

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

Name of legal analyst:	Esther Pozo Vera	Date Table completed:	28 July 2007, last revision October 2008
Contact details:	<u>e.pozo@milieu.be</u>		
Country:	Spain		

List of transposing national legislation (including legal reference and abbreviations used in TOC)

Main transposing provisions:

- **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 4/2000, 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*)

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

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

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 medios de prueba : http://extranjeros.mtas.es/es/normativa_jurisprudencia/Nacional/Instruccion_DGI_%2005-2007.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>

Rumanos y Búlgaros

http://extranjeros.mtas.es/es/normativa_jurisprudencia/Nacional/Instruccion_DGI_08-2006.pdf

Other abbreviations

- CA: competent authorities

Analysed legislation in conformity? (click as appropriate)

YES
or/and Stricter

NO
Incomplete or/and Incorrect

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
Chapter I	GENERAL PROVISIONS					
Art. 1	<p>Subject</p> <p>This Directive lays down:</p> <p>(a) the conditions governing the exercise of the right of free movement and residence within the territory of the Member States by Union citizens and their family members;</p> <p>(b) the right of permanent residence in the territory of the Member State for Union citizens and their family members;</p> <p>(c) the limits placed on the rights set out in (a) and (b) on grounds of public policy, public security or public health</p>	Art. 1 RD 240/2007	<p>Artículo 1. <i>Objeto.</i></p> <p>1. El presente real decreto regula las condiciones para el ejercicio de los derechos de entrada y salida, libre circulación, estancia, residencia, residencia de carácter permanente y trabajo en España por parte de los ciudadanos de otros Estados miembros de la Unión Europea y de los restantes Estados parte en el Acuerdo sobre el Espacio Económico Europeo, así como las limitaciones a los derechos anteriores por razones de orden público, seguridad pública o salud pública.</p> <p>2. El contenido del presente real decreto se entenderá sin perjuicio de lo dispuesto en leyes especiales y en los tratados internacionales en los que España sea parte.</p>	<p><i>Object</i></p> <p>This royal decree regulates the conditions governing the exercise of the rights of entry and exit, free movement, stay, residence, permanent residence and work in Spain of Union citizens and citizens of the remaining States members to the EEA, as well as the limitation to these rights on grounds of public order, public security or public health.</p> <p>This royal decree shall apply without prejudice of special laws and international treaties to which Spain is a Party.</p>	Y	<p>Almost literal transposition.</p> <p>RD 240/2007 also refers to the right of stay and work and to EEA citizens. The RD also spells out the limitations to these rights based on grounds of public policy, public security and public health. In addition the RD includes a clause for the application of the international treaties to which Spain is a party.</p>
Art. 2.1	<p>Definitions</p> <p>For the purposes of this Directive:</p> <p>1) "Union citizen" means any person having the nationality of a Member State;</p>	<p>Article 1(3) LO 4/2000</p> <p>Instruction 03/2007 first section (1) first indent</p>	<p>Los nacionales de los Estados miembros de la Unión Europea y aquellos a quienes sea de aplicación el régimen comunitario se registrarán por la legislación de la Unión Europea, siéndoles de aplicación la presente Ley en aquellos aspectos que pudieran ser más favorables.</p> <p>1- Los artículos 1 y 2 del Real Decreto 240/2007 establecen la aplicabilidad del mismos a:</p> <p>- los ciudadanos de los otros 26 Estados miembros de la Unión Europea, incluidos los nacionales de Bulgaria y Rumanía, Estados adheridos el 1 de enero de 2007, que únicamente tienen las especialidades derivadas del periodo transitorio respecto al régimen de libre circulación de trabajadores</p>	<p>The nationals of the Member States of the European Union and those to whom the Community regime applies shall be governed by EU legislation. This law shall only apply to them in those aspects that are more favourable.</p> <p>1- Articles 1 and 2 of Royal Decree 240/2007 established the applicability to :</p> <p>- citizens of the other 26 Member States, including citizens of Bulgaria and Romania which joined the Union on 1 January 2007, who shall only have the specificities derived from the transitional</p>	Y	<p>Effective transposition</p> <p>This provision has not been transposed as such in Spain in RD 240/2007. However, the LO 4/2000 establishing the general regime for foreigners clearly indicates that those holding the nationality of a Member States are covered by the Community regime. RD 240/2007 transposes this Community regime and in addition applies to EEA nationals.</p> <p>The instructions clarifies that the Royal Decree also applies to citizens from Romania and Bulgaria and that the only specificities refer to free movement of workers according to the Accession Treaty.</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Instruction 03/2007 First Section (2)	El término cónyuge referido en el artículo 2.a) del Real Decreto 240/2007 será interpretado, obviamente, referido a un único cónyuge, y sin diferenciar entre matrimonios entre personas de diferente o del mismo sexo, y recordando que los matrimonios entre personas del mismo sexo se exceptúan de la regla de la aplicación de la ley personal cuando el Estado de origen de uno o ambos contrayentes no ha regulado aún este derecho, aplicándose la Resolución-Circular de 29 de julio de 2005, de la Dirección General de los Registros y del Notariado (BOE de 8 de agosto de 2005). Se recuerda que, con independencia de que otros Estados miembros puedan hacerlo en el futuro, las legislaciones de Bélgica, España y Países Bajos regulan el matrimonio entre personas del mismo sexo.	The concept “spouse” referred to in Article 2.a) of RD 240/2007 shall be interpreted, obviously, as referred to a single spouse, without differentiating between different or same sex couples, and remembering that same sex marriages are excluded from the rule of <i>lex personalis</i> when the Member State of one of the spouses has not regulated this right, according to the Circular-Resolution of 29 July 2005, of the Directorate General of Registrars and Notaries (BOE 8 August 2005). It should be remembered that, without prejudice of other Member States regulating this right in the future, currently the legislations of Belgium, Spain and The Netherlands regulate same-sex marriages.		<p>provision is intended to fight against marriage of convenience but under strict legal terms this transposition is not correct. In the case of legal separation the marital relationship has not been terminated. Furthermore, such strict interpretation may lead to an exclusion of the Community regime at a later stage (not only in case of divorce, death and so on but also in the case of legal separation, as will be analysed when discussing the transposition of Article 12 and 13 of the Directive. For this reason the transposition has been considered incorrect.</p> <p>The Instruction explaining RD 240/2007 issued by the Ministry of Labour, indicates that the concept of “spouse” shall be interpreted as “single spouse” without differentiating between marriage of persons of the same sex or different sex. However, it indicates that the marriage of persons of the same sex are exempted from the application of <i>lex personalis</i> when the Member State of origin of one or both spouses has not regulated this right. This is important in terms of validity of marriages between Spanish citizen and a person from another State and recognition of marriages in Spain according to international private law. The instruction reminds that at the moment this right is regulated in Belgium, Spain and the Netherlands.</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
Art. 2.2 (b)	(b) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State;	Article 2(b) RD 240/2007 Instruction 03/2007 First Section (2) 3 third subparagraph	b) A la pareja con la que mantenga una unión análoga a la conyugal inscrita en un registro público establecido a esos efectos en un Estado miembro de la Unión Europea o en un Estado parte en el Espacio Económico Europeo, que impida la posibilidad de dos registros simultáneos en dicho Estado, y siempre que no se haya cancelado dicha inscripción, lo que deberá ser suficientemente acreditado. Las situaciones de matrimonio e inscripción como pareja registrada se considerarán, en todo caso, incompatibles entre sí. Los diferentes Registros de Parejas Estables existentes en diversas Comunidades Autónomas o Ayuntamientos españoles no serán válidos a estos efectos, por el momento, en tanto no cumplen los requisitos señalados en el artículo 2.b) del Real Decreto 240/2007. Tampoco serán válidas a estos efectos las situaciones de pareja estable a las que la legislación de un Estado miembro otorgue efectos parciales análogos al matrimonio pero sin establecer un registro público que permita su correcta acreditación.	b) the partner with whom the Union or EEA citizen has contracted a partnership registered in a public register established for this purposes in a State Member to the EU or the EEA preventing the possibility of two simultaneous registers in the same Member State, and provided the registration has not been cancelled, which will have to be sufficiently accredited. The situations of marriage and registered partnership shall be considered as incompatible. The different Registers of Stable Couples that exists in different Autonomous Communities or Spanish Municipalities are not valid for this purpose, for the moment, since they do not comply with the requirements of Art. 2.b) 240/2007. The situations of stable relationships where the legislation of the Member State of origin only grants partial equivalent effects to marriages but without establishing a public register allowing for its correct verification shall not be considered as registered partnerships within the meaning of the RD.	N, Ambiguous	Ambiguous transposition Spain has included registered partnership as family members despite the fact that the situation of registered partnerships in Spain is extremely complex (there is no national law on the subject but rather sectoral legislation extending to partners the rights of married couples and jurisprudence; in addition some Autonomous Communities, with competence on civil law, have enacted Laws regulating <i>de facto</i> unions some of which include registration in a public registers; finally there is also local legislation and local registers but there is no national unified register). Maybe due to this complexity, Spain has opted for treating “registered partnerships” as family members. However, there are more conditions than those required by the Directive: the registered is public preventing two simultaneous register in the same Member State. The intention seems to be to prevent fraud in line with Article 35 of the Directive; the effect is that Spain is determining whether the partnership is a valid registered partnership for the purposes of the application of the legislation. The Instruction also indicates that the registers established in the Autonomous Communities are not valid as long as the do not comply with the requirements laid down in Article 2(b) of RD 240/2007.

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
						<p>Although it has not been analysed which registers in the CCAA would not meet the requirements, this clarification would place <i>prima facie</i> Spanish-third country national couples or Union citizens who have established their residence in Spain and have registered their partnership in the Autonomous Community in which they are residing in is a less favourable position than Union citizens moving into Spain and having registered their partnership in another Member State, (at least when contracted with a third country national). It is not evident how this provision will be applied in practice.</p> <p>Similarly the Instruction indicates that registered partnerships in a Member State that only partially treats registered partnerships as equivalent to marriage but without establishing a public registered allowing for the correct verification of this partnership are not considered as valid.</p> <p>Since it may be rather difficult to determine which MS complies with these requirements, the instruction has listed the MS meeting these conditions: NL, FR, UK, DE, CZ, DK, SI, FIN, LU and SE (see below on Article 8 of the Directive). The instruction indicates that this is without prejudice to other MS adopting similar registered partnerships. Therefore, the <i>de facto</i> union in Portugal are not considered “registered partnerships” for the</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
						purpose of the law, but they will be treated as “other family members” (see below Art. 3(2)(b)).
Art. 2.2 (c)	(c) the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined in point (b);	Article 2(c) RD 240/2007 Instruction 03/2007 First Section(4)	<p>c) A sus descendientes directos, y a los de su cónyuge o pareja registrada siempre que no haya recaído el acuerdo o la declaración de nulidad del vínculo matrimonial, divorcio o separación legal, o se haya cancelado la inscripción registral de pareja, menores de veintinueve años, mayores de dicha edad que vivan a su cargo, o incapaces.</p> <p>4.- En relación con el concepto de “a su cargo”, referido respectivamente, a los ascendientes mayores de 21 años y a los ascendientes del ciudadano comunitario o de su cónyuge o pareja registrada, es oportuno hacer las siguientes clarificaciones:</p> <p>Para que estos familiares del ciudadano comunitario puedan beneficiarse del régimen comunitario de extranjería deben acompañarle o reunirse con él, y vivir a su cargo.</p> <p>La acreditación del cumplimiento del citado requisito de “vivir a cargo” se realizará:</p> <p>- Cuando el familiar aún se encuentra en su país de origen o procedencia, fuera de España: a lo largo de la tramitación del oportuno visado “familiar UE/EEE” (tipo C, código ESC) cuando el mismo resulte exigible en función de la nacionalidad del</p>	<p>c) direct descendants or those of the spouse or registered partner, provided no agreement or judicial declaration of nullity, divorce or legal separation has been issued or provided the registration has not been cancelled, who are under the age of 21 or above that age who are dependent or disabled.</p> <p>4- In relation to the concept of “dependency”, referred to respectively to ascendants of more than 21 years and ascendants of a Union citizen or of his/her spouse or registered partner, the following clarifications should be made:</p> <p>For Union family members to benefit from the Community regime, they have to join or accompany the Union citizens, and to be dependants.</p> <p>The verification of the compliance with the requirements of dependency shall be carried out:</p> <p>- When the family member is in the country of origin or of the State from where they come, outside Spain: during the procedure to obtain the necessary visa “family member</p>	Y	<p>Effective transposition.</p> <p>Same remark regarding legal separation as made in Article 2(a) on “spouse”.</p> <p>Regarding the concept of “dependant”, the Instruction refers back to the ECJ ruling in <i>Lebon</i> indicating that the status of “dependent” family member is the result of a factual situation, namely the provision of support by the Union citizen without there being any need to determine the reasons for recourse to the Union citizen support or to raise the question whether the person concerned is able to support himself. Therefore, the RD is quoting paragraph 22 of the <i>Lebon</i> ruling. The fact that a citizen of the Union supports a relative is decisive in determining whether he/she is dependent. The Spanish act also includes disability which could be considered as more favourable.</p> <p>This clarification will only be applicable to third country family members who are dependant (see below discussion on the conditions for residence for more than three months).</p> <p>For problems in the restriction of the right to take up employment see Article 23 of the Directive.</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			<p>familiar de ciudadano comunitario, de acuerdo con lo establecido en el Reglamento (CE) 539/2001 del Consejo, de 15 de marzo, por el que se establecen la lista de terceros países cuyos nacionales están sometidos a la obligación de visado para cruzar las fronteras exteriores y la lista de terceros países cuyos nacionales están exentos de esa obligación (modificado por los Reglamentos (CE) 2414/2001, del Consejo, de 7 de diciembre de 2001, (CE) 453/2003 de 6 de marzo de 2003, y (CE) 1932/2006, de 21 de diciembre de 2006).</p> <p>-Cuando el familiar se encuentra ya en el territorio español: al tramitar la tarjeta de residencia de familiar de ciudadano de la Unión, según lo previsto en el artículo 8.3.d) del Real Decreto 240/2007. (...)</p> <p>Así debe recordarse que el Tribunal de Justicia de las Comunidades Europeas en su sentencia de 18 de junio de 1987 sobre el asunto 316/85 (asunto Lebon), dictaminó que la calidad de miembro de la familia a cargo resulta de una situación de hecho, tratándose de un miembro de la familia cuyo mantenimiento viene asegurado por el ciudadano comunitario, sin que sea necesario determinar las razones del recurso a ese mantenimiento ni preguntarse si el familiar está en condiciones de asumir o no por sí mismo su sostenimiento.</p> <p>Dicha sentencia viene fundamentada en la</p>	<p>of EU/EEA” (type C, code ESC) when the visa is required due to the nationality of the family member according to Council Regulation 539/2001 of 15 March listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (modified by Council Regulation 2414/2001 of 7 December 2001, 453/2003 of 6 March 2003 and 1932/2006 of 21 December 2006.</p> <p>- When the family member is already in the Spanish territory: when requesting for the residence card of family member of a Union citizens, according to Article 8.3.d) of RD 240/2007 (...)</p> <p>It should be remembered that the ECJ judgement of 18 June 1987 on case 316/85 (Lebon), established that the status of dependent family member is the result of a factual situation, namely the provision of support by the Union citizen without there being any need to determine the reasons for recourse to the Union citizen support or to raise the question whether the person concerned is able to support himself.</p> <p>This judgement is based on the</p>		

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			expresión “a cargo” , contenida en el artículo 10 del Reglamento (CEE) 1612/1968 del Consejo, de 15 de octubre relativo a la libre circulación de los trabajadores dentro de la Comunidad, manteniéndose dicha expresión en idénticos términos en la redacción dada a los supuestos planteados por el artículo 2 de la Directiva 2004/38/CE	expression “dependent” included in Article 10 of Council Regulation 1612/1968 of 15 October on free movement of workers within the Community. This expression is retained with identical meaning in the situations listed in Article 2 of Directive 2004/38/EC.		
Art. 2.2 (d)	(d) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b);	Article 2(d) RD 240/2007	d) A sus ascendientes directos, y a los de su cónyuge o pareja registrada que vivan a su cargo, siempre que no haya recaído el acuerdo o la declaración de nulidad del vínculo matrimonial, divorcio o separación legal, o se haya cancelado la inscripción registral de pareja.	d) direct ascendants and those of the spouse or registered partner provided no agreement or judicial declaration of nullity, divorce or legal separation has been issued, or provided the registration has not been cancelled.	Y	Effective transposition Same remark regarding legal separation made in Article 2(a) on “spouse”.
Art. 2.3	"Host Member State" means the Member State to which a Union citizen moves in order to exercise his/her right of free movement and residence.	Article 1 RD/240/2007	Artículo 1. <i>Objeto</i> . 1. El presente real decreto regula las condiciones para el ejercicio de los derechos de entrada y salida, libre circulación, estancia, residencia, residencia de carácter permanente y trabajo en España por parte de los ciudadanos de otros Estados miembros de la Unión Europea y de los restantes Estados parte en el Acuerdo sobre el Espacio Económico Europeo, así como las limitaciones a los derechos anteriores por razones de orden público, seguridad pública o salud pública.	<i>Object</i> This royal decree regulates the conditions governing the exercise of the rights of entry and exit, free movement, stay, residence, permanent residence and work in Spain of Union citizens and citizens of the remaining States members to the EEA, as well as the limitation to these rights on grounds of public order, public security or public health.	Y	Effective transposition It has not been specifically transposed. However, the provision defining the object of the law clearly established that it applies “in Spain” which covers the whole national territory, including Ceuta and Melilla, and the Canary Islands.
Art. 3.1	Beneficiaries This Directive shall apply to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members as defined in point 2 of Article 2 who accompany or join them.	Article 1 RD 240/2007	Artículo 1. <i>Objeto</i> . 1. El presente real decreto regula las condiciones para el ejercicio de los derechos de entrada y salida, libre circulación, estancia, residencia, residencia de carácter permanente y trabajo en España por parte de los ciudadanos de otros Estados miembros de la Unión Europea y de los restantes Estados parte en el Acuerdo sobre el Espacio Económico Europeo, así como las limitaciones a los derechos anteriores por	<i>Object</i> This royal decree regulates the conditions governing the exercise of the rights of entry and exit, free movement, stay, residence, permanent residence and work in Spain of Union citizens and citizens of the remaining States members to the EU or EEA , as well as the limitation to these rights on	N, incorrect	Incorrect transposition The Spanish legislation applies to Union citizens, citizens of EEA countries and their family members. Despite the fact that the Spanish act says “remaining States” and thus will exclude Spanish citizens who have exercised their rights of free movement, the recitals of the act

