblica., pubblicato sulla *Gazzetta Ufficiale* del 26 maggio 2008 - in vigore dal giorno successivo. Law Decree 23 May 2008, n.92, Measures on public security, published in the O.J. n. 122 of 26/5/08, entered into force the following day that is the 27 May 2008.
- Law 125/2008: Legge 24 luglio 2008, n. 125 Conversione in legge, con modificazioni, del decreto-legge 23 maggio 2008, n. 92, recante misure urgenti in materia di sicurezza pubblica. Law 125/2008 converting with amendments Law Decree 92/08 into a Law, published in the O.J. n. 173 of 25 July 2008, entered into force the following day that is the 26 July 2008.

Other relevant legislation:

- Law n.3/2003: Legge 16 gennaio 2003, n. 3 Disposizioni ordinamentali in materia di pubblica amministrazione, pubblicata nella *Gazzetta Ufficiale* n. 15 del 20 Gennaio 2003 - Supplemento Ordinario n. 5. Law of 16 January 2003, n. 3 on Provisions in the field of public administration, published in the O.J. n. 15 of 20 January 2003, SO n. 5.
- RD n. 773/31: Regio decreto 18 giugno 1931, n. 773 Approvazione del testo unico delle leggi di pubblica sicurezza, pubblicato nel Supplemento Ordinario, alla *Gazzetta Ufficiale*, n. 146 del 26 giugno 1931. RD 18 June 1931 n. 773 on the approval of the Laws in the field of public administration, published in the O.J. n. 146 of 26 June 1931
- Law n. 1185/67: Legge 21 novembre 1967, n. 1185: Norme sui passaporti, pubblicata nella *Gazzetta Ufficiale* n. 314 del 18 dicembre. Law of 21 November 1967 n. 1185, provisions on passports published in the O.J. n. 314 of 18 December
- Law dof 24 December 1954, n. 1228: Legge 24 December 1954, n. 1228, "Legge anagrafica" - Law of 24 December 1954 n. 1228 , "Anagrafic Law"
- Presidential Decree (PD) n. 223/89: Decreto del Presidente della Repubblica 30 maggio 1989, n. 223 Regolamento anagrafico della popolazione residente, pubblicato nella *Gazzetta Ufficiale* del 8 giugno 1989 n. 132. Presidential Decree of 30 may 1989 n. 223 on the new registry of the resident population, published in the OJ of 8 June 1989, n. 132.
- Presidential Decree n. 445/2000: Decreto del Presidente della Repubblica del 28 Dicembre 2000 n. 445, Testo Unico delle disposizioni legislative e regolamentari in materia di documentazione amministrativa, pubblicato nella *Gazzetta Ufficiale* n. 42 del 20 febbraio 2001 Supplemento Ordinario n. 30. Presidential Decree of 28 December 2000, n. 44, Laws on legislative and statutory provisions in the subject of administrative documentation, published in the O.J. n. 42 of 20 February 2001, Supplemento Ordinario n. 30
- D.Lgs n. 181/2000: Decreto Legislativo 21 aprile 2000, n. 181 "Disposizioni per agevolare l'incontro fra domanda ed offerta di lavoro, in attuazione dell'articolo 45, comma 1, lettera a), della legge 17 maggio 1999, n. 144", pubblicato nella *Gazzetta Ufficiale* n. 154 del 4 luglio 2000. Legislative Decree of 21 April 2000, n. 181 on provisions facilitating the meeting between supply and demand work,

implementing Article 45, paragraph 1, letter a) of Law on May 17, 1999, n. 144, published in the O.J. n. 154 of 14 July 2000.

- D.Lgs n. 297/2002: Decreto Legislativo 19 dicembre 2002, n. 297 "Disposizioni modificative e correttive del decreto legislativo 21 aprile 2000, n. 181, recante norme per agevolare l'incontro tra domanda e offerta di lavoro, in attuazione dell'articolo 45, comma 1, lettera a) della legge 17 maggio 1999, n. 144", pubblicato nella *Gazzetta Ufficiale* n. 11 del 15 gennaio 2003. Legislative Decree of 19 December 2002, n. 297, on provisions amending and correcting legislative decree of April 21, 2000, n. 181 on provisions facilitating the meeting between supply and demand work, implementing Article 45, paragraph 1, letter a) of Law on May 17, 1999, n. 144, published in the O.J. n. 11 of 15 January 2003.
- Law 152/75: Legge 22 maggio 1975, n. 152, Disposizioni a tutela dell'ordine pubblico, pubblicata nella *Gazzetta Ufficiale* n. 136 del 24/05/1975. Law 22 May 1975, n. 152, Provisions against Mafia, published in the O.J. n. 136 of 24/05/1975
- Law 69/05: Legge 22 aprile 2005, n. 69 "Disposizioni per conformare il diritto interno alla decisione quadro 2002/584/GAI del Consiglio, del 13 giugno 2002, relativa al mandato d'arresto europeo e alle procedure di consegna tra Stati membri", pubblicata nella *Gazzetta Ufficiale* n. 98 del 29 aprile 2005. Law 22 April 2005, n. 69, provisions to transpose Council Framework Decision 2002/584/JHA of the of 13 June 2002, on the European arrest warrant and the surrender procedures between Member States, published in the O.J. n. 98 of 29/4/2005.
- Criminal Procedural Code (CPP): Codice di procedura penale, D.P.R. 22 settembre 1988, n. 447(CPP), Criminal Procedural Code, approved by Decree of the President of the Republic on 22 September 1988, n. 447
- Criminal Code (CP): Codice penale, R. D. n. 1398 del 19 ottobre 1930 - Pubblicato in s. o. *Gazzetta Ufficiale*, n. 253 del 28-10-1930 (CP). Criminal Code *approved by Decree* n. 1398 of 19 October 1930, published in the O.J. n. 253 del 28-10-1930
- Law 1423/56: Legge 27 dicembre 1956, n. 1423 - Misure di prevenzione nei confronti delle persone pericolose per la sicurezza e per la pubblica moralità, pubblicata nella *gazzetta ufficiale* 31 dicembre 1965, n. 327. Law of 27 December 1956, n. 1423 Prevention measures against persons dangerous for public security and morality, published in the O.J. of 31/12/1965, n. 327.
- Law 575/65: Legge 31 maggio 1965, n. 575 - Disposizioni contro la mafia, pubblicata nella *gazzetta ufficiale* 5 giugno 1975, n. 138. Law 31 May 1965 n. 575, Provisions against Mafia, published in the O.J. of 5/6/1975, n. 138
- Law 645/52: Legge 20 giugno 1952, n. 645 "Norme di attuazione della XII disposizione transitoria e finale (comma primo) della Costituzione", pubblicata nella *gazzetta ufficiale* n. 143 del 23 giugno 1952. Law 20 June 1952, n. 645, Provisions transposing the XII temporary and final provision (first paragraph) of the Constitution, published in the O.J. n. 143 of 23/6/1952
- Law 895/67: Legge 2 ottobre 1967, n. 895 - Disposizioni per il controllo delle armi, pubblicata nella *gazzetta ufficiale*, 12 ottobre 1967, n. 255. Law of 2 October 1967, n. 895, Provisions on the control of weapons, published in the O.J. n. 255 of 12/10/67
- Law 497/74: Legge 14 ottobre 1974, n. 497 - Nuove norme contro la criminalità, pubblicata nella *gazzetta ufficiale* 22 ottobre 1974, n. 275. Law 14 October 1974, n. 497, Provisions against criminality, published in the O.J. of 22/10/1974, n. 275
- Italian Constitution: Deliberazione dell'Assemblea Costituente del 22 dicembre 1947; promulgazione del Capo Provvisorio dello Stato del 27 dicembre 1947; pubblicazione sulla *Gazzetta Ufficiale* edizione straordinaria n. 298 del 27 dicembre 1947; entrata in vigore il 1° gennaio 1948. Italian Constitution, published in the extraordinary edition of the Italian O.J. n. 298 of 27 December 1947 and entered into force on 1 January 1948.