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Article 2 RD 240/2007	<p>razones de orden público, seguridad pública o salud pública.</p> <p><i>Aplicación a miembros de la familia del ciudadano de un Estado miembro de la Unión Europea o de otro Estado parte en el Acuerdo sobre el Espacio Económico Europeo.</i></p> <p>El presente real decreto se aplica también, cualquiera que sea su nacionalidad, y en los términos previstos por éste, a los familiares de ciudadano de otro Estado miembro de la Unión Europea o de otro Estado parte en el Acuerdo sobre el Espacio Económico Europeo, cuando le acompañen o se reúnan con él (...)</p> <p>1- Los artículos 1 y 2 del Real Decreto 240/2007 establecen la aplicabilidad del mismo a: (...)</p> <p>- los ciudadanos de los otros 26 Estados miembros de la Unión Europea, incluidos los nacionales de Bulgaria y Rumanía, Estados adheridos el 1 de enero de 2007, que únicamente tienen las especialidades derivadas del periodo transitorio respecto al régimen de libre circulación de trabajadores por cuenta ajena según los establecido en el Acta relativa a las condiciones de adhesión de estos dos Estados y en el Acuerdo del Consejo de Ministros de 22 de diciembre de 2006, y a los que se dedica la Cuarta de la presentes Instrucciones).</p> <p>- los familiares de dichos ciudadanos de los otros 26 Estados miembros de la Unión</p>	<p>grounds of public order, public security or public health.</p> <p><i>Application to the family Members of an Union citizens or of a State Member of the EEA</i></p> <p>The present royal decree shall also apply, regardless of their nationality, and according to the conditions established herein to family members of an Union citizen or of State member of the EEA accompanying or joining the Union citizen or the EEA citizen (...)</p> <p>1- Articles 1 and 2 of Royal Decree 240/2007 established the applicability to: (...)</p> <p>- citizens of the other 26 Member States, including citizens of Bulgaria and Romania which joined the Union on 1 January 2007, who shall only have the specificities derived from the transitional period for free movement of workers according to the Act of establishing the conditions for adhesion of these countries and the Agreement of the Council of Ministers of 22 December 2006, to whom section of 4 of these instructions applied.</p> <p>- family members of the citizens of the 26 Member States of the</p>		<p>clearly indicates even wholly national situations are covered by the legislation., in this sense going beyond <i>Surinder Singh</i> case law.</p> <p>This Additional Provision to the Aliens Act allows the application of RD 240/2007 to family members of a Spanish citizen even when the Spanish citizen has not exercised his/her right of free movement. However, it is not clear whether Spanish citizens who have exercised the right of free movement would be covered by RD 240/2007 at full or by this more specific regime. It would seem that the regime introduced by 20th Additional Provision applies regardless whether the Spanish citizen has exercised the right of free movement or not, since the provision does not exclude from its scope of application returning Spanish nationals.</p> <p>This would make the Spanish legislation not in conformity with the Directive when applied to third country family members of a Spanish citizen who exercised the right of free movement because the regime is more onerous than for Union citizens. For example, the recognition of the marriage would be more burdensome (it has to be registered in the Spanish Civil Register, in order to prove legality and produce effects in Spain-which obviously is not required for Union citizens); or to be considered a registered partner would be more difficult, as shown above.</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		<p>Article 1(3) LO 4/2000</p> <p>20th Additional Provision of LO 4/2000 (introduced by Third Final Provision of RD 240/2007)</p>	<p>Europea, cuando les acompañen o se reúnan con ellos en España y tengan uno de los vínculos familiares de los relacionados en el artículo 2 del Real Decreto 240/2007.</p> <p>Los nacionales de los Estados miembros de la Unión Europea y aquellos a quienes sea de aplicación el régimen comunitario se registrarán por la legislación de la Unión Europea, siéndoles de aplicación la presente Ley en aquellos aspectos que pudieran ser más favorables.</p> <p>Normativa aplicable a miembros de la familia de ciudadano español que no tengan la nacionalidad de un Estado miembro de la Unión Europea o de un Estado parte en el Acuerdo sobre el Espacio Económico Europeo.</p> <p>1. El Real Decreto 240/2007, (...) será de aplicación, cualquiera que sea su nacionalidad, y en los términos previstos por éste, a los familiares de ciudadano español, cuando le acompañen o se reúnan con él, y estén incluidos en una de las siguientes categorías:</p> <p>a) A su cónyuge (...)</p> <p>b) A la pareja con la que mantenga una unión análoga a la conyugal inscrita en un registro público (...)</p> <p>c) A sus descendientes directos, y a los de su cónyuge o pareja registrada (...), menores de veintiún años, mayores de dicha edad que vivan a su cargo, o incapaces.</p>	<p>Union, when they accompany or join the Union citizen in Spain and have the family links listed in Article 2 of RD 240/2007.</p> <p>The nationals of Member States of the European Union and those to whom the Community regime is applicable shall be regulated by the EU legislation. This law shall only apply to them in those aspects that will be more favourable.</p> <p>Rules applicable to family members of a Spanish citizen who does not have the nationality of a Member State of the EU or a State member to the EEA.</p> <p>1. RD 240/2007 shall be applicable, regardless of nationality) and according to the rules laid therein, to family members of a Spanish citizen that are accompanying or joining the him/her and are included in one of the following categories:</p> <p>a) the spouse (...)</p> <p>b) the partner with whom he/she has a relation equivalent to marriage and is registered in a public registered (...)</p> <p>c) direct descendants of the Spaniard and of his/her spouse or registered partner (...) who are below 21 years old or that are dependant or disabled.</p>		<p>In addition, the personal scope of the concept “family members” is reduced for ascendants. In this case, RD 240/2007 only applies when the ascendant was, at the time of entry into force of the RD, holder of a in effect or renewable residence card of family member of Community citizen issued under RD 178/2003 (the old legislation on entry and residence of Union citizens). Furthermore, this only applies for the ascendants of the Spanish citizen or of those of his/her spouse (not the partner’s). For other direct ascendants the Aliens Act applies</p> <p>Regarding <i>Metock</i>, Spain does not impose any condition of lawful residence and would also cover the situation of third country nationals who are not lawfully residence and become family members. For more details see CS.</p> <p>Article 1(3) of LO 4/200 is clearly excluding from its scope third country family members since these are subject to the Community Regime. Only in the cases expressly indicated in RD 240/2007, LO 4/2000 will be applicable as well as when LO 4/2000 offers a more favourable treatment.</p> <p>RD 240/2007 introduces an Additional Provision to LO 4/2000 to apply RD 240/2007 to family members of a Spanish citizen when the Spanish citizen has not exercised his/her right of free movement.</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			<p>d) A sus ascendientes y a los de su cónyuge (...) que vivan a su cargo, siempre que en la fecha de entrada en vigor del Real Decreto 240/2007, de 16 de febrero fueran titulares de una tarjeta de familiar de residente comunitario en vigor o susceptible de ser renovada,</p> <p>2. La reagrupación familiar de ascendientes directos de ciudadano español, o de su cónyuge, se regirá por lo previsto en la sección 2.ª del capítulo I del título IV del presente reglamento.»</p>	<p>d) the ascendants of the Spaniard or his/her spouse (...) who are dependant provided they were holders of a residence card of a family member of a Union citizen susceptible of being renovated and issued according to RD 240/2007.</p> <p>2. the reunion of direct ascendants of the Spanish citizen or his/her spouse shall be governed by Chapter I of Title IV of the present regulation.</p>		<p>The instructions 03/2007 also includes specific details regarding Spanish citizens as well as third country nationals residing in Spain to benefit from some of the provisions of the more general regime included in RD 240/2007.</p>
Art. 3.2 (a)	<p>Without prejudice to any right to free movement and residence the persons concerned may have in their own right, the host Member State shall, in accordance with its national legislation, facilitate entry and residence for the following persons:</p> <p>(a) any other family members, irrespective of their nationality, not falling under the definition in point 2 of Article 2 who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen;</p>	19 th Additional Provision of LO 4/2000 (introduced by Third Final Provision RD 240/2007)	<p><i>[Modificación del Reglamento de la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social, aprobado por Real Decreto 2393/2004, de 30 de diciembre.]</i></p> <p>El Reglamento de la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social, aprobado por Real Decreto 2393/2004, de 30 de diciembre, queda modificado como sigue:</p> <p>Uno. Se introduce una disposición adicional decimonovena:]</p> <p>«Disposición adicional decimonovena. <i>Facilitación de la entrada y residencia de los familiares de ciudadano de un Estado miembro de la Unión Europea o de otro Estado parte en el Acuerdo sobre el Espacio Económico Europeo, no incluidos en el ámbito de aplicación del 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</i></p>	<p><i>[Modification of the Regulation of the LO 4/2000 of 11 January, on freedoms and rights of aliens in Spain and their social integration approved by RD 2393/2004 of 30 December</i></p> <p>The Regulation of the Organic law 4/2000 of 11 January on freedoms and rights of aliens in Spain and their social integration approved by RD 2393/2004, of 30 December, shall be modified as follows:</p> <p>One. A Additional Disposition 19 is introduced:]</p> <p>19th Additional Disposition <i>Facilitation of the right of entry and residence to family members of a Union citizen or a State member to the EEA not included in the scope of application of RD 240/2007 of 16 February on entry, free movement and residence in Spain of Union citizens and citizens of other States members to the EEA.</i></p>	No, incorrect and incomplete	<p>Incorrect and incomplete transposition</p> <p>RD 240/2007 limits the personal scope of other family members to the 2nd degree in direct or collateral line including blood and affinity family members. The Directive does not establish this limitation and therefore the Spanish legislation should be considered as not in conformity with the Directive.</p> <p>The limitation might have little impact in practical terms for ascendants in direct line and direct descendants of less than 21 years old or dependent (because all are covered by Article 2 of the RD).</p> <p>However the limitation will have significant impact when applied to collateral lines (and to a certain extent to direct descendant lines). There, the RD establishes an unnecessary restriction which has not been established by the Directive. In</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Article 31(3) LO 4/2000	<p><i>el Acuerdo sobre el Espacio Económico Europeo.</i></p> <p>Las Autoridades competentes facilitarán, de acuerdo con lo dispuesto en la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social, y en el presente Reglamento, la obtención del visado de residencia o, en su caso, de una autorización de residencia por circunstancias excepcionales, a quien sin estar incluido en el artículo 2 del 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, acompañe a un ciudadano de la Unión o se reúna con él, y se halle en una de las siguientes circunstancias:</p> <p>a) Sea otro familiar con parentesco hasta segundo grado, en línea directa o colateral, consanguínea o por afinidad, que, en el país de procedencia, esté a cargo o viva con el ciudadano de otro Estado miembro de la Unión Europea o de otro Estado parte en el Acuerdo sobre el Espacio Económico Europeo, o cuando por motivos graves de salud o discapacidad, sea estrictamente necesario que dicho ciudadano se haga cargo de su cuidado personal</p> <p>Artículo 31 Situación de residencia temporal</p> <p>3. La Administración podrá conceder una</p>	<p>The competent authorities shall facilitate according to LO 4/2000 of 11 January on rights and liberties of foreigners in Spain and social integration and in the present Regulation, that those accompanying or joining a Union citizen or a citizen of State member to the EEA not falling under Article 2 RD 240/2007 obtain a residence visa or, when applicable, a residence permit for exceptional circumstances provided they fall under any of the following circumstances:</p> <p>(a) any other family members up to second degree in direct or collateral line, consanguineous or by affinity who, in the country from which the have come are dependants or members of the household of the Union citizen or citizen of a State member to the EEA or where serious health grounds or handicaps strictly require the personal care of the family member by the Union citizen or the citizen of a State member to the EEA.</p> <p>Article 31. Situation of temporary residence</p> <p>3. The administration may grant an authorisation of temporary</p>		<p>fact by limiting to the second degree, the facilitating mechanism would only apply to:</p> <ul style="list-style-type: none"> • direct line: (up line) up to grand fathers including blood and affinity relatives, and (down line) up to grand children including blood and affinity relatives –provided they are not covered by Article 2 • collateral line: only brothers (including both blood and affinity relatives). <p>Given the live expectancy rates, it is not unusual that there are great fathers and great sons. These would probably fall under the concept of “family member” because they will be considered dependent. More complicated is the situation of collateral relatives. Here, it would only cover brothers/sisters and brother/sisters in law. The legislation thus excludes uncles, aunts, nephews, nieces and cousins. It might not be unusual to be in charge of the nephew or niece (e.g., death of both his/her parents). RD 240/2007 therefore limits the concept of other family members even though is not limited by the Directive with the potential impact of limiting the rights of entry and residence of family members other than those included in the RD 240/2007. For all these reasons, it is considered that the Spanish legislation is not in conformity with the Directive.</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Article 46 Aliens Regulation	<p>autorización de residencia temporal por situación de arraigo, así como por razones humanitarias, de colaboración con la Justicia u otras circunstancias excepcionales que se determinen reglamentariamente. En estos supuestos no será exigible el visado.</p> <p>Artículo 46 Procedimiento</p> <p>1. La autorización de residencia temporal por circunstancias excepcionales, que no requerirá visado, deberá ser solicitada personalmente por el extranjero ante el órgano competente para su tramitación, salvo en el caso de menores o incapaces, en el que podrá presentar la solicitud su representante legal, acompañada de la siguiente documentación:</p> <p>a) Pasaporte en vigor o título de viaje, reconocido como válido en España, con una vigencia mínima de cuatro meses. En los términos fijados en la resolución del Ministro del Interior por la que se autorice la permanencia del interesado en España en los casos del artículo 17.2 de la Ley 5/1984, de 26 de marzo, reguladora del derecho de asilo y de la condición de refugiado, se podrá eximir de este requisito.</p> <p>b) En los casos en que se exija, contrato de trabajo firmado por el trabajador y el empresario con una duración mínima de un año, cuyos efectos estarán condicionados a la</p>	<p>residence for reasons of “having taken roots in the country”, as well as for humanitarian reasons, for collaborating with the Justice or for any other exceptional circumstances established by regulation. In these cases, a visa shall not be required.</p> <p>Article 46 Procedure</p> <p>1. The authorisation of temporal residence for exceptional circumstances, that shall not require a visa, shall be requested personally by the alien before the competent body for its proceeding, except in the case of minors and unfit people, who may request the authorisation via a legal representative. The request shall be accompanied of the following documents:</p> <p>a) Passport (not expired) or travel document, recognised as valid in Spain with a minimum validity of 4 months. In those cases where the authorisation is granted on the basis of Article 17.2 of Law 5/1984 regulating the right of asylum and the condition of refugee, this requirement may be exempted by Resolution of the Ministry of Interior.</p> <p>b) in the cases where it applies, a employment contract signed by the employee and the employer with a minimum duration of 1 year, the effects of which shall</p>		<p>Regarding facilitation, the general regime for foreigners applies in this case. In fact, these family members are subject to a “residence visa” or a “residence authorisation for exceptional circumstance” and the authorities are required to facilitate that these family members obtain when required the necessary residence visa as well as the this residence authorisation for exceptional circumstances.</p> <p>Two remarks: the legislation does not refer to facilitation of entry visa, which may render the transposition incomplete since the conditions for short terms visits (up to 3 months) are not the same as those for residence visas.</p> <p>However, how this facilitation will take place is not clear either from the law or from the Instruction.</p> <p>The other possibility regulated by 19th Additional Provision is the <i>authorisation for residence for exceptional circumstances</i>. The authorisation for residence for exceptional circumstances is regulated in Article 31(3) of LO 4/2000 and in detailed in Article 45-48 of the Aliens Regulation. This authorisation is mostly granted to people already working in Spain for 2 years, those living in Spain for 3 years, as well as to persons needing international protection or for humanitarian reasons (e.g., persons who had been victims of crimes of</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			<p>entrada en vigor de la autorización de residencia y trabajo solicitada.</p> <p>c) Documentación acreditativa de encontrarse en alguna de las situaciones a las que se refiere el artículo anterior. (...)</p> <p>4. El órgano competente podrá requerir del solicitante que aporte los documentos señalados en los artículos anteriores u otros documentos que sean necesarios para justificar los motivos de la solicitud, y le manifestará que, de no hacerlo en el plazo que se señale en la notificación, que no podrá ser superior a un mes, se le tendrá por desistido de la solicitud y se producirá el archivo del procedimiento.</p> <p>5. Asimismo, el órgano competente podrá requerir la comparecencia del solicitante y mantener con él una entrevista personal. Cuando se determine la celebración de la entrevista, en ella deberán estar presentes, al menos, dos representantes de la Administración, además del intérprete, en caso necesario, y quedará constancia de su contenido mediante un acta firmada por los presentes, de la que se entregará copia al interesado. Si los representantes de la Administración llegaran al convencimiento de que existen indicios suficientes para dudar de la identidad de las personas, de la validez de los documentos o de la veracidad de otras circunstancias en que se ha basado la solicitud, se recomendará la denegación de la</p>	<p>be conditioned to the entry into force of the authorisation for residence and working.</p> <p>c) Documents attesting that the person is in one of the situations referred to in the previous Article. (...)</p> <p>4. The competent body shall require the applicant to bring the abovementioned documents and other necessary documents to justify the grounds for the request and shall explain to the applicant that in case of not doing it within the timeframe in the notification, which shall not be more than one month, the application shall be considered as desisted and the procedure shall be filed.</p> <p>5. Similarly, the competent body may request the presence of the application and have a personal interview. When the interview is carried out, at least two representatives of the administration shall be present, and an interpreter if needed, and its contents shall be reproduced in the minutes signed by all persons present, and a copy shall be given to the concerned person. If the representative of the administration are convinced that there are sufficient indications to doubt of the identity of the persons, the validity of the documents</p>		<p>racism or xenophobia, persons needing health treatment in Spain, persons whose life of that or his/her family members is in danger in the country of origin).</p> <p>It is also used to grant the residence authorisation to persons who are third country nationals unlawfully residing in Spain (e.g., they entered the country illegally without a visa) but due to exceptional circumstances (mostly those linked to the protection of the family life, such as being parents of a Spanish citizen), the person has a right of residence. In this case, it is a type of exceptional regularisation. Therefore, this type of authorisation is a specific one and somehow preferential</p> <p>The Legislation does not include specific aspects regarding the visa and no Instructions has been issued in this regard by the Ministry of Foreign Affairs.</p> <p>Therefore, although the provision has been transposed and it requires facilitation, even specifying the type of authorisation that should be granted, there is little information on how this provision works in practice.</p> <p>It should be noticed that these provisions apply for third country family members. For EU family members the general regime for Union citizens applies and therefore they do not need any to comply with any conditions apart being family</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Article 47 Aliens Regulation	<p>autorización y se remitirá copia del acta al organismo competente para resolver. En caso de que surgieran dudas sobre el criterio a seguir, el órgano competente deberá elevar la consulta correspondiente a la Dirección General de Inmigración. (...)</p> <p>8. En el plazo de un mes desde la notificación de la concesión de la autorización de residencia temporal por circunstancias excepcionales o, en su caso, desde su entrada en vigor, el extranjero deberá solicitar personalmente la tarjeta de identidad de extranjero.</p> <p>Artículo 47. Renovación y cese de la situación de residencia temporal por circunstancias excepcionales.</p> <p>1. Los titulares de una autorización concedida por el Secretario de Estado de Seguridad, o autoridad en quien delegue, podrán renovar la autorización siempre que se aprecie por las autoridades competentes que permanecen las razones que motivaron su concesión. Solamente en el caso de que las autoridades concluyesen que han cesado las razones que motivaron su concesión, podrán solicitar una autorización de residencia o una autorización de residencia y trabajo, siempre y cuando cumplan los requisitos establecidos por este reglamento para su obtención, con excepción del visado.</p>	<p>submitted or the veracity of other circumstances on which the application was based, the refusal of the application shall be recommended and the copy of this act and the minutes shall be sent to the competent authority to decide. If there were doubts regarding the criteria to follow, the competent authority shall consult the Directorate General of Immigration. (...)</p> <p>8. The alien shall personally request the aliens identity card within a month from the notification of the concession of the authorisation of the temporal residence for exceptional circumstances.</p> <p><i>Article 47. Renewal and cancellation of the situation of temporal residence for exceptional circumstances.</i></p> <p>1. The holders of the authorisation issued by the State Secretary for Security, or the authority upon which he/she has delegated his powers may renew the authorisation provided the grounds on which the authorisation was granted still exist according to the competent authorities. Only when the competent authorities conclude that the grounds no longer exist, the aliens may request and authorisation for residence and work, provided the conditions to grant this authorisation</p>		<p>members.</p> <p>In addition, for third country family members beyond the second degree, no facilitation right exists and thus the general aliens regime applies.</p> <p>Although Article 3(2) has been transposed and there is an obligation to facilitate (even specifying the type of authorisations that should be granted), there is little information on how this provision works in practice. The transposition of Article 3(2) carried out by Spain is more favourable in that other family members who are themselves Union citizen will have a right of entry and residence for being Union citizen with no other conditions.</p> <p>However, overall the transposition is considered incorrect and incomplete for third country family members. Incorrect because of the narrow interpretation of other family members (limited to the second degree) and incomplete because the legislation does not include specific requirements regarding facilitation of entry (and entry visa) and no Instructions has been issued in this regard by the Ministry of Foreign Affairs. The only reference to entry is provided in the last paragraph of 19th Additional Provision but does not seem sufficient to facilitate entry</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
				according to this regulation are met, with the exception of the visa.		
Art. 3.2 (b)	(b) the partner with whom the Union citizen has a durable relationship, duly attested.	19 th Additional Provision of LO 4/2000 (this provision was introduced by Third Final Provision RD 240/2007)	b) sea la pareja, ciudadano de un Estado no miembro de la Unión Europea ni parte en el Acuerdo sobre el Espacio Económico Europeo, con la que el ciudadano de la Unión mantiene una relación estable debidamente probada.	b) the partner with whom a Union citizen has a durable relationship duly attested provided the partner is not a Union citizen or citizen or a State member to the EEA	Y, more favourable	Effective and more favourable transposition. The same regime explained above it is applicable here. The problems regarding facilitation of entry expressed above can be reproduced here. If the partner is a Union citizen, then no conditions are needed. All Union citizens can enter and reside in Spain with no conditions –see below at Art. 7.
	The host Member State shall undertake an extensive examination of the personal circumstances and shall justify any denial of entry or residence to these people.	19 th Additional Provision of LO 4/2000 (this provision was introduced by Third Final Provision RD 240/2007)	Las autoridades competentes estudiarán detenidamente las circunstancias personales en las solicitudes de entrada, visado o autorizaciones de residencia presentadas y justificarán toda denegación de las mismas.	The competent authorities shall undertake an extensive examination of the personal circumstances in the requirements for entry, visa or residence permits submitted and shall justify any denial of entry, visa or residence permit of these people.	Y	Almost literal transposition. Lack of consistency – does not refer to EEA but to be construed with previous provision. See also comments above at Article 3(2)(a) for more details.
Chapter II	RIGHT OF EXIT AND ENTRY					
Art. 4.1	Right of Exit Without prejudice to the provisions on travel documents applicable to national border controls, all Union citizens with a valid identity card or passport and their family members who are not nationals of a Member State and who hold a valid passport shall have the right to leave the territory of a Member State to travel to another Member State.	Article 5 RD 240/2007	<i>Salida.</i> Los ciudadanos de un Estado miembro de la Unión Europea o de otro Estado parte en el Acuerdo sobre el Espacio Económico Europeo, y los miembros de su familia con independencia de su nacionalidad, tendrán derecho a salir de España para trasladarse a otro Estado miembro, ello con independencia de la presentación del pasaporte o documento de identidad en vigor a los funcionarios del control fronterizo si la salida se efectúa por un puesto habilitado, para su obligada	<i>Exit</i> The Union citizens, or citizens of a State member to the EEA, and their family members regardless of their nationality, shall have the right to leave Spain to travel to another Member State, without prejudice to the presentation of the passport or in force identity card to the authorities in charge of border control, if the exit takes	Y	Effective transposition. The right of exit is recognised except where the application of the Criminal Code prevents free movement (which is in line with the ECJ case law- see for example <i>Kremzov</i>). Criminal Code establishes the ban from exit the country in the case of imprisonment and when applying specific security measures. In the ToC only the security measures that

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Article 61 LO 4/2000	<p>3. El juez o tribunal tendrá en cuenta para adoptar la prisión provisional la repercusión que esta medida pueda tener en el imputado, considerando sus circunstancias y las del hecho objeto de las actuaciones, así como la entidad de la pena que pudiera ser impuesta.</p> <p>4. No se adoptará en ningún caso la prisión provisional cuando de las investigaciones practicadas se infiera racionalmente que el hecho no es constitutivo de delito o que el mismo se cometió concurriendo una causa de justificación.</p> <p>Artículo 61. Medidas cautelares.</p> <p>1. Desde el momento en que se incoe un procedimiento sancionador en el que pueda proponerse la expulsión, el instructor, a fin de asegurar la resolución final que pudiera recaer, podrá adoptar alguna de las siguientes medidas cautelares:</p> <ol style="list-style-type: none"> a. Presentación periódica ante las autoridades competentes. b. Residencia obligatoria en determinado lugar. c. Retirada del pasaporte o documento acreditativo de su nacionalidad, previa entrega al interesado del resguardo acreditativo de tal medida. d. Detención cautelar, por la autoridad gubernativa o sus agentes, por un período máximo de 72 horas previas a la solicitud de internamiento. En cualquier otro supuesto de detención, la puesta a disposición 	<p>3. The judge or court shall have into account when deciding on the provisional prison, the impact of such measure on the defendant, having regard to the personal circumstances and the facts investigated, as well as the seriousness of the penalty the may be imposed.</p> <p>4. In no case shall the preventive prison be decided when the investigations carried out rationally indicate that the facts cannot be qualified as a crime or when the crime was committed and there are justifications.</p> <p>Article 61. Precautionary measures</p> <p>1. from the moment in which an punitive procedure that may lead to expulsion is adopted, the instructor, in order to ensure the final resolution of the case, may take any of the following precautionary measures:</p> <ol style="list-style-type: none"> a. Regular personal appearance before the competent authorities b. Compulsory residence in a given place c. withdrawal of passport or document attesting nationality, provided the person receives a document attesting such measure. d. Provisional detention, by governmental authorities or their agents for a maximum period of 72 hours previous to the request 		<p>They may however apply to other family members, since as seen before, remain regulated under the general aliens legislation although with specialities.</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			judicial se producirá en un plazo no superior a 72 horas. e. Internamiento preventivo, previa autorización judicial en los centros de internamiento.	of reclusion. In any other case of detention, the person shall be brought to court within 72 hours. e. preventive reclusion, previous judicial authorisation, in reclusion centres.		
Art. 4.2	No exit visa or equivalent formality may be imposed on the persons to whom paragraph 1 applies.	Article 5 RD 240/2007	<i>Salida.</i> Los ciudadanos de un Estado miembro de la Unión Europea o de otro Estado parte en el Acuerdo sobre el Espacio Económico Europeo, y los miembros de su familia con independencia de su nacionalidad, tendrán derecho a salir de España para trasladarse a otro Estado miembro, ello con independencia de la presentación del pasaporte o documento de identidad en vigor a los funcionarios del control fronterizo si la salida se efectúa por un puesto habilitado, para su obligada comprobación, y de los supuestos legales de prohibición de salida por razones de seguridad nacional o de salud pública, o previstos en el Código Penal.	<i>Exit</i> The Union citizens, or citizens of a State member to the EEA, and their family members regardless of their nationality, shall have the right to leave Spain to travel to another Member State, without prejudice of the presentation of the passport or in force identity card to the authorities in charge of border control, if the exit takes place through a “official exit point” for its required check and without prejudice of the exit bans imposed on grounds of national security or public health or foreseen in the Criminal Code.	Y	Effective transposition. No exit visa is required. The only requirement is a passport and an identify card in effect (in Spanish meaning that has not expired), thus <i>a contrario</i> no exit visa is required. The provision actually is only expressly requiring the ID or passport when the exit takes place through one of the official exit points.
Art. 4.3	Member States shall, acting in accordance with their laws, issue to their own nationals, and renew, an identity card or passport stating their nationality.	Article 9 LO National security	Artículo 9. 1. Todos los españoles tendrán derecho a que se les expida el Documento Nacional de Identidad, que gozará de la protección que a los documentos públicos y oficiales otorgan las Leyes, y que tendrá, por si solo, suficiente valor para la acreditación de la identidad de las personas. 2. El Documento Nacional de Identidad será obligatorio a partir de los catorce años (...). 3. En el Documento Nacional de Identidad figurarán la fotografía y la firma de su titular, así como los datos personales que se determinen reglamentariamente (...)	All Spanish citizens shall the right to obtain a National Identity Card which shall have the protection given to official and public documents granted by the Law, and shall have, on its own, enough value to certify a person’s identity. 2. The National Identity Card shall be compulsory from 14 years old (...) 3. In the National Identity Card shall be included the photography, the signature of the holder and his/her personal data	Y	Effective transposition It is compulsory for all Spanish nationals to have an ID cards which are issued every 5 years. And passport on request. It is possible that a Spanish national only has a passport (e.g., Spanish nationals who are residents abroad or born abroad). The ID is according to Spanish law a non transferable document that is valid to certify identity, personal data and nationality. It is compulsory from 154 years old but it can be issued upon request for younger people

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Article 10 LO national security	Artículo 10. 1. Los españoles podrán entrar en el territorio nacional, en todo caso, acreditando su nacionalidad. Los que pretendan salir de España habrán de estar provistos de pasaporte o documento que reglamentariamente se establezca en los términos de los acuerdos internacionales suscritos por España, que tendrán la misma consideración que el Documento Nacional de Identidad.	as established in the Regulations (...). 1. Spanish citizens shall be able to enter the Spanish territory in all cases attesting his/her nationality. Those Spanish citizens wishing to exit Spain shall hold a passport or other document established by regulation according to international conventions adhered by Spain and will have the same consideration as National Identity Card.		The ID is valid for 5 years if between 14-30 years old; for 10 years if between 30-70 years old and permanent for people older than 70 years old.
		Article 1 RD Passport	Artículo 1.- Naturaleza del pasaporte ordinario y funciones.- El pasaporte ordinario español es un documento público, personal, individual e intransferible, expedido por los órganos de la Administración General del Estado que en este real decreto se señalan, que acredita, fuera de España, la identidad y nacionalidad de los ciudadanos españoles salvo prueba en contrario, y, dentro del territorio nacional, las mismas circunstancias de aquellos españoles no residentes.	Article 1.- Nature of ordinary passport and functions.- The ordinary Spanish passport is a public document, personal and individual, issued by the organs of the Central Administration of the State (...) and which certifies outside Spain the identity and nationality of the Spanish citizens unless otherwise proven, and within Spain certifies the same circumstances for Spanish citizens who are not resident in Spain.		
Art.4.4	The passport shall be valid at least for all Member States and for countries through which the holder must pass when travelling between Member States. Where the law of a Member State does not provide for identity cards to be issued, the period of validity of any passport on being issued or renewed shall be not less than five years.	Article 5 RD Passport	Artículo 5.- Validez del pasaporte.- 1. Con carácter general, y sin perjuicio de lo dispuesto en los siguientes apartados de este artículo, el pasaporte tendrá una validez improrrogable de cinco años, si el titular tiene menos de treinta en la fecha de su expedición, y de diez años, cuando haya cumplido esa edad. Para los menores de cinco años la validez del pasaporte se limitará a dos años.	<i>Validity of the passport</i> Generally and without prejudice to the following provisions, the passport shall have a non renewable validity of 5 years, if the holder is less than 30 at the time of issuance, and of 10 years when the holder has turned 30. For citizens below 5 years old, the passport shall have a validity	Y	Effective transposition Passport format: EU format. Spain follows the Council Resolution of 23 June 1981 and Regulation 2252/2006 on biometric passports. New passport can be issued every 5 or 10 years (depending whether the holder is less or more than 30 years

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			2. Los pasaportes expedidos a los menores de catorce años residentes en España que carezcan de documento nacional de identidad, tendrán validez máxima hasta que el menor alcance dicha edad, sin que, en ningún caso, la vigencia sea superior a cinco años.	of 2 years. 2. Passport issued to minors of 14 years old residents in Spain and who are not holders of an ID shall be valid until they acquire majority of age, but this validity may in no case be more than 5 years.		old).
Art. 5.1	Right on Entry 1. Without prejudice to the provisions on travel documents applicable to national border controls, Member States shall grant Union citizens leave to enter their territory with a valid identity card or passport and shall grant family members who are not nationals of a Member State leave to enter their territory with a valid passport.	Article 4(1) RD 240/2007 Article 4(2) RD 240/2007	<i>Entrada.</i> 1. La entrada en territorio español del ciudadano de la Unión se efectuará con el pasaporte o documento de identidad válido y en vigor y en el que conste la nacionalidad del titular. 2. Los miembros de la familia que no posean la nacionalidad de uno de los Estados miembros de la Unión Europea o de otro Estado parte en el Acuerdo sobre el Espacio Económico Europeo efectuarán su entrada con un pasaporte válido y en vigor, (...)	<i>Entry</i> A Union citizen shall enter the territory of Spain with a valid and in force passport or identity card in which the nationality of the Union citizen is indicated. The family members who are not nationals of a Member State or a State member to the EEA shall enter Spain with a valid and in force passport (...)	Y	Effective transposition. Notice that despite the fact that the provision refers to in force passport (has not expired) in practice, entry with expired passports is possible for countries party to the Council of Europe agreement. More information can be obtained on the website of the Ministry of Interior: http://www.mir.es/SGACAVT/extranje/control_fronteras/documentos_entrada.html
	No entry visa or equivalent formality may be imposed on Union citizens.	Article 4(1) RD 240/2007	<i>Entrada.</i> 1. La entrada en territorio español del ciudadano de la Unión se efectuará con el pasaporte o documento de identidad válido y en vigor y en el que conste la nacionalidad del titular.	A Union citizen shall enter the territory of Spain with a valid and in force passport or identity card in which the nationality of the Union citizen is indicated.	Y	Effective transposition It is not required – Thus conformity is concluded <i>a contrario</i>
Art. 5.2	2. Family members who are not nationals of a Member State shall only be required to have an entry visa in accordance with Regulation (EC) No 539/2001 or, where appropriate, with national law.	Article 4(2) RD 240/270	2. Los miembros de la familia que no posean la nacionalidad de uno de los Estados miembros de la Unión Europea o de otro Estado parte en el Acuerdo sobre el Espacio Económico Europeo efectuarán su entrada con un pasaporte válido y en vigor, necesitando, además, el correspondiente visado de entrada cuando así lo disponga el Reglamento (CE) 539/2001, de 15 de marzo, por el que se establece la lista de terceros países cuyos nacionales están sometidos a la obligación de visado para cruzar las fronteras exteriores y la lista de terceros países cuyos	The family members who are not nationals of a Member State or a State member to the EEA shall enter Spain with a valid and in force passport needing in addition an entry visa when required by Regulation (EC) 539/2001 listing third countries whose nationals are required an entry visa to cross the external borders of the EU and those who are exempted from this requirement.	Y	Effective transposition. The legislation refers to the Regulation. The instructions clarify that the visa is only required for entry and not for the issuance of residence cards (see below comments to Article 10). Although the Instructions refer to the short-stay visa, it is clear that it is an entry visa.

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Instruction 03/2007 First section, point 5	nacionales están exentos de esa obligación. (...) Por el contrario, sí es exigible, a los citados familiares, exclusivamente a los efectos de su entrada en España, el correspondiente visado de estancia, en caso de que sean nacionales de alguno de os Estados incluidos en el Anexo I, del antes citado Reglamento (CE) 539/2001, del Consejo, de 15 de marzo de 2001, por el que se establecen la lista de terceros países cuyos nacionales están sometidos a la obligación de visado para cruzar las fronteras exteriores y la lista de terceros países cuyos nacionales están exentos de esta obligación.	Only for the purposes of their entry in Spain, it shall be required to family members, the short-stay visa, when they are nationals of one of the State listed in Annex I of the already mentioned Council Regulation (EC) 539/2001 listing third countries whose nationals are required an entry visa to cross the external borders of the EU and those who are exempted from this requirement.		
	For the purposes of this Directive, possession of the valid residence card referred to in Article 10 shall exempt such family members from the visa requirement.	Article 4(2) second subparagraph RD 240/2007	La posesión de la tarjeta de residencia de familiar de ciudadano de la Unión, válida y en vigor, expedida por un Estado que aplica plenamente el Acuerdo de Schengen, de 14 de junio de 1985, relativo a la supresión gradual de los controles en las fronteras comunes, y su normativa de desarrollo, eximirá a dichos miembros de la familia de la obligación de obtener el visado de entrada (...)	The possession of a valid and in force residence card issued by a State applying Schengen Agreement shall exempt those family members from the obligation to obtain a entry visa.	N, incorrect	Incorrect transposition Spain only admits the residence card issued by Schengen countries but the Directive has broader scope and refers to all Member States (Schengen and not Schengen) since the Directive refers to residence card issued under Article 10 of the Directive.
	Member States shall grant such persons every facility to obtain the necessary visas. Such visas shall be issued free of charge as soon as possible and on the basis of an accelerated procedure.	Article 4(2) first subparagraph last sentence RD 240/2007	La expedición de dichos visados será gratuita y su tramitación tendrá carácter preferente cuando acompañen al ciudadano de la Unión o se reúnan con él.	The issuance of these visas shall be free of charge and shall be dealt with in a preference way (accelerated procedure) when they accompany or join a Union citizen.	Y	Effective transposition Although Spain has not transposed the first sentence (shall facilitate), the provision seem to be an effective transposition. The “preference” procedure is a sort of emergency procedure and thus would seem enough facilitation. The authorities informed that less documents are requested (only family link to be proven).
Art. 5.3	3. The host Member State shall not place an entry or exit stamp in the passport of family members who are not nationals of	Article 4(2) second subparagraph in fine RD 240/2007	La posesión de la tarjeta de residencia (...) y, a la presentación de dicha tarjeta, no se requerirá la estampación del sello de entrada	(...) the presentation of the residence card shall not require the placement of an exit or entry	Y	Effective transposition. However, notice the limitation to

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
	a Member State provided that they present the residence card provided for in Article 10.		o de salida en el pasaporte.	stamp in the passport.		Schengen countries regarding residence card mentioned above. In any case, the Schengen Code Regulation will apply and this obligation apply to all Member States
Art. 5.4	4. Where a Union citizen, or a family member who is not a national of a Member State, does not have the necessary travel documents or, if required, the necessary visas, the Member State concerned shall, before turning them back, give such persons every reasonable opportunity to obtain the necessary documents or have them brought to them within a reasonable period of time or to corroborate or prove by other means that they are covered by the right of free movement and residence.	Article 4(4) RD 240/2007	En los supuestos en los que un ciudadano de un Estado miembro de la Unión Europea o de un Estado parte en el Acuerdo sobre el Espacio Económico Europeo, o un miembro de su familia, no dispongan de los documentos de viaje necesarios para la entrada en territorio español, o, en su caso, del visado, las Autoridades responsables del control fronterizo darán a estas personas, antes de proceder a su retorno, las máximas facilidades para que puedan obtener o recibir en un plazo razonable los documentos necesarios, o para que se pueda confirmar o probar por otros medios que son beneficiarios del ámbito de aplicación del presente real decreto, siempre que la ausencia del documento de viaje sea el único motivo que impida la entrada en territorio español.	In those cases where a Union citizen or of a State member to the EEA or a family member do not have the travel document necessary to entry the territory of Spain or when so required the necessary visa, the responsible authorities for border control shall before turning them back maximally facilitate that such persons obtain or receive (have them brought to them) in a reasonable period of time the necessary documents or to corroborate or prove by other means that they are beneficiaries under the scope of this royal decree, provided the absence of this travel document is the only reason preventing the entry into Spanish territory.	Y	Effective transposition. The obligation is on the authorities responsible for borders control. However notice that the Spanish legislation has included a <i>provisio</i> at the end (provided the lack of documents is the reason not to be able to entry Spain). The proviso should be read together with the general right of entry described in Article 4(1) according to which the only reasons to deny the right of entry is national security and public health. These reasons are those of Article 27 of the Directive. Therefore the transposition has been considered correct.
Art.5.5	5. The Member State may require the person concerned to report his/ her presence within its territory within a reasonable and non-discriminatory period of time. Failure to comply with this requirement may make the person concerned liable to proportionate and non-discriminatory sanctions.				n/a	Spain has not made use of this option. This is an essential difference with other aliens and “other third country nationals”. These are subject to LO 4/2000. According to Article 12 of the Aliens Regulation, in relation to Article 22(1) of the Schengen Convention, aliens entering the Spanish territory from a Schengen State shall report their presence. This reporting is supposed to be done when crossing the border to the border authorities. If it is not done at

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
						that moment, the person shall report his/her presence within 3 days after entering in one of a Commissariat of Police or Aliens Office and the person shall be included in the Aliens Register. Failure to declare the presence will place the alien in an irregular situation and will be considered a serious offence which may lead to a devolution or expulsion decision (although there are exceptions). Arguably, this obligation to report presence applicable on “other family members” as a consequence of being within the scope of LO 4/2000 within such sort notice (three days) may be considered as not reasonable (and thus contrary to the Directive). In addition, the sanction of expulsion for “other family members” may be considered as disproportionate in light of the ECJ case law (Collins?).
Chapter III RIGHT OF RESIDENCE						
Art. 6.1	<p>Right of residence for less than three months</p> <p>1. Union citizens shall have the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport.</p>	Article 6(1) RD 240/2007	<p><i>Estancia inferior a tres meses.</i></p> <p>1. En los supuestos en los que la permanencia en España de un ciudadano de un Estado miembro de la Unión Europea o de otro Estado parte en el Acuerdo sobre el Espacio Económico Europeo, cualquiera que sea su finalidad, tenga una duración inferior a tres meses, será suficiente la posesión de pasaporte o documento de identidad en vigor, en virtud del cual se haya efectuado la entrada en territorio español, no computándose dicha permanencia a los efectos derivados de la situación de residencia.</p>	<p><i>Residence for less than 3 months</i></p> <p>In those cases where the stay of the Union or EEA citizen, regardless of their purpose, has a duration of less than 3 months, it shall be enough to hold a in force passport or identity card according to which the person has entered the territory of Spain, this period not being counted to derive any rights stemming from the residence</p>	N, incorrect	<p>Incorrect transposition</p> <p>The right of residence is recognised for Union citizens and EEA citizens with the condition of holding a valid passport or ID. Notice that these are the documents that should have allowed the persons’ entry into the territory of Spain. This reference to the document with which the person entered Spain may lead to confusion regarding the interpretation of “legal residence” and “legal entry”, especially since it would only be applicable when the entry took place through an official entry point since it</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
						<p>is the only entry that will require checking the Union citizen's documents.</p> <p>The fact that the RD refers to "regardless their purpose" could be an implicit reference to job seekers although it is two vague as to consider it as an effective transposition for job-seekers. In any case, the period in that case should have been 6 months and not 3.</p> <p>Finally, these initial 3 months will not count to derive any right linked to the residence (<i>e.g.</i>, to obtain the right of permanent residence). This might be the consequence of the fact that there is no obligation to report the presence in the territory in Spain. Registration is compulsory. If the person has not registered as soon as he/she arrives, the fact that these initial three months are not taken into account may be a kind a penalty for not registering. This is against the Directive. The rights are derived from meeting the conditions and not from complying with the formalities established by the national legislation. Therefore, this approach is not in line with the Directive.</p> <p>For all these reasons, the transposition is considered as incorrect.</p>
Art. 6.2	2. The provisions of paragraph 1 shall also apply to family members in possession of a valid passport who are not nationals of a Member State, accompanying or joining the Union	Article 6(2) RD 240/2006	Lo dispuesto en el apartado anterior será de aplicación para los familiares de los ciudadanos de un Estado miembro de la Unión Europea o de otro Estado parte en el Acuerdo sobre el Espacio Económico	The previous paragraph shall also apply to family members of the Union citizen or EEA citizen who are not nationals of one of these States, and are	N, incorrect	<p>Incorrect transposition</p> <p>Third country family members can also reside for more than 3 months with the condition of holding a</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
	citizen.		Europeo, que no sean nacionales de uno de estos estados, y acompañen al ciudadano de uno de estos Estados o se reúnan con él, que estén en posesión de un pasaporte válido y en vigor, y que hayan cumplido los requisitos de entrada establecidos en el Artículo 4 del presente real decreto.	accompanying or joining the Union or EEA citizen and who hold a valid and in force passport, and who have complied with the requirements of entry provided in Article 4 of the RD.		<p>passport. There is an additional condition not foreseen by the Directive which is to have complied with the provisions on entry of Article 4. This may imply that the entry must have been lawful for the short-stay residence to be legal. Other possibility is that when a person needs an entry visa, it would imply that the family member must have entry the country with a visa, when so required. This will lead to a situation where the person has to hold a valid visa during these three months <i>de facto</i>. This requirement would be against the Directive which only requires a passport. It seems to impose a kind of pre-condition for the right of residence for up to three months¹ that it does not really exists when the RD is analysed in detail.</p> <p>Article 15(7) of RD 240/2007 states that the expiration of the ID or passport with which the person entered the country may not be a cause for expulsion. Nothing is said regarding the visa basically because the visa is not a requirement for residence (see Article 11(2) of the Directive.</p> <p>This provision will not have significant consequences for the third country family member, as already commented in Article 3 of the Directive. However, this clause creates confusion and for this reason the transposition is considered</p>

¹ This provision may also imply that the entry must have been lawful for the short-stay residence to be lawful.