15. Latvia

The main transposing legislation:

- Ministru kabineta noteikumi "Kārtība, kādā Latvijas Republikā ieceļo un uzturas Eiropas Savienības dalībvalstu, Eiropas Ekonomikas zonas valstu un Šveices Konfederācijas pilsoņi un viņu ģimenes locekļi" (Republic of Latvia Cabinet Regulation No. 586 "Procedures for the Entry into and Residence in the Republic of Latvia of Citizens of European Union Member States, European Economic Area States and the Swiss Confederation, and their Family Members"), adopted 18 July 2006, enactment – 21 July 2006, Latvijas Vēstnesis (the official Gazette of the Government of Latvia) (online publication: <http://www.vestnesis.lv/index.php?menu=doc&id=140189>)
- Ministru kabineta noteikumi Nr. 222 "Noteikumi par valsts nodevu par vīzas, uzturēšanās atļaujas vai Eiropas Kopienas pastāvīgā iedzīvotāja statusa Latvijas Republikā pieprasīšanai nepieciešamo

dokumentu izskatīšanu un ar to saistītajiem pakalpojumiem” (Republic of Latvia Cabinet Regulation No. 222 “State fees for processing the necessary visa, residence permit or permanent European Community residence status application documents and related services”), adopted 1 April 2008, enacted – 4 April 2008 – R222 (online publication <http://www.vestnesis.lv/index.php?menu=doc&id=153122>).

- Imigrācijas likums (Immigration Law), adopted 31 October 2002, enactment – 1 May 2003, Latvijas Vēstnesis (the official Gazette of the Government of Latvia), (Amended 20 December 2007, enacted 23 January 2008) (online publication: <http://www.vestnesis.lv/index.php?menu=doc&id=68522>)
- Bezdarbnieku un darba meklētāju likums (Support for Unemployed Persons and Persons Seeking Employment Law), amended 21 June 2007 (online publication <http://www.vestnesis.lv/index.php?menu=doc&id=62539>)
- Ministru kabineta noteikumi Nr. 220 “Kārtība, kādā tiek piešķirts, atmaksāts un dzēsts studiju kredīts un studējošā kredīts no kredītiestādes līdzekļiem ar valsts vārdā sniegtu galvojumu” (Republic of Latvia Cabinet Regulation No. 220 “Procedures for the Allocation, Repayment and Cancellation of a Study Loan and Student Loan from the Resources of Credit Institutions with the Government Guarantee”, adopted 11 July 2001; amended 27 September 2005, enactment – 5 October 2005, Latvijas Vēstnesis (the official Gazette of the Government of Latvia) (online publication <http://www.vestnesis.lv/index.php?menu=doc&id=25577>)
- Ārstniecības likums (Medical Treatment Law), adopted 12 June 1997, enactment – 1 October 1997, amended 08 June 2006, Latvijas Vēstnesis (the official Gazette of the Government of Latvia) (online publication <http://www.vestnesis.lv/index.php?menu=doc&id=44108>) .

Other relevant legislation:

- Ministru kabineta noteikumi “Kārtība, kādā personas šķērso Latvijas Republikas valsts robežu” (Republic of Latvia Cabinet Regulation No. 310 “Procedures by which Persons Cross the State Border of the Republic of Latvia”), adopted 10 July 2001, enactment – 14 July 2001, Latvijas Vēstnesis (the official Gazette of the Government of Latvia) (online publication <http://www.vestnesis.lv/index.php?menu=doc&id=26169>).
- Personu apliecinājošu dokumentu likums (Personal Identification Documents Law), adopted 23 May 2002, enactment – 1 July 2002, Latvijas Vēstnesis (the official Gazette of the Government of Latvia), (Amended 02 June 2005, 09 February 2006, 19 October 2006., 1 November 2007) (online publication: <http://www.vestnesis.lv/index.php?menu=doc&id=26169>)
- Ministru kabineta noteikumi “Pasu noteikumi” (Republic of Latvia Cabinet Regulation No. 755 “Passport Regulations”), adopted 13 November 2007, enactment – 20 November 2007, Latvijas Vēstnesis (the official Gazette of the Government of Latvia) (online publication: <http://www.vestnesis.lv/index.php?menu=doc&id=166435>).
- Ministru kabineta noteikumi “Noteikumi par valsts nodevu par vīzas, uzturēšanās atļaujas vai Eiropas Kopienas pastāvīgā iedzīvotāja statusa Latvijas Republikā pieprasīšanai nepieciešamo dokumentu izskatīšanu un ar to saistītajiem pakalpojumiem” (Republic of Latvia Cabinet Regulation No. 108 “State fees for processing the necessary visa, residence permit or permanent European Community residence status application documents and related services”), adopted 13 February 2007, enactment – 17 February 2007 Latvijas Vēstnesis (the official Gazette of the Government of Latvia) (online publication <http://www.vestnesis.lv/index.php?menu=doc&id=153122>).