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
						ambiguous on this point, especially since Spain has already been condemned for requiring visas for issuance of residence card for family members. Despite the ambiguity of the provision, the practice seems in line with the Directive since Instruction 3/2007 indicates that a short-stay visa is “ <u>only required to third country family members for entry purposes</u> ” [emphasis included in the Instruction].
Art.7.1 (a)	<p>Right of residence for more than three months</p> <p>All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they: (a) are workers or self-employed persons in the host Member State; or</p>	<p>Article 7(1) RD 240/2006</p> <p>Instructions 03/2007 Second section First and Second paragraph</p>	<p><i>Residencia superior a tres meses de ciudadanos de un Estado miembro de la Unión Europea o de otro Estado parte en el Acuerdo sobre el Espacio Económico Europeo.</i></p> <p>1. Los ciudadanos de un Estado miembro de la Unión Europea o de otro Estado parte en el Acuerdo sobre el Espacio Económico Europeo tienen derecho a residir en territorio español por un período superior a tres meses.</p> <p>Como antes se ha señalado, todos los ciudadanos comunitarios que residan en España por un periodo superior a tres meses tienen la obligación de solicitar su inscripción en el Registro Central de Extranjeros.</p> <p>Así las Delegaciones y Subdelegaciones del Gobierno, y las Comisarías Provinciales de Policía, deberán realizar las oportunas gestiones y actuaciones informativas para facilitar el que, con fecha de 2 de julio de 2007 (tres meses después de la entrada en vigor del Real Decreto 240/2007), la obligación de registro de todos los ciudadanos comunitarios que residan en España se encuentre normalizada,</p>	<p><i>Residence for more than 3 months of Union citizens and EEA citizens.</i></p> <p>1. The citizens of a State member to the EU or to the EEA have the right to reside in the territory of Spain for more than 3 months.</p> <p>As mentioned before, all Community citizens residing in Spain for a period of more than 3 months have the obligation of requesting the registration in the Aliens Central Register.</p> <p>Thus, the Government Delegations and Sub-delegations, and the Provincial Commissariat of Police, shall carry out the necessary informative activities to facilitate than on 2 July 2007 (three months after the entry into force of RD 240/2007), the obligation to register of all Community</p>	Y, more favourable	<p>Effective and more favourable transposition</p> <p>The RD only requires the nationality of an EU or EEA State to have the right of residence for more than 3 months. No further conditions are required. This is confirmed by the application form to obtain the registration certificate. As will be shown later on, the only requirement is to present a passport or ID to prove the nationality. http://extranjeros.mtin.es/es/general/SolicitudDeCertificadoDeRegistroComunitario-Ex-16.pdf</p> <p>In addition, the RD and the Instructions include transitory provisions, so that all those Union citizens already residing in Spain have to change their cards with the registration certificate.</p> <p>Those who did not hold a residence card because they were exempted according to the old legislation (RD 178/2003) , they have to request the registration. The certificate will be</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		<p>First Transitory Provision RD 240/2007</p> <p>Second Transitory Provision RD 240/2007</p> <p>Instruction 03/2007 Second Section, paragraphs 3-5</p>	<p>especialmente en relación a aquellos que actualmente no son titulares de tarjeta de residente comunitario por permitírsele el artículo 6 del Real Decreto 178/2003 (“Supuestos de Residencia sin Tarjeta”).</p> <p>Disposición transitoria primera. <i>Solicitudes presentadas con anterioridad a la entrada en vigor de este real decreto.</i> Las solicitudes presentadas con anterioridad a la entrada en vigor de este real decreto se tramitarán y resolverán conforme a lo previsto en él, salvo que el interesado solicite la aplicación de la normativa vigente en el momento de la solicitud y siempre que ello sea compatible con las previsiones del presente real decreto.</p> <p>Disposición transitoria segunda. <i>Atribución transitoria de competencias.</i> En las provincias en las que aún no haya sido creada la correspondiente Oficina de Extranjeros, las competencias en el ámbito del presente real decreto no expresamente atribuidas serán ejercidas por el Subdelegado del Gobierno o por el Delegado del Gobierno en las comunidades autónomas uniprovinciales.</p> <p>Por su parte, los actuales titulares de tarjeta de residente comunitario, bien por encontrarse en los supuestos de residencia con tarjeta del artículo 8 del Real Decreto 178/2003, bien por encontrarse en un supuesto de residencia sin tarjeta del artículo 6 del mismo pero por haber hecho uso del</p>	<p>citizens residing in Spain is normalised, specially in relation to those that currently do not hold a residence card of Community citizen as allowed by Article 6 of RD 178/2003 (“Situation of Residence without a Card”).</p> <p>Requests submitted before the entry into force of the RD.</p> <p>The requests submitted before the entry into force of the RD shall be processed and solved according to the RD, except when the concerned person requests the application of the legislation in force at the time of the request provided it is compatible with the requirements of this RD.</p> <p>Transitory allocation of competences. In the provinces where a Aliens Office has not been created, the competences within the scope of this RD not expressly allocated shall be exercised by the Government Sub-delegate in the Autonomous Communities with a single province.</p> <p>On their side, the current holders of a residence card of Community citizens, either because they fall under Article 8 of RD 178/2003, or because they fall under one of the situations described in Article 6 for</p>		<p>dated from the date in which the person shows that has been living in Spain. So if more than 5 years, the authorities will issue registration certificate of permanent residence. The burden on proof is on the person.</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			<p>derecho a solicitar este documento, ya no podrán, obviamente, solicitar la renovación del mismo, siéndoles en su lugar expedido el certificado de registro según lo establecido en los artículos 7 (certificado de registro) y 10.1 (certificado del derecho a residir con carácter permanente) del Real Decreto 240/2007.</p> <p>Los ciudadanos comunitarios que residían en España antes de la entrada en vigor del Real Decreto 240/2007 pero no eran titulares de tarjeta de residente comunitario, deberán solicitar su inscripción en el Registro Central de Extranjeros, dándose efectos a dicha inscripción desde la fecha que el interesado manifieste y acredite de forma fidedigna que data su residencia en España.</p> <p>Los certificados de registro sólo servirán para acreditar la inscripción en el Registro Central de Extranjeros si se presentan en unión con el pasaporte o del documento nacional de identidad en vigor, justificando así el cumplimiento de la obligación establecida en el artículo 7 del Real Decreto 240/2007 y acreditando, en su caso, el derecho a residir con carácter permanente referido en el artículo 10 del mismo Real Decreto.</p>	<p>residence without card but nevertheless they made use of the right to request this document, they may no longer request the renovation of the card, and instead a registration certificate shall be issued according to Article 7 (registration certificate) and Article 10.1 (registration certificate of permanent residence) of RD 240/2007.</p> <p>Community citizens who were residing in Spain before the entry into force of RD 240/2007 but who did not hold a residence card of Community citizens, shall request the registration in the Aliens Central Register, given retroactive effects to the registration from the date on which the person shows and attests in a trustworthy way that he/she has been residing in Spain.</p> <p>The registration certificates shall only attest the inscription in the Aliens Register if they are presented together with the passport or ID in effect, justifying this way compliance with the obligation laid down in Article 7 of RD 240/2007 and attesting, when required, the right to reside in Spain permanently referred to in Article 10.</p>		

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
Art.7.1 (b)	(b) have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State; or	<i>Idem</i>	<i>Idem</i>	<i>Idem</i>	<i>Idem</i>	<i>Idem</i>
Art.7.1 (c)	(c) - are enrolled at a private or public establishment, accredited or financed by the host Member State on the basis of its legislation or administrative practice, for the principal purpose of following a course of study, including vocational training; and	<i>Idem</i>	<i>Idem</i>	<i>Idem</i>	<i>Idem</i>	<i>Idem</i>
	- have comprehensive sickness insurance cover in the host Member State and assure the relevant national authority, by means of a declaration or by such equivalent means as they may choose, that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence; or	<i>Idem</i>	<i>Idem</i>	<i>Idem</i>	<i>Idem</i>	<i>Idem</i>
Art.7.1 (d)	(d) are family members accompanying or joining a Union citizen who satisfies the conditions referred to in points (a), (b) or (c).	<i>Idem</i>	<i>Idem</i>	<i>Idem</i>	<i>Idem</i>	<i>Idem.</i> The law does not distinguish whether the person is a family member or not since no conditions are needed to have the right of residence if the person is a Union citizen.
Art. 7.2	2. The right of residence provided for in paragraph 1 shall extend to family members who are not nationals of a Member State, accompanying or joining the Union citizen in the host Member State, provided that such Union citizen satisfies the conditions referred to in paragraph 1(a), (b) or (c).	Article 8(1) RD 240/2007	Residencia superior a tres meses con tarjeta de residencia de familiar de ciudadano de la Unión. 1.Los miembros de la familia de un ciudadano de un Estado miembro de la Unión Europea o de un Estado parte en el Acuerdo sobre el Espacio Económico Europeo especificados en el artículo 2 del presente real decreto, que no ostenten la	<i>Residence for more than 3 months for family members of a Union citizen</i> 1. Family members of a Union or EEA citizen that fall under Article 2 of the present RD and who are not nationals of one of those States may reside in Spain for more than 3 months when	Y	Effective transposition The right of residence is recognised on the condition that the person is a family member according to Article 2 (hard core family members) and that they are accompanying or joining the Union or EEA citizen. This right also includes “registered

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			<p>nacionalidad de uno de dichos Estados, cuando le acompañen o se reúnan con él, podrán residir en España por un período superior a tres meses, estando sujetos a la obligación de solicitar y obtener una «tarjeta de residencia de familiar de ciudadano de la Unión».</p>	<p>they accompany or join the Union or EEA citizen, being required to apply and obtain a “residence card of a family member of Union citizen”</p>		<p>partnerships”. However during a visit to the Aliens Office in a province of Spain, it was indicated by one of the officials that in general they did not accept registered partnerships. This is despite the fact that the Instruction from the Ministry of Labour has explicitly said that partnerships registered in certain MS should be considered as equivalent to marriage and therefore the partner should be treated as a spouse. This issue would need further follow up but it is outside the scope of this analysis since the Spanish legislation and the Instructions given by the Ministry are very clear on this point.</p>
Art. 7.3 (a)	<p>3. For the purposes of paragraph 1(a), a Union citizen who is no longer a worker or self-employed person shall retain the status of worker or self-employed person in the following circumstances: (a) he/she is temporarily unable to work as the result of an illness or accident;</p>				Y	<p>Effective transposition</p> <p>Since being a worker is not a condition to have the right of residence, the RD has not transposed these provisions. This will not have an impact on the special protection enjoyed by workers and self-employed since EU citizens can never become an unreasonable burden and cannot be expelled from the country except for one of the grounds listed in Article 27 of the Directive which cannot be invoked to serve economic ends.</p> <p>The RD extends the special protection granted to workers to all Union citizens and family members. Union citizen and his/her family member may only be expelled from the country on grounds of public order and public security, which cannot be invoked for economic</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
						<p>purposes (Article 15(5)(c) RD 240/2007). This also applies for the renewal of a residence card or registration certificate: only if the person is no longer a Union citizen or no longer a family member under Article 2 of RD 240/2007 may a card or certificate not be renewed, or for public order/public security reasons.</p> <p>It could be argued that this lack of transposition could have an impact on the acquisition of the right of permanent residence. However, those provisions, which include specific requirements linked to incapacity and unemployment, have been correctly transposed (as will be shown below). In addition, under Spanish labour law, the worker that is unable to work because of accident or illness retains his/her status of worker and therefore the objectives of the Directive will be achieved.</p> <p>Spanish legislation includes a definition of “worker”. Article 1 of the Workers’ Statute defines its personal scope as workers that freely provided retributive services within the organisation and under the direction of another person, physical or legal, considered employer or entrepreneur. It is a very broad definition which has always interpreted the concept in line with the jurisprudence of the ECJ.</p>
Art. 7.3 (b)	(b) he/she is in duly recorded involuntary unemployment after having been employed for more than one year and has registered as a jobseeker with the relevant				Y	<i>Idem.</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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
	employment office;					
Art. 7.3 (c)	(c) he/she is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first twelve months and has registered as a job-seeker with the relevant employment office. In this case, the status of worker shall be retained for no less than six months;				Y	<i>Idem</i>
Art.7.3 (d)	(d) he/she embarks on vocational training. Unless he/she is involuntarily unemployed, the retention of the status of worker shall require the training to be related to the previous employment.				Y	<i>Idem</i> Vocational training is under Spanish labour law a working relationship.
Art. 7.4	4. By way of derogation from paragraphs 1(d) and 2 above, only the spouse, the registered partner provided for in Article 2(2)(b) and dependent children shall have the right of residence as family members of a Union citizen meeting the conditions under 1(c) above. Article 3(2) shall apply to his/her dependent direct relatives in the ascending lines and those of his/her spouse or registered partner.				Y, more favourable	Effective and more favourable transposition There are no limitations regarding the family members of students.
Art. 8.1	Administrative formalities for Union citizens 1. Without prejudice to Article 5(5), for periods of residence longer than three months, the host Member State may require Union citizens to register with the relevant authorities.	Article 3(3) RD 240/2007 Article 7(1) second sentence RD 240/2007	Los titulares de los derechos a que se refieren los apartados anteriores que pretendan permanecer o fijar su residencia en España durante más de tres meses estarán obligados a solicitar un certificado de registro (...), según el procedimiento establecido en la presente norma. Residencia superior a tres meses (...) Los interesados estarán obligados a solicitar personalmente ante la Oficina de Extranjeros de la provincia donde pretendan permanecer o fijar su residencia o, en su defecto, ante la Comisaría de Policía	The holders of the rights referred to in the previous paragraphs who intend to stay or establish their residence in Spain for more than 3 months are obliged to request a registration certificate (...), according to the procedure established in this RD. <i>Residence for more than three months</i> (...) The concerned persons are obliged to apply for their registration in the Central Register for Aliens personally in	Y, (Not for job seekers)	Effective transposition, except for jobseekers Spain has opted to require the registration. Notice that the person shall be registered in the Central Register for Aliens. It could be argued that this is not in conformity with the Directive.

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			correspondiente, su inscripción en el Registro Central de Extranjeros. (...)	the Aliens Office of the province in which they intend to establish their residence or if there is none in the Commissariat of Police (...)		
Art. 8.2	2. The deadline for registration may not be less than three months from the date of arrival. A registration certificate shall be issued immediately, stating the name and address of the person registering and the date of the registration. Failure to comply with the registration requirement may render the person concerned liable to proportionate and non-discriminatory sanctions.	Article 7(1) third sentence RD 240/2007 Article 15(8) RD 240/2007	(...)Dicha solicitud deberá presentarse en el plazo de tres meses contados desde la fecha de entrada en España, siéndole expedido de forma inmediata un certificado de registro en el que constará el nombre, nacionalidad u domicilio de la persona registrada, su número de identidad de extrajero, y la fecha de registro. El incumplimiento de la obligación de solicitar la tarjeta de residencia o del certificado de registro conllevará la aplicación de las sanciones pecuniarias que, en idénticos términos y para supuestos similares, se establezca para los ciudadanos españoles en relación con el Documento Nacional de Identidad.	(...) The application shall be submitted within 3 months from the date of entry in Spain. A registration certificate shall be issued immediately which will include the name, nationality and address of the registered person, alien identity number, and date of registration. Failure to comply with the obligation to request a residence card or a registration certificate shall lead to the application of pecuniary penalties applicable in similar circumstances for Spanish nationals in relation to their obligations regarding the National Identity Card.	N, incorrect	Incorrect transposition Notice that the Spanish registration certificate also includes the foreigner's number. It was not possible to obtain a sample of the registration certificate during the visit. Also, it should be noticed that although the legislation requires the certificate to be issued immediately, in practice, the office visited informed that the person receives a receipt of application and then the person receives a date for approximately one week afterwards to receive the registration certificate. In fact, the payment is not made on the spot. The person needs to be allocated a Foreigners Identification Number (NIE) which is done automatically by the competent authority and after that the person can pay the fee for the registration certificate to be issued. This is an additional requirement not foreseen by the Directive. See more comments on the CS. The whole process may take 2 weeks but further information of the practical implementation, concretely the time frame to obtain the registration certificate, could not be obtained.
Art. 8.3	3. For the registration certificate to be issued, Member States may only require	Article 7(2) RD 240/2007	Junto con la solicitud de inscripción, deberá presentarse el pasaporte o documento	Together with the application, the person concerned shall	Y	Effective transposition

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
	<p>that — Union citizens to whom point (a) of Article 7(1) applies present a valid identity card or passport, a confirmation of engagement from the employer or a certificate of employment, or proof that they are self-employed persons,</p>	<p>Instructions 03/2007 Section Three</p>	<p>nacional de identidad válido y en vigor del solicitante. En el supuesto de que dicho documento esté caducado, deberá aportarse copia de éste y de la solicitud de renovación.</p> <p>El artículo 12 del RD 240/2007 establece que las solicitudes de los certificados de registro y tarjetas de residencia previstos en el mismo se presentarán personalmente en el modelo oficial establecido al efecto (que se establecerá mediante Instrucción conjunta de esta Dirección General y de la Comisión General de Extranjería y Documentación), se tramitará con carácter preferente y se resolverán conforme a lo previsto en los artículos 7, 8, 11, 12, 13 y 14 de dicho Real Decreto, que establecen como lugar al que deben dirigirse las solicitudes, la Oficina de Extranjeros de la provincia donde el interesado pretenda permanecer o fijar su residencia o, en su defecto, la Comisaría de Policía correspondiente. En dichas dependencias, previa solicitud, el interesado formalizará los trámites de presentación del documento de identidad o pasaporte, impresión dactilar (en el caso de ser solicitante de tarjeta de residencia de familiar de un ciudadano de la Unión), y entrega de la documentación necesaria en cada caso (fotografías, acreditación del vínculo familiar, etc), previo pago de la tasa establecida (cuya cuantía será la equivalente a la que se exige a los españoles para la obtención y renovación del documento nacional de identidad).</p>	<p>present a valid passport or ID. If the document has expired, the person shall present a copy of the document together with a request for renewal.</p> <p>Article 12 of RD 240/2007 establishes that the requests for registration certificates and residence cards foreseen therein shall be requested personally in the official model (that shall be established by joint Instruction of the Directorate General and the General Commission for Foreigners and Documentation) and shall be processed preferentially and resolved according to Articles 7, 8, 11, 12, 13 and 14 of the RD, which indicate that the place to submit the requests is the Aliens Office of the province in which the concerned person wishes to stay or establish his/her residence, or, if there is none, in the Commissariat of police. In those premises, previous request, the concerned person shall formalise the procedures for the submission of the ID or passport and dactyl impression (in the case of a person requesting a residence card of a family member of a Union citizen), and the necessary documentation (photographs, prove of the family link, etc.) former payment of the fee fixed (the amount of which shall be equivalent to what is required of</p>		<p>The person has to present the original and a copy. Following administrative practice in Spain, it is possible to present a document that has expired but the person will have to present the application for renewal. The issuance of the certificate also requires the payment of 6,80€(which is the same applicable for Spanish nationals for issuance of an ID)</p> <p>The Form (called EX-16) is available at the website of the Ministry of Home Affairs, Ministry of Labour, Ministry of Public administration: http://www.mir.es/SGACAVT/modelos/extranjeria/modelos_extranje/ex_16.pdf http://www.map.es/servicios/servicios_on_line/extranjeria/modelos_oficiales_solicitudes/ex16/document_es/Ex-16.pdf</p> <p>Notice that the application form includes minimum information on personal data (place of birth, sex, marital status, mother's and father's name etc). This is the same data asked from Spanish citizens to have the ID issued needed. These personal data are therefore considered as part of verification of identity in Spain. However, in strict terms the ID or passport should have been enough to prove identity and nationality and thus this information could be considered against the Directive. However, it is not a serious breach</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Form EX-16	<p>En caso de no ser posible acreditar en ese momento el previo abono de la tasa, por no ser el interesado aún titular de un NIE, la Oficina o Comisaría le hará entrega del impreso para dicho abono, en el que figurará el NIE asignado, a efectos de que efectúe tal abono de cara a la posterior expedición del certificado de registro.</p> <p>Los Delegados y Subdelegados del Gobierno podrán impulsar (en base a las funciones que les atribuye la Ley 6/1997, de 14 de abril, de organización y funcionamiento de la Administración General del Estado, respecto de los servicios integrados y no integrados de ésta) el establecimiento de diferentes puntos de presentación de solicitudes, dependientes de las Oficinas de Extranjeros o de las Comisarías de Policía existentes en su ámbito territorial de competencia.</p> <p>DOCUMENTACIÓN (se acompañarán los documentos originales, que serán devueltos una vez cotejadas las copias):</p> <p>En todos los supuestos se presentará solicitud en modelo oficial (EX 16), original y copia</p>	<p>Spanish citizens for obtaining and renewing the ID).</p> <p>If it is not possible to show at the moment of the request the payment of the fee, because the concerned person has not been given a NIE (foreigners identity number), the Office or Commissariat shall give the person the form to pay the tax and which will include the NIE, so that the person concerned can pay the tax for the posterior issuance of the registration certificate.</p> <p>The Government delegates and sub-delegates shall provide impetus (based on the functions allotted by Law 6/1997 of 14 April on organisation and functioning of the General Administration of the State, regarding integrated and non-integrated services) for the establishment of different points to submit requests, dependent of the Aliens Offices or the Commissariat of Police which exist within their territorial scope of competence.</p> <p>Documents (that shall be accompanied by the originals and shall be returned once the copies have been checked):</p> <p>In all cases the request shall be submitted according to official model (EX 16) original and copy</p>		