16. Lithuania

Consolidated versions of the legislation can be found at <http://www3.lrs.lt/>

- Lietuvos Respublikos įstatymas dėl užsieniečių teisinės padėties (Republic of Lithuania Law on the Legal Status of Aliens) No IX-2206 of 29 April 2004, as amended by No IX-924 of 28 November 2006, *Valstybės žinios*, 2004, No 73-2539; 2006, No 137-5199; 2008, No 22-803 (thereinafter – LLSoA), http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=315087;
- Lietuvos Respublikos asmens tapatybės kortelės įstatymas (Republic of Lithuania Law on Identity Cards) No IX-577 of 6 November 2001, *Valstybės žinios*, 2001, No 97-3417 (thereinafter – Identity cards law), http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=154166&p_query=&p_tr2=
- Lietuvos Respublikos paso įstatymas (Republic of Lithuania Passport Law) No IX-590 of 8 November 2001, as amended by No X-705 of 20 June 2006, *Valstybės žinios*, 2001, No 99-3524; 2006, No 77-2957 (thereinafter – Passport law), http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=280169

- Paso formos aprašymas (Description of Passport Format), approved by the Minister of Interior of the Republic of Lithuania order No 1V-498 of 28 December 2006 (thereinafter – MoI order 1V-498) http://www3.lrs.lt/pls/inter1/dokpaieska.showdoc_l?p_id=25755
- Kelionės dokumentų, kurie suteikia teisę užsieniečiui atvykti į Lietuvos Respubliką, pripažinimo tvarkos aprašas (Procedures for Recognition of Travel Documents Giving the Rights for Entry to Lithuanian Republic), approved by Order No V-101/1V-397 of the Minister of the Interior of the Republic of Lithuania and the Minister of Foreign Affairs of the Republic of Lithuania of 21 November 2007, *Valstybės žinios*, 2007, No 125-5123 (thereinafter – Order No 397) http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=310144&p_query=&p_tr2=
- Asmenų, vykstančių per valstybės sieną, kelionės dokumentų žymėjimo instrukciją (Manual on Stamping of Travel Documents for Persons Crossing the Border), approved by the State Border Protection Service upon the Minister of the Interior together with the Minister of Foreign Affairs Order No 4-705 of 6 October 2006, as amended by No 4-841 of 16 November 2006, *Valstybės žinios*, 2006, No 109-4152; No 124-4747 (thereinafter – Order 4-705) http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=284416&p_query=&p_tr2=
- Dokumentų vizai gauti pateikimo, vizos išdavimo, taip pat ir vizos išdavimo pasienio kontrolės punktuose, buvimo Lietuvos Respublikoje turint vizą laiko pratęsimo, vizos panaikinimo taisyklės (Rules on submission of documents for issue of a visa, visa issue, also on visa issue at border control posts, the extension of a period of stay in the Republic of Lithuania being in possession of a visa and on cancellation of a visa), approved by Order No 1V-280/V-109 of the Minister of the Interior of the Republic of Lithuania and the Minister of Foreign Affairs of the Republic of Lithuania of 2 September 2004, *Valstybės žinios*, 2004, No 113-4961; 2006, No. 18-634, No 75-2896; 2007, No 2-85, No 31-1144, No 121-4969 (thereinafter – Order No 109) http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=290248&p_query=&p_tr2=
- Lietuvos Respublikos konsulinio mokesčio įstatymas (Republic of Lithuania Law on Consular Fees), as amended by No X-1300 of 2007-10-18, *Valstybės žinios*, 2007, No. 114-4631 (thereinafter – LCF) http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=307780&p_query=&p_tr2=
- Lietuvos Respublikos konsulinio mokesčio tarifai (Consular fees tariffs of the Republic of Lithuania), approved by the Government Resolution No 1135 of 16 November 1994, as amended by No 1347 of 27 October 2004, *Valstybės žinios*, 2004, No 158-5789 (thereinafter – Resolution 1347) http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=244116&p_query=&p_tr2=;
- Lietuvos Respublikos gyvenamosios vietos deklaravimo įstatymas (The Republic of Lithuania Law on Declaration of Residence Place) No VIII-840 of 2 July 1998, as amended by No X-961 of 2006-12-07, (*Valstybės žinios*, No 141-5395) http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=289812
- Gyvenamosios vietos deklaravimo ir deklaravimo duomenų tvarkymo taisyklės (Rules on Declaration of Residence Place Data Management), approved by the director of Citizen Register Service under the Ministry of Interior order No (29)4R-18 of 8 April 2008 (*Valstybės žinios*, 2008, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=318143&p_query=&p_tr2=
- Užsieniečių registro nuostatai (Statutes on the Register of Foreigners), approved by the Government of the Republic of Lithuania resolution No 1342 of 14 December 2005, *Valstybės žinios*, 2005, No 147-5353 http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=267719&p_query=&p_tr2=
- Pažymos Europos Sąjungos valstybės narės piliečiui jo teisei gyventi Lietuvos Respublikoje patvirtinti formą (Format for the Certificate Confirming a Union citizen's Residence Rights in Lithuania, *Valstybės žinios*, 2008, Nr. 52-1934 http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=319461&p_query=&p_tr2=
- Pažymos Europos Sąjungos valstybės narės piliečio teisei nuolat gyventi Lietuvos Respublikoje patvirtinti išdavimo tvarkos aprašas (Procedures on issuance of permanent residence certificates for citizens of Member States of the European Union), approved by the Minister of the Interior of the Republic of Lithuania order No 1V-369 of 25 October 2007, *Valstybės žinios*, 2007, No 113-4607 (thereinafter – MoI order 1V-369_EU) http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=307851&p_query=&p_tr2=
- Europos Sąjungos valstybės narės piliečio šeimos nario leidimo gyventi Lietuvos Respublikoje išdavimo, pratęsimo ir panaikinimo Europos Sąjungos valstybės narės piliečio šeimos nariams, kurie nėra Europos Sąjungos valstybės narės piliečiai, tvarkos aprašą (Procedures on issuance, extension and revocation of residence permits for European Union citizen's family members who are not nationals of a Member State of EU), approved by the Minister of the Interior of the Republic of Lithuania order No 1V-369 of 25 October 2007, *Valstybės žinios*, 2007, No 113-4607 (thereinafter – MoI order 1V-369_EU) http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=307851&p_query=&p_tr2=