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			<p>• Certificado de registro como ciudadano de la Unión: 1. Pasaporte o documento de identidad válido y en vigor. Si está caducado, copia de éste y de la solicitud de renovación. 2. Salvo en los casos de no tener asignado NIE con carácter previo a la solicitud, documento acreditativo del abono de la tasa por expedición del certificado (en el resto de los casos, el órgano administrativo ante el que se presente la solicitud, previa asignación de NIE, hará entrega del impreso para el abonote la tasa, a efectos de que éste sea efectuado con carácter previo a la expedición del certificado).</p>	<p>• Registration certificate as Union citizen: 1. Valid and in force Passport or ID. If it has expired, copy of the Passport or ID and of the request for renewal. 2. Except in the cases where the person has already a NIE before the request is submitted, document showing the payment of the fee for issuing the certificate (in the remaining cases, the administrative bodies before which the request is submitted, shall allocate a NIE and provide the document to pay the tax, so that the payment can take place before the issuance of the certificate.</p>		
	— Union citizens to whom point (b) of Article 7(1) applies present a valid identity card or passport and provide proof that they satisfy the conditions laid down therein,				Y	Not required. See comments above. Only condition is to prove nationality and identity.
	— Union citizens to whom point (c) of Article 7(1) applies present a valid identity card or passport, provide proof of enrolment at an accredited establishment and of comprehensive sickness insurance cover and the declaration or equivalent means referred to in point (c) of Article 7(1). Member States may not require this declaration to refer to any specific amount of resources.				Y	Not required. See comments above. Only condition is to prove nationality and identity.
Art. 8.4	4. Member States may not lay down a fixed amount which they regard as 'sufficient resources', but they must take into account the personal situation of the person concerned. In all cases this amount shall not be higher than the				Y	Not required. See comments above. Only condition is to prove nationality and identity. To have sufficient resources is not a condition for residence. The person

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
	threshold below which nationals of the host Member State become eligible for social assistance, or, where this criterion is not applicable, higher than the minimum social security pension paid by the host Member State.					does not have to provide any proof or declaration regarding sufficient resources. Neither for him/herself nor for his/her family members.
Art. 8.5	5. For the registration certificate to be issued to family members of Union citizens, who are themselves Union citizens, Member States may require the following documents to be presented:	Article 7(1) RD 240/2007	<p>Los titulares de los derechos a que se refieren los apartados anteriores que pretendan permanecer o fijar su residencia en España durante más de tres meses estarán obligados a solicitar un certificado de registro (...), según el procedimiento establecido en la presente norma.</p> <p><i>Residencia superior a tres meses de ciudadanos de un Estado miembro de la Unión Europea o de otro Estado parte en el Acuerdo sobre el Espacio Económico Europeo.</i></p> <p>1. Los ciudadanos de un Estado miembro de la Unión Europea o de otro Estado parte en el Acuerdo sobre el Espacio Económico Europeo tienen derecho a residir en territorio español por un período superior a tres meses. Los interesados estarán obligados a solicitar personalmente ante la Oficina de Extranjeros de la provincia donde pretendan permanecer o fijar su residencia o, en su defecto, ante la Comisaría de Policía correspondiente, su inscripción en el Registro Central de Extranjeros. Dicha solicitud deberá presentarse en el plazo de tres meses contados desde la fecha de entrada en España, siéndole expedido de forma inmediata un certificado de registro en el que constará el nombre, nacionalidad y domicilio de la persona registrada, su número de identidad de extranjero, y la fecha de registro.</p>	<p>The holders of the rights referred to in the previous paragraphs who intend to stay or establish their residence in Spain for more than 3 months are obliged to request a registration certificate (...), according to the procedure established in this RD.</p> <p><i>Residence for more than three months of Union citizens or EEA citizens</i></p> <p>The citizens of a State member to the EU or to the EEA have the right to reside in the territory of Spain for more than 3 months. The concerned persons are obliged to apply personally in the Aliens Office of the province in which they intend to establish their residence or if there is none in the Commissariat of Police their registration in the Central Register for Aliens. The application shall be submitted within 3 months from the date of entry in Spain. A registration certificate shall be issued immediately which will include the name, nationality and address of the registered person, alien identity number, and date</p>	Y	<p>Effective transposition</p> <p>The Spanish legislation does not differentiate whether the Union citizen is a family member or not, since the only condition to have the right of residence is to have the nationality of a Member State. The same formalities indicated above apply. See also comments above.</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
				of registration.		
	(a) a valid identity card or passport;	Article 7(2) RD 240/2007	Junto con la solicitud de inscripción, deberá presentarse el pasaporte o documento nacional de identidad válido y en vigor del solicitante. En el supuesto de que dicho documento esté caducado, deberá aportarse copia de éste y de la solicitud de renovación.	Together with the application, the person concerned shall present a valid and in force passport or ID. If the document has expired, the person shall present a copy of the document together with a request for renewal.	Y	Effective transposition As mentioned above, the person has to present the original and a copy. Following administrative practice in Spain, it is possible to present a document that has expired but the person will have to present the application for renewal. The Form (called EX-16) is available at the website of the Ministry of Home Affairs, Ministry of Labour, Ministry of Public administration: http://www.mir.es/SGACAVT/modelos/extranjeria/modelos_extranje/ex_16.pdf http://www.map.es/servicios/servicios_on_line/extranjeria/modelos_oficiales_solicitudes/ex16/document_es/Ex-16.pdf
	(b) a document attesting to the existence of a family relationship or of a registered partnership;	<i>Idem</i>	<i>Idem</i>	<i>Idem</i>	Y	Not required. See comments above. Only condition is to prove nationality and identity. To have sufficient resources is not a condition for residence. The person does not have to provide any proof or declaration regarding sufficient resources. Neither for him/herself nor for his/her family members.
	(c) where appropriate, the registration certificate of the Union citizen whom they are accompanying or joining;	<i>Idem</i>	<i>Idem</i>	<i>Idem</i>	Y	Not required. See comments above
	(d) in cases falling under points (c) and (d) of Article 2(2), documentary evidence that the conditions laid down therein are met;	<i>Idem</i>	<i>Idem</i>	<i>Idem</i>	Y	Not required. See comments above

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
	(e) in cases falling under Article 3(2)(a), a 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, or proof of the existence of serious health grounds which strictly require the personal care of the family member by the Union citizen;	<i>Idem</i>	<i>Idem</i>	<i>Idem</i>	Y	Not required. See comments above
	(f) in cases falling under Article 3(2)(b), proof of the existence of a durable relationship with the Union citizen.	<i>Idem</i>	<i>Idem</i>	<i>Idem</i>	Y	Not required. See comments above
Art. 9.1	Administrative formalities for family members who are not nationals of a Member State. 1. Member States shall issue a residence card to family members of a Union citizen who are not nationals of a Member State, where the planned period of residence is for more than three months.	Article 8(1) RD 240/2007	<i>Residencia superior a tres meses con tarjeta de residencia de familiar de ciudadano de la Unión.</i> 1. Los miembros de la familia de un ciudadano de un Estado miembro de la Unión Europea o de un Estado parte en el Acuerdo sobre el Espacio Económico Europeo especificados en el artículo 2 del presente real decreto, que no ostenten la nacionalidad de uno de dichos Estados, cuando le acompañen o se reúnan con él, podrán residir en España por un período superior a tres meses, estando sujetos a la obligación de solicitar y obtener una «tarjeta de residencia de familiar de ciudadano de la Unión».	<i>Residence for more than three months with a residence card of a family member of a Union citizen</i> 1. Family members of a Union or EEA citizen that fall under Article 2 of the present RD and who are not nationals of one of those States may reside in Spain for more than 3 months when they accompany or join the Union or EEA citizen, being required to apply and obtain a “residence card of a family member of Union citizen”.	Y	Effective transposition
Art. 9.2	2. The deadline for submitting the residence card application may not be less than three months from the date of arrival.	Article 8(2) first sentence RD 240/2007	La solicitud de la tarjeta de residencia de familiar de ciudadano de la Unión deberá presentarse en el plazo de tres meses desde la fecha de entrada en España, ante la Oficina de Extranjeros de la provincia donde el interesado pretenda permanecer o fijar su residencia o, en su defecto, ante la Comisaría de Policía correspondiente.(...)	The request for a residence card of a family member of a Union citizen shall be submitted within 3 months from the date of entry into Spain at the Aliens Office of the province in which they intend to stay or establish their residence, or, if there is none, at the Commissariat of Police. (...)	Y	Effective transposition
Art. 9.3	3. Failure to comply with the requirement to apply for a residence card may make	Article 15(8) RD 240/2007	El incumplimiento de la obligación de solicitar la tarjeta de residencia o del	Failure to comply with the obligation to request a residence	Y	Effective transposition.

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
	the person concerned liable to proportionate and non-discriminatory sanctions.		certificado de registro conllevará la aplicación de las sanciones pecuniarias que, en idénticos términos y para supuestos similares, se establezca para los ciudadanos españoles en relación con el Documento Nacional de Identidad.	card or a registration certificate shall lead to the application of pecuniary penalties applicable in similar circumstances for Spanish nationals in relation to their obligations regarding the National Identity Card.		Same comment as in Article 8(1) above.
Art.10.1	Issue of residence cards 1. The right of residence of family members of a Union citizen who are not nationals of a Member State shall be evidenced by the issuing of a document called 'Residence card of a family member of a Union citizen' no later than six months from the date on which they submit the application. A certificate of application for the residence card shall be issued immediately.	Article 8(1) RD 240/2007 Article 8(4) RD 240/2007 Article 8(2) second sentence RD 240/2007	1. Los miembros de la familia de un ciudadano de un Estado miembro de la Unión Europea o de un Estado parte en el Acuerdo sobre el Espacio Económico Europeo especificados en el artículo 2 del presente real decreto, que no ostenten la nacionalidad de uno de dichos Estados, cuando le acompañen o se reúnan con él, podrán residir en España por un período superior a tres meses, estando sujetos a la obligación de solicitar y obtener una «tarjeta de residencia de familiar de ciudadano de la Unión». 4. La expedición de la tarjeta de residencia de familiar de ciudadano de la Unión deberá realizarse en el plazo de los tres meses siguientes a la presentación de la solicitud. La resolución favorable tendrá efectos retroactivos, entendiéndose acreditada la situación de residencia desde el momento de su solicitud. En todo caso, se entregará de forma inmediata un resguardo acreditativo de la presentación de la solicitud de la tarjeta que será suficiente para acreditar su situación de estancia legal hasta la entrega de la tarjeta.	1. Family members of a Union or EEA citizen that fall under Article 2 of the present RD and who are not nationals of one of those States may reside in Spain for more than 3 months when they accompany or join the Union or EEA citizen, being required to apply and obtain a “residence card of a family member of Union citizen” . The residence card shall be issued within three months from the date on which they submit the application. The resolution to issue the card shall have retroactive effects so that it is understood that the person concerned has attested his/her residence from the date on which the application was submitted. In any case, a certificate attesting the submission of the application, which shall be enough to attest the situation of legal residence, shall be issued immediately until the residence card is issued.	Y	Effective transposition. The time limit to issue the card is 3 months instead of 6 months. This is the normal time for the adoption of administrative resolutions. The card is issued with retroactive effects to the date on which the application was submitted. See also the comments made on Article 7 regarding transitory measures. The certificate is valid proof of lawful residence but meeting the conditions and entitlement of rights can be proven by any other means (see transposition of Article 25(1) of the Directive below).

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Form EX-16	<p>exentos de esa obligación.</p> <p>Tarjeta de residencia de familiar no comunitario de ciudadano de la Unión:</p> <p>1. Pasaporte válido y en vigor. Si está caducado, copia de éste y de la solicitud de renovación.</p> <p>5. Tres fotografías recientes en color, en fondo blanco, tamaño carné.</p> <p>6. Salvo en los casos de no tener asignado NIE con carácter previo a la solicitud, documento acreditativo del abono de la tasa por expedición de tarjeta (en el resto de los casos, el órgano administrativo donde se presente la solicitud, previa asignación del NIE, hará entrega del impreso para su abono, a efectos de que éste sea efectuado con carácter previo a la expedición de la tarjeta.</p>	<p>borders and the list of third countries whose nationals are exempted from this obligation.</p> <p>Residence card of a non-Community family member of a Union citizen:</p> <p>1. Valid and in effect passport. If it has expired, a copy of the passport and of the request for renewal.</p> <p>5. three recent photographs in colour with white background, ID size.</p> <p>6. Except in the cases of not having assigned a NIE previously, document certifying the payment of the fee for the issuance of the card (in the remaining cases, the administrative body where the application is submitted, shall, after assigning the NIE, provide the form for the payment, so that this payment is done before the issuance of the card.</p>		administration will give the number <i>ex officio</i> and the form to pay the tax for issuance of the card. The requirement to have a NIE is considered against the Directive
Art.10.2 (b)	(b) a document attesting to the existence of a family relationship or of a registered partnership;	Article 8(3)(b) RD 240/2007 Instruction 03/2007 First Section point 2 second and third subparagraphs	<p>b) Documentación acreditativa, en su caso debidamente traducida y apostillada o legalizada, de la existencia del vínculo familiar, matrimonio o unión registrada que otorga derecho a la tarjeta.</p> <p>2. (...) En el Artículo 8(3) del Real Decreto 240/2007 se relacionan los requisitos exigidos en el marco del procedimiento de solicitud de tarjetas de residencia de familiar</p>	<p>b) Document attesting the existence of a family relationship, marriage or registered partnership which gives the right of residence. When needed the document shall be translated and stamped or legalised.</p> <p>2. (...) Article 8(3) of RD 240/2007 lays down the conditions required in the process to request residence</p>	Y	<p>Effective transposition</p> <p>No specific documents are requested, only to proof the family link. However, the competent authority may require, and will usually do so, that the information is translated and has some official status (certified copies, stamped or legalised). These requirements seem reasonable to avoid fraud.</p> <p>The Instruction of the Ministry as</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Instruction 03/2007 First Section point 3	<p>de ciudadano de la Unión. Entre dichos requisitos se encuentra, en el caso de cónyuges, la documentación acreditativa de la existencia de matrimonio.</p> <p>En el caso de los cónyuges no separados legalmente se exigirá la aportación del documento acreditativo de la validez del Vínculo matrimonial, documento que posibilita que el vínculo conyugal alegado produzca efectos civiles de conformidad con la legislación española.</p> <p>3. Por la novedad del mismo, conviene aclarar que, tal y como establece el artículo 2.b) del Real Decreto, para que la pareja no casada de un ciudadano comunitario entre en el ámbito de aplicación de esta norma, deberá acreditarse, mediante certificación expedida por el órgano encargado del registro de parejas correspondiente, la correspondiente inscripción en un registro público establecido a los efectos en un Estado miembro de la Unión Europea o en un Estado parte en el Espacio Económico Europeo, que impida la posibilidad de dos registros simultáneos en dicho Estado, como el Registrato establecido en Alemania en base a la Ley de Partenariado y Convivencia de Parejas del mismo sexo de 2000, el Registro establecido en Francia en base a la Ley 1999-944, de 15 de noviembre de Pacto Civil de Solidaridad (PaCS), El Registro establecido en el Reino Unido en base a la Ley del Parlamento Civil de 2004, u otros Registros públicos estatales existentes en Chequia, Dinamarca, Eslovenia, Finlandia, Luxemburgo y Suecia, con independencia de que otros Estados miembros puedan en el futuro establecer registros de análogos</p>	<p>cards of family members of a Union citizen. These conditions include, in the case of spouses, the documents attesting the existence of marriage.</p> <p>In the case of spouses who are not legally separated it shall be required the document showing the validity of the marriage and serve the marriage to have civil effects according to the Spanish legislation.</p> <p>3. Due to its novelty, it should be clarified that, according to Article 2.b) of the RD, for a non-married couple of a Union citizen to fall under the scope of the RD it shall be attested, through a certificate issued by the relevant body in charge of the registered partnerships, attesting the registration in a public registered established for this purpose by a MS or a State party to the EEA preventing the possibility of the existence of two registers at the same time, such as the Register established in Germany on the basis of Law of Partnership and Cohabitation of same sex couples of 2000, the Register established in France on the basis of Law 1999-944 of 15 November of Civil Contract of Solidarity (PaCS), the Registry established in the United Kingdom on the basis of the Civil Parliament Act of 2004, or other public State Registers</p>		<p>well as the application form indicates more details:</p> <ul style="list-style-type: none"> • <i>Marriage</i>: the document has to serve to attest the validity of the marriage so it can produce effects in Spain – normally a certificate, family book or similar document will be enough; • <i>Registered partnerships</i>: certificate issued by the body in charge of registering the partnership in the relevant MS. It is required that the certificate proving the registered partnerships has been issued at least 3 months before the date on which the application is submitted. This is to reduce risk of partnerships already cancelled. However it may lead to a situation where, in the case of partnerships just concluded before moving into Spain, a partner cannot join or obtain the residence card until 3 months have elapsed since the registration. This does not have major impacts since the family member can stay for 3 months with no need to require a card and the residence will be lawful.

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Form EX-16	<p>efectos.</p> <p>La certificación registral deberá haber sido expedida con una antelación máxima de 3 meses a la fecha de presentación de la solicitud de la tarjeta de residencia de familiar de ciudadano de la Unión.</p> <p>2. Documentación acreditativa, en su caso debidamente traducida y apostillada o legalizada, de la existencia del vínculo familiar; de la validez del matrimonio; o certificación expedida (con una fecha de antelación máxima de 3 meses a la fecha de presentación de la solicitud) por el órgano encargado del registro de parejas correspondiente de la inscripción como pareja.</p>	<p>existing in Czech Republic, Denmark, Slovenia, Finland, Luxembourg and Sweden without prejudice to other MS establishing in the future similar registers for this purpose.</p> <p>The registry certificate shall be issued as a maximum 3 months before the date of submission of an application for the residence card of a family member of a Union citizen.</p> <p>2. Document certifying, when applicable duly translated and certified or legalised, of the existence of the family link; the validity of the marriage; or certificate issued (as a maximum 3 months before the date of submission of an application) by the correspondent body in charge of the registration of the partnership, certifying the registration as a partnership.</p>		
Art.10.2 (c)	(c) the registration certificate or, in the absence of a registration system, any other proof of residence in the host Member State of the Union citizen whom they are accompanying or joining;	Article 8(3)(c) RD 240/2007 Form EX-16	<p>c) Certificado de registro del familiar ciudadano de un Estado miembro de la Unión Europea o de otro Estado parte en el Acuerdo sobre el Espacio Económico Europeo al que acompañan o con el que van a reunirse.</p> <p>3.Certificado de registro del ciudadano comunitario al que acompaña o con el que va a reunirse, presentado junto con el pasaporte o documento de identidad, en vigor, de éste. En caso de que el derecho derive de un ciudadano español, DNI de éste o autorización para verificar electrónicamente sus datos de identidad.</p>	<p>c) Registration certificate of the Union or EEA citizens whom they are accompanying or joining.</p> <p>3. Registration certificate of the Union citizen to whom they are accompanying or joining, together with the Union citizen's passport or identity document, in effect, or if the right is derived from a Spanish citizen, his/her ID or the authorisation to verify</p>	Y	Almost literal transposition

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
				electronically his/her identity data.		
Art.10.2 (d)	(d) in cases falling under points (c) and (d) of Article 2(2), documentary evidence that the conditions laid down therein are met;	Article 8(3)(d) RD 240/2007 Instruction 3/2007 First section, point 4, 7 th subparagraph	<p>d) Documentación acreditativa, en los supuestos en los que así se exija en el artículo 2 del presente real decreto, de que el solicitante de la tarjeta vive a cargo del ciudadano de un Estado miembro de la Unión Europea o de otro Estado parte en el Acuerdo sobre el Espacio Económico Europeo del que es familiar.</p> <p>En cuanto a los posibles elementos a valorar de cara a la acreditación de la concurrencia en el familiar de la circunstancia de vivir a cargo del ciudadano comunitario, ese Centro directivo tiene el siguiente criterio:</p> <p>- la carga de la prueba de vivir a expensas del ciudadano comunitario ha de recaer sobre el solicitante de visado C código ESC o de tarjeta de residencia de familiar de ciudadano de la Unión (descendiente mayor de 21 años o ascendiente de ciudadano comunitario o de su cónyuge o pareja registrada).</p> <p>- Dicha prueba debe tener carácter abierto, admitiéndose la acreditación de la concurrencia de la circunstancia citada mediante la utilización de cualquier tipo de prueba admitida en Derecho que presente el solicitante, de que sus medios de vida proceden, de forma exclusiva o con carácter principal y no prescindible, de su ascendiente o descendiente que a su vez es ciudadano comunitario o cónyuge o pareja registrada de ciudadano comunitario.</p>	<p>d) Document attesting when so required by Article 2 of the present Royal Decree that the applicant is a dependent family member of the Union or EEA Citizen</p> <p>Regarding the possible elements to be taken into consideration for the certification of the circumstance of dependency from the Union citizen, this Centre follows the following criteria:</p> <p>- the burden of the proof of being dependant is on the applicant for a visa C code ESC or for a residence card of a family member of a Union citizen (descendant of more than 21 years old and ascendant of a Union citizen or of his/her spouse or registered partner)</p> <p>- The proof has to be open, admitting the accreditation of the circumstances by any mean of proof admitted in Law submitted by the applicant, that his/her means of living depend exclusively or mainly and unrescindable way, on the ascendant or descendant who is a Union citizen or of his/her spouse or registered partner.</p>	Y	<p>Effective transposition.</p> <p>The form and the Instruction from the Ministry provide more detailed information. In particular, it indicates that if the family member is outside Spain, the prove can be submitted when applying for a visa (if a visa is required to enter Spain); or if already in Spain or no visa required when applying for the card. The Instructions clearly indicates that provisions under the Aliens Regulation (regulation to LO 4/2000) and in particular the specific aspects on proof included in Article 39(e) of the Regulation do not apply in this context. This is important since such Article 39(e) is burdensome in since it requires attesting that transfers of resources from the person to the dependant took place in the previous years and that there were sufficient, sufficient resources to be established by the Ministry of Home Affairs and the Ministry of Labour.</p> <p>Therefore, the means of proof under RD 240/2007 are much more flexible and basically the Instruction indicates that the burden of proof is for the applicant but that the means of proof shall be kept opened admitting any mean of proof acceptable under Spanish law attesting that the means of living comes exclusively or mainly from the Union citizen. The means of proof accepted include a declaration signed by the Union or EEA citizen</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Form EX-16	<p>- No obstante lo anterior, los medios de prueba utilizados deben arrojar resultados de carácter objetivable, dándose preferencia a los medios de prueba documentales y, si es posible, emitidos por Autoridades públicas (certificados de dependencia, etc.), pudiendo elaborarse listas de medios de prueba, si bien éstas deben ser a título de ejemplo y no tasadas.</p> <p>- Si el medio de prueba utilizado es una declaración firmada del familiar que ostenta el derecho, manifestando que el beneficiario estará a su cargo, dicha declaración deberá ser acompañada, bien de un documento público de reconocimiento de firma (acta notarial), bien de un documento de identidad del declarante en donde aparezca su firma para que el funcionario que actúa pueda comprobar que ambas firmas son la misma.</p> <p>4. En caso de descendientes de 21 años o mayores de edad o ascendientes directos, acreditación por cualquier medio de prueba admitido en Derecho de que sus medios proceden, de forma exclusiva o con carácter principal y no prescindible, de su ascendiente o descendiente (ciudadano comunitario o cónyuge o pareja registrada de ciudadano comunitario).</p>	<p>- Without prejudice of the paragraph above, the means of proof used must provide objective results, giving preference to the documentary means of proof, and, if possible to documents issued by public authorities (e.g., certificates of dependency etc.). Lists of means of proof may be elaborated, but these shall only provide examples and shall not be exhaustive.</p> <p>- If the mean of proof used is a declaration signed by the family member holder of the right, showing that the beneficiary will be his/her dependant, the declaration shall be accompanied by either a public document recognising the signature (act issued by a notary), or a identity document of the person declaring in which the signature appears to allow the public servant to compare that both signatures are the same.</p> <p>4. In case of descendants of 21 years old or majors of age, or direct ascendants, certification by any means of proof admitted in the Law that his/her means of living derived, exclusively or mainly and un-rescindable from the ascendant or descendant (Union citizen or his/her spouse or registered partnership).</p>		<p>who they are accompanying or joining. In this case the declaration has to be a sworn statement, for example before a notary, or has to be accompanied by a document attesting the identity of the Union citizen to compare both signatures. Therefore, it is very flexible but the Instruction indicates that the means of proof have to allow for a decision based on objective elements and that the competent authorities should give preference to document evidence, if possible issued by competent authorities of a Member State (such as a certificate of dependency). The Instruction indicates that if needed to orientate and non exhaustive list of means of proof for dependency could be developed if required.</p>
Art.10.2 (e)	(e) in cases falling under Article 3(2)(a), a document issued by the relevant	19 th Additional Provision of LO	Las autoridades exigirán la presentación de acreditación, por parte de la autoridad	The authorities shall require the presentation of document issued	Y	Effective transposition

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
	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, or proof of the existence of serious health grounds which strictly require the personal care of the family member by the Union citizen;	4/2000 second subparagraph first sentence and third subparagraph LO 4/2000 (this provision was introduced by Third Final Provision RD 240/2007)	competente del país de origen o procedencia, que certifique que está a cargo del ciudadano de la Unión o que vivía con él en ese país, o la prueba de la existencia de motivos graves de salud o discapacidad que requieran estrictamente que el ciudadano de la Unión se haga cargo del cuidado personal del miembro de la familia (...). Las autoridades competentes estudiarán detenidamente las circunstancias personales en las solicitudes de entrada, visado o autorizaciones de residencia presentadas y justificarán toda denegación de las mismas.	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, or proof of the existence of serious health grounds which strictly require the personal care of the family member by the Union citizen (...) The competent authorities shall examine in detail the personal circumstances in the application of entry, visa or residence and shall justify any denial to these people.		No information has been obtained regarding the type of proof that will be required. It has to be verified whether the requirements under the Regulation of LO 4/2000 and the form EX-07, which is the form for family reunion under the general Aliens regime, will be applicable in this case.
Art.10.2 (f)	(f) in cases falling under Article 3(2)(b), proof of the existence of a durable relationship with the Union citizen.	19th Additional Provision, second subparagraph, second sentence and third subparagraph LO 4/2000 (this provision was introduced by Third Final Provision RD 240/2007)	(...) Igualmente se exigirá prueba suficiente de la existencia de una relación estable con el ciudadano de la Unión. Las autoridades competentes estudiarán detenidamente las circunstancias personales en las solicitudes de entrada, visado o autorizaciones de residencia presentadas y justificarán toda denegación de las mismas.	(...) Similarly, it shall be required to attest the existence of a durable relationship with the Union citizen. The competent authorities shall examine in detail the personal circumstances in the application of entry, visa or residence and shall justify any denial to these people.	Y	Effective transposition No information has been obtained regarding the type of proof that will be required. It has to be verified whether the requirements under the Regulation of LO 4/2000 and the form EX-07, which is the form for family reunion under the general Aliens regime, will be applicable in this case.
Art.11.1	Validity of the residence card 1. The residence card provided for by Article 10(1) shall be valid for five years from the date of issue or for the envisaged period of residence of the Union citizen, if this period is less than five years.	Article 8(5) RD 240/2007	5. La tarjeta de residencia de familiar de ciudadano de la Unión tendrá una validez de cinco años a partir de la fecha de su expedición, o por el período previsto de residencia del ciudadano de la Unión o de un Estado parte en el Acuerdo sobre el Espacio Económico Europeo, si dicho período fuera inferior a cinco años. Renovación de la tarjeta de residencia de familiar de ciudadano de la Unión	The residence card of a family member of a Union citizen shall be valid for five years from the date of issue, or for the envisaged period of residence of the Union or EEA citizen, if this period is less than five years. Renewal of the residence card of a family member of Union	Y	Effective transposition

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			<p>1. Pasaporte válido y en vigor. Si está caducado, copia de éste y de la solicitud de renovación.</p> <p>2. Documentación acreditativa, en su caso debidamente traducida y apostillada o legalizada, de la existencia del vínculo familiar; de la validez del matrimonio; o certificación expedida (con una fecha de antelación máxima de 3 meses a la fecha de presentación de la solicitud) por el órgano encargado del registro de parejas correspondiente de la inscripción como pareja.</p> <p>3. Certificado de registro del ciudadano comunitario al que acompaña o con el que va a reunirse, presentado junto con el pasaporte o documento de identidad, en vigor, de éste. En caso de que el derecho derive de un ciudadano español, DNI de éste o autorización para verificar electrónicamente sus datos de identidad.</p> <p>4. En caso de descendientes de 21 años o mayores de edad o ascendientes directos, acreditación por cualquier medio de prueba admitido en Derecho de que sus medios proceden, de forma exclusiva o con carácter principal y no prescindible, de su ascendiente o descendiente (ciudadano comunitario o cónyuge o pareja registrada de ciudadano comunitario).</p>	<p>citizen</p> <p>1. Valid and in effect passport. If it has expired, a copy of the passport and of the request for renewal.</p> <p>2. Document certifying, when applicable duly translated and certified or legalised, of the existence of the family link; the validity of the marriage; or certificate issued (as a maximum 3 months before the date of submission of an application) by the correspondent body in charge of the registration of the partnership, certifying the registration as a partnership.</p> <p>3. Registration certificate of the Union citizen to whom they are accompanying or joining, together with the Union citizen's passport or identity document, in effect, or if the right is derived from a Spanish citizen, his/her ID or the authorisation to verify electronically his/her identity data.</p> <p>4. In case of descendants of 21 years old or majors of age, or direct ascendants, certification by any means of proof admitted in the Law that his/her means of living derived, exclusively or mainly and un-rescindable from the ascendant or descendant (Union citizen or his/her spouse or registered partnership).</p>		

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			<p>5. Tres fotografías recientes en color, en fondo blanco, tamaño carné.</p> <p>6. Documento acreditativo de abono de la tasa por expedición de tarjeta.</p>	<p>5. three recent photographs in colour with white background, ID size.</p> <p>6. Document certifying the payment of the fee to issue the card</p>		
Art.11.2	2. The validity of the residence card shall not be affected by temporary absences not exceeding six months a year, or by absences of a longer duration for compulsory military service or by one absence of a maximum of 12 consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.	Article 14(3) RD 240/2007	<p>La vigencia de la tarjeta de residencia de familiar de ciudadano de la Unión caducará por las ausencias superiores a seis meses en un año. No obstante, dicha vigencia no se verá afectada por las ausencias de mayor duración del territorio español que se acredite sean debidas al cumplimiento de obligaciones militares o, que no se prolonguen más de doce meses consecutivos y sean debidas a motivos de gestación, parto, posparto, enfermedad grave, estudios, formación profesional, o traslados por razones de carácter profesional a otro Estado miembro o a un tercer país.</p> <p>Esta caducidad por ausencia no será de aplicación a los titulares de tarjeta de familiar de ciudadano de la Unión vinculados mediante una relación laboral a organizaciones no gubernamentales, fundaciones o asociaciones, inscritas en el registro general correspondiente y reconocidas oficialmente de utilidad pública como cooperantes, y que realicen para aquellas proyectos de investigación, cooperación al desarrollo o ayuda humanitaria, llevados a cabo en el extranjero. Tampoco será de aplicación a los titulares de dicha tarjeta que permanezcan en el territorio de otro Estado miembro de la Unión Europea para la realización de programas temporales</p>	<p>The validity of the residence card of a family member of the Union shall expire for absences of more than 6 months. However, the validity of the card shall not be affected by absences of a longer duration when it is attested that they were due to compulsory military service or, when they do not extend for more than 12 consecutive months and are due to pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.</p> <p>The expiration of the card shall not occur when the holder of the card of family member of the Union are carrying out a professional activity as collaborators in NGOs, foundations or associations registered in the general register and that are recognised as general interest associations and they are carrying out research projects or developing aid activities in third countries. The same shall apply when the holder remains in the territory of another Member State of the EU</p>	Y	<p>Effective transposition.</p> <p>Although the structure of the provision is different the objective is the same. In addition to the cases listed in the Directive, the RD also establishes that the validity of the card is not affected by absences when the holder is a person cooperating with NGOs or similar and who has to moved to a third country to carry out research activities or development aid projects or goes to other MS for study programmes such as Erasmus.</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			de estudios promovidos por la propia Unión.	to carry out temporary programmes of study promoted by the EU.		
Art.12.1	Retention of the right of residence by family members in the event of death or departure of the Union citizen 1. Without prejudice to the second subparagraph, the Union citizen's death or departure from the host Member State shall not affect the right of residence of his/her family members who are nationals of a Member State. Before acquiring the right of permanent residence, the persons concerned must meet the conditions laid down in points (a), (b), (c) or (d) of Article 7(1).	Article 9(1) RD 240/2007	<i>Mantenimiento a título personal del derecho de residencia de los miembros de la familia, en caso de fallecimiento, salida de España, nulidad del vínculo matrimonial, divorcio, separación legal o cancelación de la inscripción como pareja registrada, en relación con el titular del derecho de residencia</i> . 1. El fallecimiento del ciudadano de un Estado miembro de la Unión Europea o de un Estado parte en el Acuerdo sobre el Espacio Económico Europeo, su salida de España (...) no afectará al derecho de residencia de los miembros de su familia ciudadanos de uno de dichos Estados.	<i>Maintenance on a personal basis of the right of residence of family members in case of death, departure, nullity of marriage, divorce, legal separation or cancellation of the registration of the partnership with the holder of the right of residence.</i> . 1. The Union or EEA citizen's death or departure from Spain (...) shall not affect the right of residence of his/her family members who are nationals of a Member State to the EU or EEA.	Y	Effective transposition. The last sentence is not transposed since Union and EEA Citizens do not have to meet any conditions, apart from being nationals of a MS to the EU or EEA to reside in Spain.
Art.12.2	2. Without prejudice to the second subparagraph, the Union citizen's death shall not entail loss of the right of residence of his/her family members who are not nationals of a Member State and who have been residing in the host Member State as family members for at least one year before the Union citizen's death.	Article 9(2) RD 240/2007	2. El fallecimiento del ciudadano de un Estado miembro de la Unión Europea o de un Estado parte en el Acuerdo sobre el Espacio Económico Europeo, en el caso de miembros de la familia que no sean ciudadanos de uno de dichos Estados, tampoco afectará a su derecho de residencia, siempre que éstos hayan residido en España, en calidad de miembros de la familia, antes del fallecimiento del titular del derecho. Los familiares tendrán obligación de comunicar el fallecimiento a las autoridades competentes.	1. The Union or EEA citizen's death shall not entail loss of the right of residence of his/her family members who are not nationals of a Member State to the EU or the EEA provided they have been residing in Spain as family members for at least one year before the Union citizen's death. The family member shall have the obligation to notify to the authorities the death of the Union or EEA citizen.	Y	Almost literal transposition. In addition, the RD requires the family members to notify the death.
	Before acquiring the right of permanent residence, the right of residence of the persons concerned shall remain subject to the requirement that they are able to show that they are workers or self-employed persons or that they have sufficient resources for themselves and their family members not to become a burden on the	Article 9(2) second subparagraph RD 240/2007	Transcurridos seis meses desde el fallecimiento salvo que haya adquirido el derecho a residir con carácter permanente, el familiar deberá solicitar una autorización de residencia, de conformidad con lo previsto en el artículo 96.5 Reglamento de la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en	After six months of the death and provided the family member has not acquired the right of permanent residence, the family member shall apply for a residence authorisation according to Article 96.5 of the Regulation of the LO 4/2000. To	N, incorrect	Incorrect transposition After six months of the event, the family member will have to obtain a residence authorisation according to the Aliens Act. However, the RD refers to Article 96(5) of the Aliens Regulation which specifically

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
	social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State, or that they are members of the family, already constituted in the host Member State, of a person satisfying these requirements. 'Sufficient resources' shall be as defined in Article 8(4).		España y su integración social. Para obtener la nueva autorización deberá demostrar que está en alta en el régimen correspondiente de seguridad social como trabajador, bien por cuenta ajena o bien por cuenta propia, o que disponen, para sí y para los miembros de su familia, de recursos suficientes, o que son miembros de la familia, ya constituida en el Estado miembro de acogida, de una persona que cumpla estos requisitos.	obtain a new authorisation, the person concerned shall show that is registered in the social security system as worker or self-employed persons or that has sufficient resources for him/herself and his/her family members, or that they are members of a family already constituted in the host Member State of a person satisfying those requirements.		mentions family members of a Union citizen that are no longer family members. The way RD 240/2007 has transposed these provisions for third country family members is one of the most serious cases of non conformity identified. RD 240/2007 excludes third country family members who retained the right of residence from the Union citizens' regime so that after six months of the event, they have to request for a residence card under the Aliens Act. This implies that these family members will not be protected under Article 27-31 of the Directive. The transposition of these two provisions for third country family members is therefore considered incorrect. Regarding sufficient resources (except for entry), in Spain there is no specific legislation and it is left at the discretion of the authority
	Such family members shall retain their right of residence exclusively on a personal basis.	Article 9	<i>Mantenimiento a título personal del derecho de residencia de los miembros de la familia en caso de fallecimiento, salida de España, nulidad del vínculo matrimonial, divorcio, separación legal o cancelación de la inscripción como pareja registrada, en relación con el titular del derecho de residencia</i>	<i>Maintenance on a personal basis of the right of residence of family members in case of death, departure, nullity of marriage, divorce, legal separation or cancellation of the registration of the partnership with the holder of the right of residence</i>	N, incorrect	Incorrect transposition Transposed but see comments above.
Art.12.3	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	Article 9(3) RD 240/2007	3. La salida de España o el fallecimiento del ciudadano de un Estado miembro de la Unión Europea o de un Estado parte en el Acuerdo sobre el Espacio Económico Europeo no supondrá la pérdida del derecho de residencia de sus hijos ni del progenitor que tenga atribuida la custodia efectiva de	The Union or EEA citizen's departure from Spain 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	Y	Almost literal transposition. For meaning of completion of studies see CS.