- Lietuvos Respublikos socialinių paslaugų įstatymas (Republic of Lithuania Law on Social Services) No X-493 of 19 January 2006, *Valstybės žinios*, 2006, No 17-589 (thereinafter – Law of Social Services) http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=270342&p_query=&p_tr2=
- Sprendimų dėl užsieniečio įpareigojimo išvykti, išsiuntimo, grąžinimo ir vykimo tranzitu per Lietuvos Respublikos teritoriją priėmimo ir jų vykdymo taisyklės (Rules on making and implementation of decisions on expulsion, expulsion, reentering and tranziton of foreigners through the border of the republic of Lithuania), adopted by the Minister of Interior order No 1v-429 of 24 December 2004, *Valstybės žinios*, 2005, No 4-70 (thereinafter – MoI order 1V-429)
- Lietuvos Respublikos darbo kodeksas (Republic of Lithuania Labour Code), No IX-926 of 4 July 2002, as amended by No X-458 of 20 December 2005, *Valstybės žinios*, 2002, 64-2569; 2005, No 67-2400 (thereinafter – Labour Code) http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=169334
- Lietuvos Respublikos civilinis kodeksas (Civil Code of the Republic of Lithuania), No VIII-1864 of 18 July 2000, *Valstybės žinios*, 2000, 74-2262 (thereinafter – Civil Code) http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=107687
- Lietuvos Respublikos socialinės apsaugos ir darbo ministro 2007 m. sausio 29 d. įsakymas Nr. A1-22 „Dėl pragyvenimo Lietuvos Respublikoje lėšų dydžio, kuris gali būti laikomas pakankamu pragyventi Lietuvos Respublikoje užsieniečiui, prašančiam išduoti leidimą gyventi, nustatymo (Ministry of Social Security and Labour Order No A1-22 of 29 January 2007 on settlement of livelihood size which may be treated as sufficient resources for aliens requesting of residence permit in the Republic of Lithuania), *Valstybės žinios*, 2007, No 15-570 (thereinafter – MoSSL order A1-22) http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=291849&p_query=&p_tr2=
- Lietuvos Respublikos nedarbo socialinės apsaugos įstatymas (The Republic of Lithuania Law on Unemployment social Insurance) No IX-1904 of 16 December 2003, as last amended by No X-1399 of 2007-12-20, (*Valstybės žinios*, 2007, No 138-5654) http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=312380
- Užsieniečių registro nuostatai (Statutes on the Register of Foreigners), approved by the Government of the Republic of Lithuania resolution No 1342 of 14 December 2005, *Valstybės žinios*, 2005, No 147-5353 http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=267719&p_query=&p_tr2=
- Užsieniečių, kuriems draudžiama atvykti į Lietuvos Respubliką, sąrašo sudarymo ir tvarkymo taisyklės (Rules on drawing up and administration of the list of foreigners to whom exit to the Republic of Lithuania are refused), approved by the Government of the Republic of Lithuania resolution No 436 of 20 April 2005, *Valstybės žinios*, 2005, No 52-1747 (thereinafter – Governmental resolution 436) http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=254427&p_query=&p_tr2=
- Leidimų laikinai gyventi Lietuvos Respublikoje užsieniečiams išdavimo bei fiktyvios santuokos sudarymo įvertinimo taisyklės (Rules on issuance of temporary residence permit in the Republic of Lithuania for aliens and assessment of fictitious marriage), approved by the Minister of the Interior of the Republic of Lithuania order No 1V-329 of 12 October 2005 as amended by No 1V-242 of 28 June 2007, *Valstybės žinios*, 2005, No 126-4509; 2007, No 75-2981 (thereinafter – Order 1V-329) http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=301446&p_query=&p_tr2=
- Lietuvos Respublikos vidaus reikalų ministro 2008 m. liepos 25 d. įsakymas Nr. 1V-290 „Dėl pažymos Europos Sąjungos valstybės narės piliečiui jo teisei gyventi Lietuvos Respublikoje patvirtinti išdavimo tvarkos aprašo ir Europos Sąjungos valstybės narės piliečio šeimos nario leidimo gyventi Lietuvos Respublikoje išdavimo, galiojimo pratęsimo ir panaikinimo Europos Sąjungos valstybės narės piliečio šeimos nariams tvarkos aprašo patvirtinimo” (The Ministry of Interior order No 1V-290 of 25 July 2008 on approval of Procedures on issuance of certificate confirming residence rights for a Citizen of a Member State of the European Union and Procedures on issuance, extension and revocation of residence permits for European Union citizen’s family members who are not nationals of a Member State of EU, *Valstybės žinios*, 2008, Nr. 88-3537 (thereinafter – Order 1V-290) http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=325573&p_query=&p_tr2=

17. Luxembourg

- Projet de loi portant sur la libre circulation des personnes et l’immigration
- Loi du 9 juillet 2004 relative aux effets légaux de certains partenariats
- Arrêté grand-ducal du 30 août 1939, portant introduction de la carte d’identité obligatoire
- Luxemburgian Constitution
- Code Civil of Luxemburg
- Règlement grand-ducal du 8 juin 1979 relatif à la procédure à suivre par les administrations relevant de l’Etat et des communes

- Règlement grand-ducal du 8 juin 1979 relatif à la procédure à suivre par les administrations relevant de l'Etat et des communes
- Loi du 7 novembre 1996 portant organisation des juridictions de l'ordre administratif

18. Malta

- Free movement of EU Nationals and their Family Members order, 2007 (LN 191 of 2007)
- Passport Ordinance (Cap. 61 of the Laws of Malta)
- Passport Regulations (LN 59/01)
- Identity Card Act (Cap. 258 of the Laws of Malta)
- Constitution of Malta
- Criminal Code (Cap. 9 of the Laws of Malta)
- Immigration Act (Cap. 217 of the Laws of Malta)

All these laws are accessible from web site:

<http://www.gov.mt/frame.asp?l=1&url=http://www2.justice.gov.mt/lom/home.asp?langid=m&pubid=lg&psb=p>

19. The Netherlands

- [Aliens Act](#) (Vreemdelingenwet) 2000
- [Aliens Decree](#) (Vreemdelingenbesluit) 2000
- [Aliens Regulations](#) (Voorschrift Vreemdelingen) 2000
- [Aliens Circular](#) (Vreemdelingencirculaire)
- [Compulsory Identification Act](#) (Wet op de identificatieplicht)
- [Constitution of the Kingdom of the Netherlands](#) (Grondwet voor het Koninkrijk der Nederlanden)
- [Consular Fees Regulations](#) (Regeling op de consulaire tarieven)
- [Criminal Code](#) (Wetboek van Strafrecht)
- [Equal Treatment Act](#) (Algemene wet gelijke behandeling)
- [Fees and Educational Expenses \(Allowances\) Act](#) (Wet tegemoetkoming onderwijskosten en schoolkosten)
- [Foreign Nationals Employment Act](#) (Wet arbeid vreemdelingen)
- [General Administrative Law Act](#) (Algemene wet bestuursrecht)
- [Implementation and Delegation Decree, Annex to the Foreign Nationals Employment Act](#) (Delegatie- en Uitvoeringsbesluit Wet arbeid vreemdelingen)
- [Passport Act](#) (Paspoortwet)
- [Registered Partnership \(Conflict of Laws\) Act](#) (Wet conflictenrecht geregistreerd partnerschap)
- [Student Finance Act](#) (Wet studiefinanciering)
- [Work and Social Assistance Act](#) (Wet werk en bijstand)

20. Poland

- 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 - Ustawa z dnia 14 lipca 2006 r. o wjeździe na terytorium Rzeczypospolitej Polskiej, pobycie oraz wyjeździe z tego terytorium obywateli państw członkowskich Unii Europejskiej i członków ich rodzin (OJoL of 2006 No. 144 item 1043 amended by: OJoL of 2007 No. 120 item 818) - <http://www.abc.com.pl/serwis/du/2006/1043.htm> - EREA
- Minister of Health Regulation of 18 January 2007 on the list of diseases justifying decision on expulsion of nationals of the European Union Member States and their family members from the territory of the Republic of Poland on grounds of public health - Rozporządzenie Ministra Zdrowia z dnia 18 stycznia 2007 r. w sprawie wykazu chorób, które uzasadniają podjęcie decyzji o wydaleniu z terytorium Rzeczypospolitej Polskiej obywatela UE lub członka rodziny niebędącego obywatelem UE z powodu zagrożenia dla zdrowia publicznego (OJoL: of 2007 No. 18 item 112) - <http://www.abc.com.pl/serwis/du/2007/0112.htm> - LDR
- Minister of Internal Affairs and Administration Regulation of 24 August 2006 on applications and documents related to the right of residence on the territory of the Republic of Poland of nationals of the European Union Member States and their family members - Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 24 sierpnia 2006 r. w sprawie wniosków i dokumentów w

sprawach prawa pobytu na terytorium Rzeczypospolitej Polskiej obywateli Unii Europejskiej i członków ich rodzin (OJoL of 2006 No. 154 item 1105, amended by: OJoL of 2007 No. 172 item 1214) - <http://www.abc.com.pl/serwis/du/2006/1105.htm> - DRR

- Minister of Internal Affairs and Administration Regulation of 24 August 2006 on applications and documents related to the right of permanent residence on the territory of the Republic of Poland of nationals of the European Union Member States and their family members - Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 24 sierpnia 2006 r. w sprawie wniosków i dokumentów dotyczących prawa stałego pobytu na terytorium Rzeczypospolitej Polskiej obywateli Unii Europejskiej i członków ich rodzin (OJoL of 2006 No. 154 item 1106, amended by: OJoL of 2007 No. 172 item 1215) - <http://www.abc.com.pl/serwis/du/2006/1106.htm> - DPRR
- Minister of Internal Affairs and Administration Regulation of 31 August 2006 on charges for issuing or exchange of a registration certificate for nationals of the European Union Member States and for issuing or exchange of a residence card for their family members - Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 31 sierpnia 2006 r. w sprawie opłat za wydanie lub wymianę zaświadczenia o zarejestrowaniu pobytu obywatela Unii Europejskiej oraz karty pobytu członka rodziny obywatela Unii Europejskiej (OJoL of 2006 No. 160 item 1133) - <http://www.abc.com.pl/serwis/du/2006/1133.htm> - RCHR
- Minister of Internal Affairs and Administration Regulation of 31 August 2006 on charges for issuing or exchange of a document certifying permanent residence or a permanent residence card for a family members of nationals of the European Union Member States - Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 31 sierpnia 2006 r. w sprawie opłat za wydanie lub wymianę dokumentu potwierdzającego prawo stałego pobytu lub karty stałego pobytu członka rodziny obywatela Unii Europejskiej - (OJoL of 2006 No. 160 item 1134, amended by: OJoL of 2007 No. 172 item 1215) - <http://www.abc.com.pl/serwis/du/2006/1134.htm> - PRCHR
- Foreigners Act of 13 June 2003 - Ustawa z dnia 13 czerwca 2003 r. o cudzoziemcach (cons. text: OJoL of 2006 No. 234 item 1694, amended by: OJoL of 2007 No. 120 item 818, OJoL of 2007 No. 165 item 1170) - <http://www.abc.com.pl/serwis/du/2006/1694.htm> - FA
- Promotion of Employment and Work Market Institution Act of 20 April 2004 Act - Ustawa z dnia 20 kwietnia 2004 r. o promocji zatrudnienia i instytucjach rynku pracy (OJoL of 2004 No. 99 item 1001; since then amended 20 times) - <http://www.abc.com.pl/serwis/du/2004/1001.htm> - PEA
- Population Records and ID Cards Act of 10 April 1974 - Ustawa z dnia 10 kwietnia 1974 r. o ewidencji ludności i dowodach osobistych (cons. text: OJoL of 2006 No. 139 item 993, amended by: OJoL of 2006 No. 104 item 711, OJoL of 2006 No. 144 item 1043, OJoL of 2007 No. 21 item 125) - <http://www.abc.com.pl/serwis/du/2006/0993.htm> - IDA
- Passport Documents Act of 13 July 2006 - Ustawa z dnia 13 lipca 2006 r. o dokumentach paszportowych (OJoL of 2006 No. 143 item 1027) - <http://www.abc.com.pl/serwis/du/2006/1027.htm> - PA
- Stamp Duty Act of 16 November 2006 - Ustawa z dnia 16 listopada 2006 r. o opłacie skarbowej (OJoL of 2006 No. 225 item 1635; amended by: OJoL of 2007 No. 64 item 427 OJoL of 2007 No. 124 item 859 OJoL of 2007 No. 127 item 880 OJoL of 2007 No. 128 item 883) - <http://www.abc.com.pl/serwis/du/2006/1635.htm> - SDA
- Administrative Courts Procedure Law Act of 30 August 2002 - Ustawa z dnia 30 sierpnia 2002 r. Prawo o postępowaniu przed sądami administracyjnymi (cons. text OJoL of 2002 No. 153 item 1270 amended by: OJoL of 2004 No. 162 item 1692; OJoL of 2005 No. 94 item 788; OJoL of 2005 No. 169 item 1417; OJoL of 2005 No. 250 item 2118; OJoL of 2006 No. 38 item 268; OJoL of 2006 No. 208 item 1536; OJoL of 2006 No. 217 item 1590; OJoL of 2007 No. 120 item 818; OJoL of 2007 No. 121 item 831; OJoL of 2007 No. 221 item 1650) - <http://www.abc.com.pl/serwis/du/2002/1270.htm> - ACPLA
- Medical benefits financed by public means Act of 27 August 2004 - Ustawa z dnia 27 sierpnia 2004 r. o świadczeniach opieki zdrowotnej finansowanych ze środków publicznych (OJoL of 2004 No. 210 item 2135, since then amended 22 times) - <http://www.abc.com.pl/serwis/du/2004/2135.htm> - MBPA
- Business Activity Freedom Act of 2 July 2004 - Ustawa z dnia 2 lipca 2004 r. o swobodzie działalności gospodarczej (cons. text OJoL of 2007 No. 155 item 1095) - <http://www.abc.com.pl/serwis/du/2007/1095.htm> -BAFA
- Education System Act of 7 September 1991 - Ustawa z dnia 7 września 1991 r. o systemie oświaty (cons. text OJoL of 2004 No. 256 item 2572; since then amended 19 times) - <http://www.abc.com.pl/serwis/du/2004/2572.htm> -ESA
- Higher Education Law Act of 27 July 2005 - Ustawa z dnia 27 lipca 2005 r. - Prawo o szkolnictwie wyższym (OJoL of 2005 No. 164 item 1365, amended by: OJoL of 2006 No. 46 item 328; OJoL of 2006 No. 104 item 708; OJoL of 2006 No. 104 item 711; OJoL of 2006 No. 144 item 1043; OJoL of 2006 No. 227 item 1658; OJoL of 2007 No. 80 item 542; OJoL of 2007 No. 120 item 818; OJoL of