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
	enrolled at an educational establishment, for the purpose of studying there, until the completion of their studies.		éstos, con independencia de su nacionalidad, siempre que dichos hijos residan en España y se encuentran matriculados en un centro de enseñanza para cursar estudios, ello hasta la finalización de éstos.	children reside in Spain and are enrolled at an educational establishment, for the purpose of studying there, until the completion of their studies.		
Art.13.1	Retention of the right of residence by family members in the event of divorce, annulment of marriage or termination of registered partnership 1. Without prejudice to the second subparagraph, divorce, annulment of the Union citizen's marriage or termination of his/her registered partnership, as referred to in point 2(b) of Article 2 shall not affect the right of residence of his/her family members who are nationals of a Member State.	Article 9(1) RD 240/2007	El [fallecimiento del ciudadano de un Estado miembro de la Unión Europea o de un Estado parte en el Acuerdo sobre el Espacio Económico Europeo, su salida de España], o la nulidad del vínculo matrimonial, divorcio, separación legal o cancelación de la inscripción como pareja registrada, no afectará al derecho de residencia de los miembros de su familia ciudadanos de uno de dichos Estados.	1. The Union or EEA citizen's death or departure from Spain or the nullity of the marriage, divorce, legal separation or cancellation of the registration of the registered partnership shall not affect the right of residence of his/her family members who are nationals of a Member State to the EU or EEA.	Y	Effective transposition. Notice that Spain has also included legal separation. See comments on this issue on Article 2 of the Directive but it does not have any practical consequence here.
	Before acquiring the right of permanent residence, the persons concerned must meet the conditions laid down in points (a), (b), (c) or (d) of Article 7(1).				Y	Effective transposition No need to meet any conditions apart from being a national of a MS to the EU or the EEA.
Art.13.2 (a)	2. Without prejudice to the second subparagraph, divorce, annulment of marriage or termination of the registered partnership referred to in point 2(b) of Article 2 shall not entail loss of the right of residence of a Union citizen's family members who are not nationals of a Member State where: (a) prior to initiation of the divorce or annulment proceedings or termination of the registered partnership referred to in point 2(b) of Article 2, the marriage or registered partnership has lasted at least three years, including one year in the host Member State; or	Article 9(4)(a) RD 240/2007	En el caso de nulidad del vínculo matrimonial, divorcio, separación legal o cancelación de la inscripción como pareja registrada, de un nacional de un Estado miembro de la Unión Europea o de un Estado parte en el Acuerdo sobre el Espacio Económico Europeo, con un nacional de un Estado que no lo sea, éste tendrá obligación de comunicar dicha circunstancia a las autoridades competentes. Para conservar el derecho de residencia, deberá acreditarse uno de los siguientes supuestos: a) Duración de al menos tres años del	In the event of nullity of marriage, divorced, legal separation or cancellation of the registered partnership, of a Union or EEA citizen with a citizen who is not a national of the Member State of the EU or a State member to the EEA, the person concerned has the obligation to notify the change in the circumstances to the competent authorities. To retain the right of residence, the person concerned shall attest that he/she falls under one the following situations: a) prior to initiation of the	N, incorrect	Incorrect transposition The transposition follows closely the wording of the Directive but also refers to legal separation. In this cases, as mentioned in article 2 the RD does not consider the person as a spouse despite the fact that the person is still legally the spouse and the marital link still exists. Otherwise, the transposition is correct. The person concerned has the obligation to notify the change in the circumstances.

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			matrimonio o situación de pareja registrada, hasta el inicio del procedimiento judicial de nulidad del matrimonio, divorcio o separación legal, o de la cancelación de la inscripción como pareja registrada, de los cuales deberá acreditarse que al menos uno de los años ha transcurrido en España.	divorce or annulment proceedings or termination of the registered partnership, or legal separation, the marriage or registered partnership has lasted at least three years, including one accredited year in Spain		
Art.13.2 (b)	(b) by agreement between the spouses or the partners referred to in point 2(b) of Article 2 or by court order, the spouse or partner who is not a national of a Member State has custody of the Union citizen's children; or	Article 9(4)(b) RD 240/2007	b) Otorgamiento por mutuo acuerdo o decisión judicial, de la custodia de los hijos del ciudadano comunitario, al ex cónyuge o ex pareja registrada que no sea ciudadano de un Estado miembro de la Unión Europea ni de un Estado parte en el Acuerdo sobre el Espacio Económico Europeo.	b) by agreement between the spouses or the partners or by court order, the ex-spouse or ex-partner who is not a national of a Member State of the EU or the EEA has custody of the Union citizen's children	Y	Almost literal transposition.
Art.13.2 ©	(c) this is warranted by particularly difficult circumstances, such as having been a victim of domestic violence while the marriage or registered partnership was subsisting; or	Article 9(4)(c) RD 240/2007	c) Cuando se acredite que han existido circunstancias especialmente difíciles como haber sido víctima de violencia doméstica durante el matrimonio o situación de pareja registrada, circunstancia que se considerará acreditada de manera provisional cuando exista una orden de protección a su favor o informe del Ministerio Fiscal en el que se indique la existencia de indicios de violencia doméstica, y con carácter definitivo cuando haya recaído sentencia en la que se declare que se han producido las circunstancias alegadas.	c) when it is attested that there have been particularly difficult circumstances, such as having been a victim of domestic violence while the marriage or registered partnership was subsisting. The existence of this particular circumstance shall be considered provisionally attested if there is an order of protection issued by the Prosecutor in which it is indicated that there are signs of domestic violence, and definitely attested when there is a court decision declaring that those circumstances existed.	Y	Effective transposition. With regard to the specific case of domestic violence, the RD requires as proof the order issued by the Prosecutor or the court order. It could be argued that this is not required by the Directive and that the person could actually denounce the circumstances after the divorce or cancellation took place. Also it could be argued that medical examinations could also be considered as a proof of such domestic violence. It could be argued that this is not required by the Directive and that the person could actually denounce the circumstances after the divorce or cancellation took place. Also it could be argued that medical examinations could also be considered as a proof of such domestic violence. However, these means of proof are those accepted under Organic Law 1/1994 of 28 December, on measures to ensure total protection in cases of

Directive 2004/38/EC on the right of citizens of the Union and their family members
to move and reside freely within the territory of the Member-States

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
						gender violence ² to certify the existence of such situation. For this reasons the transposition has been considered correct. A protective order is not very difficult to obtain in Spain given the specific legislation against domestic violence and awareness about domestic violence
Art.13.2 (d)	d) by agreement between the spouses or partners referred to in point 2 (b) of Article 2 or by court order, the spouse or partner who is not a national of a Member State has the right of access to a minor child, provided that the court has ruled that such access must be in the host Member State, and for as long as is required.	Article 9(4)(d) RD 240/2007	d) Resolución judicial o mutuo acuerdo entre las partes que determine el derecho de visita, al hijo menor, del ex cónyuge, cónyuge separado legalmente o ex pareja registrada que no sea ciudadano de un Estado miembro de la Unión Europea o de un Estado parte en el Acuerdo sobre el Espacio Económico Europeo, cuando dicho menor resida en España y dicha resolución o acuerdo se encuentre vigente.	d) by agreement between the spouses or partners or by court order, the ex-spouse, the partner legally separated or ex-partner who is not a national of a Member State has the right of access to a minor child, provided that the court has ruled that such access must be in the host Member State, and the court order or agreement is in force.	Y	Effective transposition Although the last sentence “for as long as is required” has not been transposed, it would be part of the idea of the court order and agreement being in force.
	Before acquiring the right of permanent residence, the right of residence of the persons concerned shall remain subject to the requirement that they are able to show that they are workers or self-employed persons or that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State, or that they are members of the family, already constituted in the host Member State, of a person satisfying these requirements. 'Sufficient resources' shall be as defined in Article 8(4).	Article 9(4) second subparagraph RD 240/2007	Transcurridos seis meses desde que se produjera cualquiera de los supuestos anteriores, salvo que haya adquirido el derecho a residir con carácter permanente, el ex cónyuge o ex pareja registrada que no sea ciudadano de un Estado miembro de la Unión Europea o de un Estado parte en el Acuerdo sobre el Espacio Económico Europeo deberá solicitar una autorización de residencia, de conformidad con lo previsto en el artículo 96.5 Reglamento de la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social. Dicho plazo de seis meses podrá ser prorrogado, en el supuesto de la letra c) anterior, hasta el momento en que recaiga resolución judicial en la que se declare que se han producido las circunstancias alegadas. Para obtener la	After six months of any of the events described above took place, and provided that the person concerned has not acquired the right of permanent residence, the ex-spouse, ex-partner shall apply for a residence authorisation according to Article 96.5 of the Regulation of the LO 4/2000. This period of time could be extended in the event described in (c) [domestic violence] until a court decisions is taken declaring that those circumstances existed. To obtain a new authorisation, the person concerned shall show that is registered in the social security	N, incorrect	Incorrect transposition Although the basic requirements are correctly transposed, the RD limits the person scope of application to the ex-spouse or ex-partner and does not apply to family members in general as in the Directive. In addition, see the problem of exclusion of these family members from the protection of the Directive already commented at Article 12.

² See also explanations from the Council of State. Ley Orgánica 1/2004, de 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género, BOE n. 313 of 29/12/2004, p. 42166, available at: http://www.boe.es/g/es/bases_datos/doc.php?coleccion=iberlex&id=2004/21760.

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			nueva autorización deberá demostrar que está en alta en el régimen correspondiente de seguridad social como trabajador, bien por cuenta ajena o bien por cuenta propia, o que disponen, para sí y para los miembros de su familia, de recursos suficientes, o que son miembros de la familia, ya constituida en el Estado miembro de acogida, de una persona que cumpla estos requisitos.	system as worker or self-employed persons or that has sufficient resources for him/herself and his/her family members, or that they are members of a family already constituted in the host Member State of a person satisfying those requirements.		
	Such family members shall retain their right of residence exclusively on personal basis.	Article 9 RD 240/2007	<i>Mantenimiento a título personal del derecho de residencia de los miembros de la familia en caso de fallecimiento, salida de España, nulidad del vínculo matrimonial, divorcio, separación legal o cancelación de la inscripción como pareja registrada, en relación con el titular del derecho de residencia</i>	<i>Maintenance on a personal basis of the right of residence of family members in case of death, departure, nullity of marriage, divorce, legal separation or cancellation of the registration of the partnership with the holder of the right of residence</i>	N, incorrect	Incorrect transposition Effective transposition, but same comment as above and under Article 12(2).
Art.14.1	Retention of the right of residence Union citizens and their family members shall have the right of residence provided for in Article 6, as long as they do not become an unreasonable burden on the social assistance system of the host Member State.	Article 6 RD 240/2007	<i>Estancia inferior a tres meses.</i> 1. En los supuestos en los que la permanencia en España de un ciudadano de un Estado miembro de la Unión Europea o de otro Estado parte en el Acuerdo sobre el Espacio Económico Europeo, cualquiera que sea su finalidad, tenga una duración inferior a tres meses, será suficiente la posesión de pasaporte o documento de identidad en vigor, en virtud del cual se haya efectuado la entrada en territorio español, no computándose dicha permanencia a los efectos derivados de la situación de residencia. 2. Lo dispuesto en el apartado anterior será de aplicación para los familiares de los ciudadanos de un Estado miembro de la Unión Europea o de otro Estado parte en el Acuerdo sobre el Espacio Económico Europeo, que no sean nacionales de uno de estos estados, y acompañen al ciudadano de uno de estos Estados o se reúnan con él, que estén en posesión de un pasaporte válido y en	In those cases where the stay of the Union or EEA citizen, regardless of their purpose, has a duration of less than 3 months, it shall be enough to hold a valid passport or identity card according to which the person has entered the territory of Spain, this period not being counted to derive any rights stemming from the residence 2.The previous paragraph shall also apply to family members of the Union citizen or EEA citizen who are not nationals of one of these States, and are accompanying or joining the Union or EEA citizen and who hold a valid passport, and who have complied with the	Y	Effective transposition There is no specific provision transposing this requirement but since the only condition to entry and reside in Spain is to have the nationality of MS, Union citizens and their family members could never be expelled out for being a unreasonable burden. The only possibility to deny entry, refuse registration or expel Union citizens and their family members are reasons based on grounds of public policy, public security and public health. These measures have to be based on these grounds and cannot be applied to serve economic ends.

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		<p>Article 15(1) RD 240/2007</p> <p>Article 4(3) RD 240/2007</p>	<p>vigor, y que hayan cumplido los requisitos de entrada establecidos en el Artículo 4 del presente real decreto.</p> <p>Artículo 15. <i>Medidas por razones de orden público, seguridad y salud pública.</i> 1. Cuando así lo impongan razones de orden público, de seguridad pública o de salud pública, se podrá adoptar alguna de las medidas siguientes en relación con los ciudadanos de un Estado miembro de la Unión Europea o de otro Estado parte en el Acuerdo sobre el Espacio Económico Europeo, o con los miembros de su familia: a) Impedir la entrada en España, aunque los interesados presenten la documentación prevista en el artículo 4 del presente real decreto. b) Denegar la inscripción en el Registro Central de Extranjeros, o la expedición o renovación de las tarjetas de residencia previstas en el presente real decreto. c) Ordenar la expulsión o devolución del territorio español.</p> <p>3. Cualquier resolución denegatoria de una solicitud de visado o de entrada, instada por una persona incluida en el ámbito de aplicación del presente real decreto deberá ser motivada. Dicha resolución denegatoria indicará las razones en que se base, bien por no acreditar debidamente los requisitos exigidos a tal efecto por el presente real decreto, bien por motivos de orden público, seguridad o salud públicas. Las razones serán puestas en conocimiento del interesado salvo que ello sea contrario a la seguridad del Estado.</p>	<p>requirements of entry provided in Article 4 of the RD.</p> <p><i>Measures for reasons of public order, public health and public security.</i> When so required by reasons of public policy, public security or public health, any of the following measures can be adopted against a Union or EEA citizen or their family members: a) prevent entry in Spain, even if the concerned people have submitted the documentation foreseen on Article 4 of the present Royal Decree. b) deny the registration in the Aliens Central Register, or the issuance or renovation of the residence cards foreseen in this Royal Decree. c) Order the expulsion or return from the territory of Spain.</p> <p>3. Any negative resolution regarding visa or entry against a person covered by this Royal Decree must be motivated. This negative resolution shall indicate the reasons on which it is based, which may be either because the requirements are not accredited, or because of reasons of public order, public health or public security. The reasons shall be made known to the concerned person except when it is contrary to the interest of the State.</p>		

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Article 15(5)(c) RD 240/2007	5. La adopción de una de las medidas previstas en los apartados anteriores 1 a 4 se atenderá a los siguientes criterios: c) No podrá ser adoptada con fines económicos	5. The adoption of any of the measures foreseen in subparagraphs 1-4 shall comply with the following criteria: (...) c) they shall not be adopted to serve economic ends.		
Art.14.2	2. Union citizens and their family Members shall have the right of residence provided for in Articles 7, 12 and 13 as long as they meet the conditions set out therein.	Article 14(2) RD 240/2007	En todo caso, la vigencia de los certificados de registro y tarjetas de residencia contemplados en el presente real decreto, y el reemplazo de éstos por un documento acreditativo de la residencia permanente o una tarjeta de residencia permanente, respectivamente, estará condicionada al hecho de que su titular continúe encontrándose en alguno de los supuestos que dan derecho a su obtención. Los interesados deberán comunicar los eventuales cambios de circunstancias referidos a su nacionalidad, estado civil o domicilio a la Oficina de Extranjeros de la provincia donde residan o, en su defecto, a la Comisaría de Policía correspondiente.	In any case, the validity of the registrations certificate and the residence cards foreseen in the present RD, and the replacement of these by a document attesting the permanence residence or a card of permanent residence shall be conditioned to the holder falling under any of the situations that give right to obtaining these documents. The concerned persons shall communicate any change in the circumstances referred to nationality, civil status or address to the Aliens Office of the province in which they are residing or, if there is none, to the Commissariat of Police.	Y	Effective transposition Although there is no specific provision transposing this Article, the RD prefers to refer to validity of the card rather than losing the right of residence. Two different remarks need to be done on this aspect: <ul style="list-style-type: none"> For Union citizens, there are no conditions for residence except to be a national of a Member State. For this reason, they cannot lose the right of residence for not meeting Article 7, and Article 12(1) or 13(1) conditions since these are not required under RD. The right of residence may be affected by a change in the nationality though. For this reason, the only obligation is for the Union citizen to notify a change in the nationality. However, this does not mean that they lose the right of residence since it may well be that they have a right of residence for other reasons (under the general Aliens Act conditions). In the case of family members, the Spanish legislation again prefers not to refer to losing the right of residence but rather to

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
						<p>the validity of the card. The fact that they are no longer family members does not imply that they lose the right of residence immediately since the person may have a right of residence under the general Aliens Act and a different card is then issued. Regarding retention of the right of residence under Article 12 and 13, if they do not meet the conditions under Article 12(2) and 13(2) then they might not acquire the right of permanent residence under the RD but they can acquire the right of permanent residence under the general provisions of the Aliens Act which also includes 5 years of residence. In addition, under Article 75(2)(e) of the Aliens Regulation when the conditions that led to the issuance of residence authorisation for up to 5 years are no longer met the right of residence may be lost. This includes be no longer a worker or self employed; or not having sufficient resources (Article 75(2)(a)).</p>
	<p>In specific cases where there is a reasonable doubt as to whether a Union citizen or his/her family members satisfies the conditions set out in Articles 7, 12 and 13, Member States may verify if these conditions are fulfilled. This verification shall not be carried out systematically.</p>	<p>Article 14(2) RD 240/2007</p>	<p>En todo caso, la vigencia de los certificados de registro y tarjetas de residencia contemplados en el presente real decreto, y el reemplazo de éstos por un documento acreditativo de la residencia permanente o una tarjeta de residencia permanente, respectivamente, estará condicionada al hecho de que su titular continúe encontrándose en alguno de los supuestos que dan derecho a su obtención. Los</p>	<p>In any case, the validity of the registrations certificate and the residence cards foreseen in the present RD, and the replacement of these by a document attesting the permanence residence or a card of permanent residence shall be conditioned to the holder falling under any of the situations that give right to</p>	<p>N, incomplete</p>	<p>Incomplete transposition</p> <p>There is no specific provision in the RD or in the LO 4/2000 or its Regulation ensuring that only when there is a reasonable doubt checks will be carried out. Notice however that the way the RD and the LO 4/2000 are construed, the basic principle is that there is an obligation</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		<p>Article 9(2) RD 240/2007</p> <p>Article 9(1) RD 240/2007</p> <p>Article 13 RD 240/2007</p>	<p>interesados deberán comunicar los eventuales cambios de circunstancias referidos a su nacionalidad, estado civil o domicilio a la Oficina de Extranjeros de la provincia donde residan o, en su defecto, a la Comisaría de Policía correspondiente.</p> <p>En el caso de nulidad del vínculo matrimonial, divorcio, separación legal o cancelación de la inscripción como pareja registrada, de un nacional de un Estado miembro de la Unión Europea o de un Estado parte en el Acuerdo sobre el Espacio Económico Europeo, con un nacional de un Estado que no lo sea, éste tendrá obligación de comunicar dicha circunstancia a las autoridades competentes.</p> <p>Los familiares tendrán obligación de comunicar el fallecimiento a las autoridades competentes.</p> <p><i>Renovación de las tarjetas de residencia.</i></p> <p>En caso de que fuese necesaria la renovación de la tarjeta de residencia antes de la adquisición del derecho a residir con carácter permanente, dicha renovación se tramitará conforme a lo dispuesto en el presente real decreto, si bien en el caso de ascendientes y descendientes no se exigirá la aportación de la documentación acreditativa de la existencia del vínculo familiar que da derecho a la expedición de la tarjeta.</p>	<p>obtaining these documents. The concerned persons shall communicate any change in the circumstances referred to nationality, civil status or address to the Aliens Office of the province in which they are residing or, if there is none, to the Commissariat of Police.</p> <p>In the event of nullity of marriage, divorced, legal separation or cancellation of the registered partnership, of a Union or EEA citizen with a citizen who is not a national of the Member State of the EU or a State member to the EEA, the person concerned has the obligation to notify the change in the circumstances to the competent authorities</p> <p>The family member shall have the obligation to notify to the authorities the death of the Union or EEA citizen.</p> <p><i>Renewal of residence cards</i></p> <p>In case the renovation of the residence card was needed before the acquisition of the right of permanent residence, the renovation shall be carried out according to the present RD, but in the case of ascendants and descendants the documents attesting the family link giving the right to the issuance of the card shall not be required.</p>		<p>of the person concerned to notify a change in the circumstances and the only checks possible are the control checks carried out in the street requiring the person to identify themselves (see transposition of Article 26 below). In addition, in case the renovation of a card has to take place before the permanent residence card is issued family link of ascendants and descendants do not have to be submitted. This o implies that at that moment of renovation a revision of whether the persons meets the conditions may take place. Again, it should be highlighted that because Union citizens do not have to meet any conditions, this provision will mainly affect third country family members. In any case, the approach adopted under the RD does not seem to grant the same level of protection than the Directive.</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			c) No podrá ser adoptada con fines económicos	c) they shall not be adopted to serve economic ends.		<p>not obtain a notification in writing as required by Article 30(1) of the Directive.</p> <p>After analys of the procedural guarantees under Article 30-31 and the regime applicable to decisions falling under Article 15 of the Directive, it is concluded that:</p> <ul style="list-style-type: none"> - there is ambiguity regarding the time-limit to leave the country (whether 15 or 90 days will be applicable)- Article 30(3) if the Dir - there is ambiguity regarding the application for interim orders under Article 31(2) and - the Aliens act does not offer the same guarantees for defence in person under Article 31(4) of the Dir <p>For this reason the transposition is considered incomplete and ambiguous.</p>
Art.15.2	2. Expiry of the identity card or passport on the basis of which the person concerned entered the host Member State and was issued with a registration certificate or residence card shall not constitute a ground for expulsion from the host Member State.	Article 15(7) RD 240/2007	La caducidad del documento de identidad o del pasaporte con el que el interesado efectuara su entrada en España, o, en su caso, de la tarjeta de residencia, no podrá ser causa de expulsión.	Expiry of the identity card or passport on the basis of which the person concerned entered Spain, or when applicable, expiry of residence card, shall not constitute a ground for expulsion from the host Member State.	Y	<p>Effective transposition.</p> <p>The RD also includes expiration of the residence card. This is in line with the nature of the card, which is simply declaratory.</p>
Art.15.3	3. The host Member State may not impose a ban on entry in the context of an expulsion decision to which paragraph 1 applies.	Article 158 Aliens Regulation	Si los extranjeros a que se refiriere este artículo realizasen efectivamente su salida del territorio español conforme a lo dispuesto en los apartados anteriores, no serán objeto de prohibición de entrada en el país y eventualmente podrán volver a España, con arreglo a las normas que regulas el acceso al territorio español	If the aliens referred to in this article who effectively exit Spain according to the provisions of previous paragraphs, they shall not be subject to an entry ban and could return to Spain according to the rules on entry into the Spanish territory.	Y	<p>Effective transposition</p> <p>The only expulsion decisions that can be taken are those in relation to public security, public policy and public health. Only in these cases a ban on entry will be imposed.</p> <p>It should also be noticed that in the case discussed above under Article</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
						15(1) of a possible order to leave the country for not meeting the conditions (therefore deny of residence card), no ban on entry will be imposed (Article 158(3) of the Aliens Regulation). Only for expulsion decisions based on public order and public security may a ban be imposed. The Council of State of the same opinion.
Chapter IV						
RIGHT OF PERMANENT RESIDENCE						
<i>Section I. Eligibility</i>						
Art.16.1	General rule for Union citizens and their family members 1. Union citizens who have resided legally for a continuous period of five years in the host Member State shall have the right of permanent residence there. This right shall not be subject to the conditions provided for in Chapter III.	Article 10(1) RD 240/2007	<i>Derecho a residir con carácter permanente.</i> 1. Son titulares del derecho a residir con carácter permanente los ciudadanos de un Estado miembro de la Unión Europea o de un Estado parte en el Acuerdo sobre el Espacio Económico Europeo, y los miembros de la familia que no sean nacionales de uno de dichos Estados, que hayan residido legalmente en España durante un período continuado de cinco años. Este derecho no estará sujeto a las condiciones previstas en el capítulo III del presente real decreto.	<i>Right of permanent residence.</i> Union and EEA citizens, as well as their family members who are not nationals of one of those States, who have resided legally for a continuous period of five years in Spain shall have the right of permanent residence there. This right shall not be subject to the conditions provided for in Chapter III.	Y	Almost literal transposition
Art.16.2	2. Paragraph 1 shall apply also to family members who are not nationals of a Member State and have legally resided with the Union citizen in the host Member State for a continuous period of five years.	Article 10(1) RD 240/2007	1. Son titulares del derecho a residir con carácter permanente los ciudadanos de un Estado miembro de la Unión Europea o de un Estado parte en el Acuerdo sobre el Espacio Económico Europeo, y los miembros de la familia que no sean nacionales de uno de dichos Estados, que hayan residido legalmente en España durante un período continuado de cinco años. Este derecho no estará sujeto a las condiciones previstas en el capítulo III del presente real decreto.	Union and EEA citizens, as well as their family members who are not nationals of one of those States , who have resided legally for a continuous period of five years in Spain shall have the right of permanent residence there. This right shall not be subject to the conditions provided for in Chapter III.	Y	Almost literal transposition
Art.16.3	3. Continuity of residence shall not be affected by temporary absences not exceeding a total of six months a year, or by absences of a longer duration for	Article 10(6) RD 240/2007	A los efectos del presente artículo, la continuidad de la residencia se valorará de conformidad con lo previsto en el presente real decreto.	For the purposes of this article, the continuity of residence shall be evaluated in accordance with the present royal decree.	Y	Effective transposition The provision establishes the continuity shall be considered