- 2007 No. 176 item 1238; OJoL of 2007 No. 176 item 1240) - <http://www.abc.com.pl/serwis/du/2005/1365.htm> - HELA
- Social Assistance Act of 12 March 2004 - Ustawa z dnia 12 marca 2004 r. o pomocy społecznej (OJoL of 2004 No. 64 item 593; since then amended 21 times) - <http://www.abc.com.pl/serwis/du/2004/0593.htm> - SAA
 - Social Pension Act of 27 June 2003 - Ustawa z dnia 27 czerwca 2003 r. o rencie socjalnej (OJoL of 2003 No. 135 item 1268, amended by: OJoL of 2005 No. 94 item 788; OJoL of 2006 No. 144 item 1043; OJoL of 2007 No. 120 item 818; OJoL of 2007 No. 176 item 1241) - <http://www.abc.com.pl/serwis/du/2003/1268.htm> - SPA
 - Misdemeanour Code of 20 May 1971 - Ustawa z dnia 20 maja 1971 r. Kodeks wykroczeń (cons. text OJoL of 2007 No. 109 item 756, amended by: OJoL of 2007 No. 82 item 558) - <http://www.abc.com.pl/serwis/du/2007/0756.htm> - MC
 - Administrative Procedure Code Act of 14 June 1960 - Ustawa z dnia 14 czerwca 1960 r. Kodeks postępowania administracyjnego (cons. text OJoL of 2000 No. 98 item 1071 amended by: OJoL of 2001 No. 49 item 509; OJoL of 2002 No. 113 item 984; OJoL of 2002 No. 153 item 1271; OJoL of 2002 No. 169 item 1387; OJoL of 2003 No. 130 item 1188; OJoL of 2003 No. 170 item 1660; OJoL of 2004 No. 162 item 1692; OJoL of 2005 No. 64 item 565; OJoL of 2005 No. 78 item 682; OJoL of 2005 No. 181 item 1524) - <http://www.abc.com.pl/serwis/du/2000/1071.htm> - APC

21. Portugal

Main transposing legislation:

- Law 37/2006, of 09.08 rules the right of citizens of the European Union and their families to move and reside freely in the national territory and transpose to national law Directive 2004/32/CE of the European Parliament and the Council of 29.04, *Lei 37/2006 de 09.08, regula o exercicio do direito de livre circulação e residência dos cidadãos da União Europeia e dos membros das suas famílias no território nacional e transpõe para a ordem jurídica interna a Directiva 2004/38/CE, do Parlamento Europeu e do Conselho de 29 de Abril (DR153/2006 I Série).*
- Order 1637/2006 of 17.10 approves the models of the register certificate, the residence card of the family member of the citizen of the European Union, the permanent residence certificate of the citizen of the European Union and the permanent residence card of family member of his/her family member, according to Law n.º 37/2006, *Portaria 1637/2006 de 17.10 aprova os modelos de certificado de registo, do documento de residência permanente de cidadão da União Europeia e do cartão de residência de familiar de cidadão da União Europeia, em conformidade com o disposto na Lei 37/2006, de 9 de Agosto (DR 200/2006, Série II).*
- Law Decree 83/2000 of 11.05 approves the new legal regime for granting and issuing passports modified by Law Decree 138/2006 of 26.07 which approves the legal regime for issuing electronic Portuguese passports, *Decreto-lei 83/2000 de 11.05 aprova o novo regime legal de emissão e concessão de passaportes modificado pelo Decreto Lei 138/2006 of 26.07 que aprova o regime legal de emissão de passaportes Portugueses electrónicos (DR 143/2006, Série I).*
- Law 23/2007 of 04.07 which approves the legal framework of entry, permanence, exit and removal of foreigners into and out of national territory, *Lei 23/2007 de 4 de Julho aprova o regime jurídico de entrada, permanência, saída e afastamento de estrangeiros do território nacional (DR 127/2007, Série I).*
- Law 7/2007 of 05.02 which sets up the citizen card and defines the conditions for its issue and use, *Lei 7/2007 de 05.02 que cria o cartão de cidadão e rege a sua emissão e utilização (DR 25/2007, I Série).*
- Law 7/2001 of 11.05, adopts measures for the protection of the de facto union, *Lei 7/2001 adopta medidas de protecção das uniões de facto (DRE 109/2001, Série I).*
- Law 5/95 of 21.02, requires the possession of identification document (DR 44/1995, Série I) was amended by Law 49/98 which extends to the maritime police competence to require identification of any person (DR 184/1995 Série I) *Lei n.º 5/95 de 21 de Fevereiro estabelece a obrigatoriedade do porte de documento de identificação emendada pela Lei 49/98, de 21 de Fevereiro, por forma a conferir à Polícia Marítima competência para exigir a identificação de qualquer pessoa, nas condições nela previstas (DR 184/, série I).*

Other relevant legislation:

- Portuguese Constitution (Approved on April 2, 1976, and amended by the Constitutional Laws 1/82, September 30; 1/89 of 8 July; 1/92, November 25; 1/97, September 20, 1/2001, December 12; 1/2004, July 24; and finally by the Constitutional Law 1/2005, August 12).

- Code of Administrative Procedures (Decree-Law 442/91, November 15; with the changes made by the following acts: Correction declaration 265/91, December 31; Correction declaration 22-A/92, February 29; Decree-Law 6/96, January 31; and Decision from the Constitutional Court 118/97, April 24)
- Code of Administrative Courts Procedure (Approved by Law 15/2002, February 22; and amended by Law 4-A/2003, February 19).
- Code of Criminal Procedure (Approved by Law 78/87, February 17; and republished by Law 48/2007, August 29).

22. Romania

- Governmental Emergency Ordinance no. 102/2005 on the free movement of citizens of the Member States of the European Union and the European Economic Area on the Romanian territory
- Governmental Decision no. 1864/2006 approving the Methodological Norms for the implementation of the Governmental Emergency Ordinance no. 102/2005 and establishing the form and content of the documents to be issued to the European Citizens and their family members
- Governmental Emergency Ordinance no. 97/2005 on the registration, domicile, residence and identity documents of Romanian citizens
- Law no. 248/2005 on free movement of the Romanian citizens abroad
- Law no. 21/1991 on the Romanian citizenship
- Governmental Emergency Ordinance no. 194/2002 on the legal regime of foreigners in Romania
- Governmental Decision no. 639/2007 on organization and attributions of the Romanian Office for Immigration

23. Slovakia

The laws can be found at: http://jaspi.justice.gov.sk/jaspiw1/htm_zak/jaspiw_maxi_zak_fr0.htm

- Act No 48/2002 on foreigners stay, Collection of laws No 23/2002, p. 518, as amended (Zákon č. 48/2002 Z.z. z 13. decembra 2001 o pobyte cudzincov a o zmene a doplnení niektorých zákonov, Uverejnené v Zbierke zákonov č. 23/2002 strana 518)
- Act No 647/2007 on travel documents and modification and amendment of several acts, Collection of laws No 263/2007, p. 4622 (Zákon č. 647/2007 Z.z. z 5. decembra 2007 o cestovných dokladoch a o zmene a doplnení niektorých zákonov, Uverejnené v Zbierke zákonov č. 263/2007 strana 4622)
- Act No 381/1997 on travel documents, Collection of laws No 145/1997 p. 3547) – repealed (Zákon č. 381/1997 Z.z. zo 17. decembra 1997 o cestovných dokladoch, Uverejnené v Zbierke zákonov č. 145/1997 strana 3547)
- Act No 71/1967 on Administrative Procedure (Administrative Procedure Act, Collection of laws No 27/1967, p. 284) – as amended (Zákon č. 71/1967 z 29. júna 1967 o správnom konaní (správny poriadok), Uverejnené v Zbierke zákonov č. 27/1967 strana 284)
- Act No 145/1995 on administrative Fees, Collection of laws No 49/1995 p 1410) as amended (Zákon č. 145/1995 Z.z. z 22. júna 1995 o správnych poplatkoch, Uverejnené v Zbierke zákonov č. 49/1995 strana 1410)
- Act No 365/2004 on equal treatment in certain aspects and on protection against discrimination, Collection of laws 153/2004 p.3579) – as amended (Zákon č. 365/2004 Z.z. z 20. mája 2004 o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov (antidiskriminačný zákon), Uverejnené v Zbierke zákonov č. 153/2004 strana 3579)

24. Slovenia

- The Aliens Act, Zakon o tujcih, adopted: Ur. I. RS, nr. 61/99 (amended: Ur.I.RS, nr. 9/01, 87/02, 96/02, 93/05 in 79/06, 111/07, 44/08), (ZTuj)
- The Law on the Passports of the Citizens of the Republic of Slovenia, Zakon o potnih listinah državljanov Republike Slovenije, adopted: Ur. I. RS, nr. 65/00, (amended: Ur.I.RS, nr. 98/05) (ZPLD-1)
- The Law on the Personal Identity Card, Zakon o osebni izkaznici, adopted: Ur. I. RS, nr. 75/97 (amended: Ur.I. RS, nr. 100/2005) (ZOIzk)
- The Law on the Employment and Work of Foreign Citizens, Zakon o zaposlovanju in delu tujcev, adopted: Ur. I. RS, nr. 66/00 (amended: 101/05 in 52/07), (ZZDT)

- The Criminal Code of the Republic of Slovenia, Kazenski zakonik Republike Slovenije, adopted: Ur. l. RS, nr. 63/94 (amended: Ur.l. RS, nr. 23/1999, 60/1999 Odl.US: U-I-226/95, 40/2004, 37/2005 Odl.US: U-I-335/02-20, 17/2006 Odl.US: U-I-192/04-16) (KZ)
- The Administrative Procedure Act, Zakon o splošnem upravnem postopku, adopted: Ur. l. RS, nr. 80/99 (amended: Ur.l. RS, nr. 70/2000, 52/2002, 73/2004, 119/2005, 105/2006, 126/2007), (ZUP)
- The Minor Offences Act, Zakon o prekrških, adopted: Ur.l. RS, nr. 7/03 (amended: Ur.l. RS, nr. 45/2004-ZdZPKG, 86/2004, 34/2005 Odl.US: U-I-19/05-11, 40/2006 (51/2006 popr.), 115/2006, 139/2006 Odl.US: U-I-69/06-16, 29/2007 Odl.US: U-I-56/06-31, 58/2007 Odl.US: U-I-34/05-9, 17/2008), (ZP-1)
- Rules on the method of determining the right to free access to the labour market with regard to nationals of the EU and the EEA and their family members, Pravilnik o načinu ugotavljanja pravice do prostega dostopa na trg dela državljanov EU in EGP ter njihovih družinskih članov (Ur.l. RS, nr. 70/06) (Prav1)
- Instructions concerning the refusal of entry to the Republic of Slovenia of EU citizens, Navodilo o zavrnitvi vstopa v Republiko Slovenijo državljanu Evropske Unije, adopted: Ur.l. RS, nr. 74/06, (Navod)
- The Administrative Disputes Act, Zakon o upravnem sporu Adopted Ur.l. RS, nr. 105/2006) (ZUS-1)
- Rules on the content, form, issuing and termination of certificates and permits on the residence of the EU citizens, their family members, and family members of Slovenian citizens, Pravilnik o vsebini, obliki, načinu izdaje ter prenehanja potrdil o prijavi prebivanja in dovoljenj za prebivanje za državljane držav članic Evropske unije in njihove družinske člane ter družinske člane slovenskih državljanov Ur.l. RS, nr. 70/2007 (Prav2)

25. Spain

All legislation is available at www.boe.es and consolidated versions can be found at www.noticias.juridicas.com

- RD 240/2007: Real Decreto 240/2007 de 16 de febrero, sobre entrada, libre circulación y residencia en España de ciudadanos de los Estados miembros de la Unión Europea y de otros Estados parte en el Acuerdo sobre el Espacio Económico Europeo (BOE núm 51, del 28 febrero 2007) [Royal Decree 240/2007 on entry, free movement and residence in Spain of citizens of the Union and their family members]
- Instruction of the Ministry of Labour: Instrucciones DGI/SGRJ/03/2007, relativas al Real Decreto 240/2007, de 16 de febrero, sobre entrada, libre circulación y residencia en España de ciudadanos de los estados miembros de la unión europea y de otros estados parte en el acuerdo sobre el espacio económico europeo http://extranjeros.mtas.es/es/normativa_jurisprudencia/Nacional/Instruccion03-2007.pdf

Aliens legislation

- LO 4/2000 (Aliens Act): Ley Orgánica 4/2000, de 11 de enero, Sobre Derechos Y Libertades De Los Extranjeros En España Y Su Integración Social (BOE núm. 10, de 12 de enero), en su redacción dada por la ley orgánica 8/2000, de 22 de diciembre (BOE núm. 307, de 23 de diciembre), por la ley orgánica 11/2003, de 29 de septiembre (BOE núm. 234, de 30 de septiembre) y por la ley orgánica 14/2003, de 20 de noviembre (BOE núm. 279, de 21 de noviembre). Modificada por la sentencia 236/2007, de 7 de noviembre, del Tribunal Constitucional (BOE núm. 295 -suplemento-, de 10 de diciembre).
- Aliens Regulation: Real Decreto 2393/2004, de 30 de diciembre, por el que se aprueba el reglamento de la Ley Orgánica 4/200, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social (BOE Núm. 6, De 7 De Enero), en su redacción dada por el Real Decreto 1019/2006, de 8 de septiembre (BOE Núm. 228, De 23 De Septiembre) y por el Real Decreto 240/2007, de 16 de Febrero (BOE Núm. 51, De 28 De Febrero).

Citizen's Security (passports and IDs)

- LO 1/1992: Ley Orgánica 1/1992, de 21 de febrero, sobre protección de la seguridad ciudadana (BOE núm. 46, de 22 de febrero), en su redacción dada por la Sentencia 341/1993, de 18 de noviembre, del Tribunal Constitucional, por la que se declaran nulos determinados preceptos (BOE núm. 295, de 10 de diciembre), por la Disposición Adicional Cuarta de la Ley Orgánica 4/1997, de 4 de agosto (BOE núm. 186, de 5 de agosto) y por la Ley 10/1999, de 21 de abril (BOE núm. 96, de 22 de abril). [Organic Law on citizens' protection and security]

- RD Passport: Real Decreto 896/2003, de 11 de Julio, por el que se regula la Expedición del Pasaporte Ordinario y se determinan sus características (BOE núm. 166, de 12 de julio de 2003)

Procedural Legislation

- Law 30/92 (law on administrative procedure): Ley 30/92 de 26 de noviembre de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común BOE núm. 285 de 27 de noviembre de 1992
- Law on administrative judicial procedure: Ley 29/1998, de 13 de julio, reguladora de la Jurisdicción Contencioso-Administrativa. BOE de 14 de julio de 1998
- RD on administrative punishment procedure: Real Decreto 1398/1993, de 4 de agosto, por el que se aprueba el reglamento del procedimiento para el ejercicio de la potestad sancionadora (BOE núm. 189, de 9 de agosto de 1993)

Fees

- Orden PRE/3654/2007, de 14 de diciembre, por la que se establece el importe de las tasas por concesión de autorizaciones administrativas, expedición de documentos en materia de inmigración y extranjería, o tramitación de visados en frontera

Others

- RESOLUCIÓN-CIRCULAR de 29 de julio de 2005, de la Dirección General de los Registros y del Notariado, sobre matrimonios civiles entre personas del mismo sexo. <http://www.boe.es/boe/dias/2005/08/08/pdfs/A27817-27822.pdf>
- Instrucción de medios de prueba : http://extranjeros.mtas.es/es/normativa_jurisprudencia/Nacional/Instruccion_DGI_%2005-2007.pdf
- Rumanos y Búlgaros http://extranjeros.mtas.es/es/normativa_jurisprudencia/Nacional/Instruccion_DGI_08-2006.pdf
- Instrucción de 31 de enero de de la Dirección General de los Registros y del Notariado, sobre los matrimonios de complacencia, BOE n. 41 of 17/02/2006, p.6330 <http://www.boe.es/boe/dias/2006/02/17/pdfs/A06330-06338.pdf>

26. Sweden

Legislation

- SFS 2005:716 Aliens Act – Utlänningslag (2005:716), published in The Swedish Code of Statutes 29 September 2005, entered into force 31 March 2006
- SFS 2006:97 Aliens Decree – Utlänningsförordning (2006:97), published in The Swedish Code of Statutes 23 February 2006, entered into force 31 March 2006
- SFS 2005:661 National Identity Cards Decree - Förordning ((2005:661) om nationellt identitetskort, published in The Swedish Code of Statutes 1 September 2005, entered into force 1 October 2005
- SFS 2000:655 Study Grants Decree - Studiestödsförordningen (2000:655), published in The Swedish Code of Statutes 21 June 2000, entered into force 1 July 2001
- SFS 1999:1395 Study Grants Act - Studiestödslagen (1999:1395), published in The Swedish Code of Statutes 16 December 1999, entered into force 1 July 2001
- SFS 1997:691 Diplomatic and Consular Fees Decree - Förordning (1997:691) om avgifter vid utlandsmyndigheter, published in The Swedish Code of Statutes 19 September 1997, entered into force 1 November 1997
- SFS 1992:191 The Fee Regulation – Avgiftsförordning (1992:191), published in The Swedish Code of Statutes 23 April 1992, entered into force 1 July 1992
- SFS 1991:572 Special Aliens Control Act - Lag (1991:572) om särskild utlänningskontroll, published in The Swedish Code of Statutes 30 May 1991, entered into force 1 July 1991
- SFS 1986:223 Administrative Procedure Act – Förvaltningslag (1986:223), published in The Swedish Code of Statutes 7 May 1986, entered into force 1 January 1987
- SFS 1978:02 Passport Act - Passlagen (1978:02), published in The Swedish Code of Statutes 25 May 1978, entered into force
- SFS 1971:291 The Administrative Court Procedure Act (1971:291) - Förvaltningsprocesslag (1971:291), published in The Swedish Code of Statutes 4 June 1971
- SFS 1987:230 Swedish Marriage Code - Äktenskapsbalken (1987:230)
- SFS 2004:1117 the Registration of Partnership Act - Lag om registrerat partnerskap (2004:1117)

- SFS 1904:26 Law concerning certain international legal relationships in terms of marriage and wardship - Lag (1904:26 s.1) om vissa internationella rättsförhållanden rörande äktenskap och förmynderskap
- SFS 2004:168 Communicable Diseases Act/Smittskyddslagen (2004:168)

Travaux preparatoires/other legislation as referred to in the TOC

- Proposition (2004/05:170) to the Aliens Act (2005:716)
- Government Bill prop. 2005/06:77
- The Swedish Marriage Code (SFS 1987:230)
- Law (1904:26) concerning certain international legal relationships in terms of marriage and wardship

27. UK

Key transposing national legislation

- The Immigration (European Economic Area) Regulations 2006
- The Education (Student Support) (Amendment) Regulations 2006
- The Education (Student Loans) (Amendment) (England and Wales) Regulations 2006
- The Education (Mandatory Awards)(Amendment) Regulations 2006
- The Education (Student Support) (European Institutions) Regulations 2006
- The Social Security (Persons from Abroad) Amendment Regulations 2006
- The Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006
- The Education (Fees and Awards) (Amendment) Regulations 2006

UK statutory instruments are available via the Office of Public Sector Information:
<http://www.opsi.gov.uk/stat.htm>.

Other relevant legislation

- Immigration Act 1971.
- UK Borders Act 2007.

UK statutes are available, as amended and consolidated via <http://www.statutelaw.gov.uk/Home.aspx> - the UK statute database of the Ministry of Justice, or via the Office of Public Sector Information:
http://www.opsi.gov.uk/legislation/about_legislation.htm.