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
	compulsory military service, or by one absence of a maximum of 12 consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.					according to the RD but in no provision of the RD there is a definition of continuity. It seems that the RD is trying to clearly establish a different regime from the continuity of residence that the one established in the Aliens Act (LO 4/2000). Therefore, one should look at other provisions of the RD regulating continuity, including interruption of continuity due to expulsion according to Article 21 of the Directive and transposed by Article 15(3) of the RD and Article 14(3) for the valuation of continuity despite the fact that in this case it only refers to the validity of the residence card. Article 14(3) includes the requirements listed in Article 16(3) of the Directive and it is even more flexible since it covers cooperation work in third countries and study programmes beyond 12 months of absence. Although a clear provision would have been better, the <i>effet utile</i> is ensured and for this reason transposition is considered correct.
Art.16.4	4. Once acquired, the right of permanent residence shall be lost only through absence from the host Member State for a period exceeding two consecutive years.	Article 10(7) RD 240/2007	Se perderá el derecho de residencia permanente por ausencia del territorio español durante más de dos años consecutivos	The right of permanent residence shall be lost through absence from the host Member State for a period exceeding two consecutive years	Y	Effective transposition Although the text does not include "only" there is no other provision in the RD. The provisions under the Aliens Act do not seem applicable since they will not be more favourable (the Aliens Act only applies in those aspects that are more favourable to the persons covered by the RD).
Art.17.1 (a)	Exemptions for persons no longer working in the host Member State and their family members	Article 10(2)(a) RD 240/2007	Asimismo, tendrán derecho a la residencia permanente, antes de que finalice el período de cinco años referido con anterioridad, las	Similarly, the right of permanent residence in shall be enjoyed before completion of a	Y	Almost literal transposition. The second paragraph is the

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
	<p>1. By way of derogation from Article 16, the right of permanent residence in the host Member State shall be enjoyed before completion of a continuous period of five years of residence by:</p> <p>(a) workers or self-employed persons who, at the time they stop working, have reached the age laid down by the law of that Member State for entitlement to an old age pension or workers who cease paid employment to take early retirement, provided that they have been working in that Member State for at least the preceding twelve months and have resided there continuously for more than three years.</p>	<p>Form EX-16</p>	<p>personas en las que concurra alguna de las siguientes circunstancias:</p> <p>a) El trabajador por cuenta propia o ajena que, en el momento en que cese su actividad, haya alcanzado la edad prevista en la legislación española para acceder a la jubilación con derecho a pensión, o el trabajador por cuenta ajena que deje de ocupar la actividad remunerada con motivo de una jubilación anticipada, cuando hayan ejercido su actividad en España durante, al menos, los últimos doce meses y hayan residido en España de forma continuada durante más de tres años.</p> <p>La condición de duración de residencia no se exigirá si el cónyuge o pareja registrada del trabajador es ciudadano español o ha perdido su nacionalidad española tras su matrimonio o inscripción como pareja registrada con el trabajador.</p> <p>Certificado de derecho a residir con carácter permanente de ciudadano de la Unión.</p> <p>El trabajador que haya cesado su actividad, por cuenta propia o ajena, habiendo alcanzado la edad prevista en la normativa española para la jubilación con derecho a pensión, así como habiendo residido en España de forma continuada por más de 3 años y ejercido su actividad durante los últimos 12 meses en España:</p>	<p>continuous period of five years of residence by the persons falling under one of the following circumstances:</p> <p>(a) worker or self-employed person who, at the time they stop working, has reached the age laid down by the law of Spain for entitlement to an old age pension, or worker who ceases paid employment to take early retirement, provided that has have been working in Spain for at least the preceding twelve months and has resided in Spain continuously for more than three years.</p> <p>The condition of duration of residence shall not apply if the worker's or self-employed person's spouse or registered partner is a national of Spain or has lost his/her Spanish nationality by marriage or registration as registered partner of the worker.</p> <p>Certificate of permanent residence of a Union citizen</p> <p>The worker or self-employed person who has ceased his/her activity having attained the age foreseen in the Spanish legislation for retirement with a right to pension and having resided continuously in Spain for more than 3 years and exercised</p>		<p>transposition of Article 17(2).</p> <p>According to the EX-16 form, the proof requested when applying for the certificate is document evidence of retirement and certificate of economic activity (certificado de vida laboral) issued by the Social Security showing that the person has been working in Spain the previous 12 months. This document is not required when the worker's or self-employed person's spouse or registered partner is a national of Spain or has lost his/her Spanish nationality by marriage or registration as registered partner of the worker. Document evidence shall show this circumstance.</p> <p>Regarding early retirement, document evidence of early retirement, the same certificate issued by the Social Security showing that he/she has work in Spain the previous 12 months. This document is not required when the worker's or self-employed person's spouse or registered partner is a national of Spain or has lost his/her Spanish nationality by marriage or registration as registered partner of the worker. And the registration certificate as a Union citizen showing that the person has been residing in Spain for the last 3 years.</p> <p>The adequateness of these means of proof shall be discussed more in detail in the conformity study especially having regard to the</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			<p>- Documentación acreditativa del acceso a la jubilación</p> <p>- Certificado de vida laboral expedido por la Seguridad Social en el que conste que los últimos 12 meses ha desempeñado su actividad en España (salvo qu el cónyuge o pareja registrada del ciudadano comunitario sea ciudadano español o haya perdido dicha nacionalidad tras su matrimonio o inscripción como pareja con el ciudadano comunitario).</p> <p>- Certificado de registro como ciudadano de la Unión en el que conste un periodo mínimo de 3 años de residencia continuada en España (salvo qu el cónyuge o pareja registrada del ciudadano comunitario sea ciudadano español o haya perdido dicha nacionalidad tras su matrimonio o inscripción como pareja con el ciudadano comunitario. En este caso deberá presentar documento acreditativo de esta circunstancia).</p> <p>El trabajador que haya cesado en su actividad por cuenta ajena en base a una jubilación anticipada:</p> <p>- Documento acreditativo del acceso a la jubilación anticipada</p> <p>- Certificado de vida laboral certificado por la Seguridad Social en el que conste que los últimos 12 meses ha desempeñado su actividad en España (salvo qu el cónyuge o</p>	<p>his/her activity for the last 12 months in Spain.</p> <p>- Document certifying the access to retirement</p> <p>- Certificate of employment life issued by the Social Security in which is shown that the last 12 months the person has been working in Spain (except if the spouse or registered partner of the Union citizen is a Spanish national or lost that nationality upon marriage or partnership with the Union citizen.)</p> <p>- Registration certificate of the Union citizen in which is shown that he/she continuously resided in Spain for at least 3 years (except if the spouse or registered partner of the Union citizen is a Spanish national or lost that nationality upon marriage or partnership with the Union citizen. In this case, a document certifying this circumstance shall be submitted)</p> <p>The self-employed person who ceased work based on early retirement:</p> <p>- Document certifying the access to early retirement.</p> <p>- Certificate of employment life issued by the Social Security showing that in the last 12 months he/she carried out his/her</p>		<p>Spanish provision transposing Article 21 admitting any means of proof. Some aspects will need to be clarified with the competent authorities.</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			<p>pareja registrada del ciudadano comunitario sea ciudadano español o haya perdido dicha nacionalidad tras su matrimonio o inscripción como pareja con el ciudadano comunitario).</p> <p>-Certificado de registro como ciudadano de la Unión en el que conste un periodo mínimo de 3 años de residencia continuada en España (salvo qu el cónyuge o pareja registrada del ciudadano comunitario sea ciudadano español o haya perdido dicha nacionalidad tras su matrimonio o inscripción como pareja con el ciudadano comunitario. En este caso deberá presentar documento acreditativo de esta circunstancia).</p>	<p>activity in Spain (except if the spouse or registered partner of the Union citizen is a Spanish national or lost that nationality upon marriage or partnership with the Union citizen.</p> <p>- Registration certificate of Union citizen showing at least 3 years of continuous residence in Spain (except if the spouse or registered partner of the Union citizen is a Spanish national or lost that nationality upon marriage or partnership with the Union citizen. In this case, a document certifying this circumstance shall be submitted)</p>		
	If the law of the host Member State does not grant the right to an old age pension to certain categories of self-employed persons, the age condition shall be deemed to have been met once the person concerned has reached the age of 60;				n/a	Spain grants old age pension to self-employed persons.
Art.17.1 (b)	(b) workers or self-employed persons who have resided continuously in the host Member State for more than two years and stop working there as a result of permanent incapacity to work. If such incapacity is the result of an accident at work or an occupational disease entitling the person concerned to a benefit payable in full or in part by an institution in the host Member State, no condition shall be imposed as to length of residence;	Article 10(2)(b) RD 240/2007	<p>El trabajador por cuenta propia o ajena que haya cesado en el desempeño de su actividad como consecuencia de incapacidad permanente, habiendo residido en España durante más de dos años sin interrupción. No será necesario acreditar tiempo alguno de residencia si la incapacidad resultara de accidente de trabajo o de enfermedad profesional que dé derecho a una pensión de la que sea responsable, total o parcialmente, un organismo del Estado español.</p> <p>La condición de duración de residencia no se exigirá si el cónyuge o pareja registrada del trabajador es ciudadano español o ha perdido</p>	<p>(b) worker or self-employed person who has resided continuously in Spain for more than two years and stop working there as a result of permanent incapacity to work. If such incapacity is the result of an accident at work or an occupation disease entitling the person concerned to a pension payable in full or in part by an body dependant of the Spanish State.</p> <p>The condition of duration of residence shall not apply if the worker's or self-employed</p>	Y	<p>Almost literal transposition.</p> <p>The second subparagraph is he transposition of Article 17(2).</p> <p>EX-16 form includes as means of proof: document evidence of permanent incapacity and the registration certificate showing that the person concerned has resided in Spain for at least 2 years. This is not required (a) if the incapacity is the result of an accident at work or an occupation disease entitling the person concerned to a pension payable in full or in part by an body dependant of the Spanish State; or (b)</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Form EX 16	<p>su nacionalidad española tras su matrimonio o inscripción como pareja con el trabajador.</p> <p>El trabajador que haya cesado en su actividad, por cuenta propia o ajena, como consecuencia de una incapacidad permanente:</p> <ul style="list-style-type: none"> - Documentación acreditativa de la incapacidad permanente - Certificado de registro como ciudadano de la Unión en el que conste un periodo mínimo de 2 años de residencia continuada en España (salvo que la incapacidad permanente derive de accidente de trabajo o enfermedad profesional que dé derecho a pensión de la que sea responsable, en todo o en parte, un organismo del Estado español, o que el cónyuge o pareja registrada del ciudadano comunitario sea ciudadano español o haya perdido dicha nacionalidad tras su matrimonio o inscripción como pareja con el ciudadano comunitario. En este caso, habrá de presentar documentación acreditativa de la circunstancia que exime del cumplimiento del requisito de 2 años de residencia previa continuada). 	<p>person's spouse or registered partner is a national of Spain or has lost his/her Spanish nationality by marriage or registration as registered partner of the worker.</p> <p>The worker or self-employed who ceased work as a consequence of permanent incapacity:</p> <ul style="list-style-type: none"> - Document certifying the permanent incapacity - Registration certificate of Union citizen showing at least 2 years of continuous residence in Spain (except if the incapacity is the result of an accident at work or occupational disease entitling the person to a pension payable in full or in part by an institution of Spain or if the spouse or registered partner of the Union citizen is a Spanish national or lost that nationality upon marriage or partnership with the Union citizen. In this case, a document certifying this circumstance shall be submitted) 		if the worker's or self-employed person's spouse or registered partner is a national of Spain or has lost his/her Spanish nationality by marriage or registration as registered partner of the worker. Document evidence of these circumstances is then requested.
Art.17.1 (c)	(c) workers or self-employed persons who, after three years of continuous employment and residence in the host Member State, work in an employed or self-employed capacity in another Member State, while retaining their place of residence in the host Member State, to which they return, as a rule, each day or at least once a week.	Article 10(2)(c) first sentence RD 240/2007	El trabajador por cuenta propia o ajena que, después de tres años consecutivos de actividad y de residencia continuadas en territorio español desempeñe su actividad, por cuenta propia o ajena, en otro Estado miembro y mantenga su residencia en España, regresando al territorio español diariamente o, al menos, una vez por semana.	(c) worker or self-employed person who, after three years of continuous employment and residence in Spain, work in an employed or self-employed capacity in another Member State, while retaining their place of residence in Spain, to which he/she returns each day or at	Y	Almost literal transposition EX-16 form includes as means of proof: the registration certificate showing 3 years of residence in Spain; a certificate of activity issued by the Social Security showing that in the previous 3 years the person has been working in Spain; document

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Form EX-16	<p>El trabajador que después de 3 años consecutivos de actividad y residencia en España, desempeñe su actividad profesional en otro Estado miembro y mantenga su residencia en España, regresando, al menos, una vez por semana:</p> <p>- Certificado de registro como ciudadana no de la Unión en el que conste un periodo mínimo de 3 años de residencia continuada en España.</p> <p>- Certificado de vida laboral expedido por la Seguridad Social en el que conste que el los últimos 3 años ha desempeñado su actividad en España</p> <p>- Documentación acreditativa de que desempeña su actividad en otro Estado miembro</p> <p>- Acreditación de que regresa por lo menos una vez a la semana al territorio español.</p>	<p>least once a week.</p> <p>The worker or self-employed who after 3 consecutive years of activity and residence in Spain, carries out his/her professional activity in another MS while keeping his/her residence in Spain and returning at least once a week:</p> <p>- Registration certificate of Union citizen showing at least 3 years of continuous residence in Spain</p> <p>- Certificate of employment life issued by the Social Security, showing that in the last 3 years he/she has been working in Spain</p> <p>- Document certifying that the person carries out his/her activity in another MS</p> <p>- Proof that the person returns to the Spanish territory at least once a week.</p>		evidence showing that the person is carrying our work in another MS; evidence that the person concerned returns at least once a week to Spain. Information about the type of evidence that will be admitted will be asked to the authorities.
	For the purposes of entitlement to the rights referred to in points (a) and (b), periods of employment spent in the Member State in which the person concerned is working shall be regarded as having been spent in the host Member State.	Article 10(2)(c) second sentence RD 240/2007	A los exclusivos efectos del derecho de residencia, los períodos de actividad ejercidos en otro Estado miembro de la Unión Europea se considerarán cumplidos en España.	For the purposes of entitlement to the right of residence, periods of activity spent in the Member State in which the person concerned is working shall be regarded as having been spent in Spain.	Y	Almost literal transposition. Reference to (a) and (b) replaced with right of residence, meaning permanent residence as understood in this context since the provision is a subdivision of the right of permanent residence.
	Periods of involuntary unemployment duly recorded by the relevant employment office, periods not worked for reasons not of the person's own	Article 10(4) RD 240/2007	A los efectos contemplados en el apartado 2 anterior, los períodos de desempleo involuntario, debidamente justificados por el servicio público de empleo competente, los	For the purposes of paragraph 2, periods of involuntary unemployment duly recorded by the relevant employment office,	Y	Almost literal transposition. Subparagraph 2 refers to right of permanent residence before 5 years

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
	making and absences from work or cessation of work due to illness or accident shall be regarded as periods of employment.		períodos de suspensión de la actividad por razones ajenas a la voluntad del interesado, y las ausencias del puesto de trabajo o las bajas por enfermedad o accidente se considerarán como períodos de empleo.	periods not worked for reasons not of the person's own making and absences from work or cessation of work due to illness or accident shall be regarded as periods of employment.		and transposing article 17(1).
Art.17.2	2. The conditions as to length of residence and employment laid down in point (a) of paragraph 1 and the condition as to length of residence laid down in point (b) of paragraph 1 shall not apply if the worker's or the self-employed person's spouse or partner as referred to in point 2(b) of Article 2 is a national of the host Member State or has lost the nationality of that Member State by marriage to that worker or self-employed person.	Article 10(2)(a) second subparagraph RD 240/2007 & Article 10(2)(b) second subparagraph RD 240/2007	La condición de duración de residencia no se exigirá si el cónyuge o pareja registrada del trabajador es ciudadano español o ha perdido su nacionalidad española tras su matrimonio o inscripción como pareja registrada con el trabajador.	The condition of duration of residence shall not apply if the worker's or self-employed person's spouse or registered partner is a national of Spain or has lost his/her Spanish nationality by marriage or registration as registered partner of the worker.	Y	Effective transposition Transposed in the relevant paragraph. The Spanish text reads "trabajador" (worker) but it needs to be read together with the previous subparagraph and means worker ("trabajador for cuenta ajena") and self-employed ("trabajador por cuenta propia").
Art.17.3	3. Irrespective of nationality, the family members of a worker or a self-employed person who are residing with him in the territory of the host Member State shall have the right of permanent residence in that Member State, if the worker or self-employed person has acquired himself the right of permanent residence in that Member State on the basis of paragraph 1.	Article 10(3) RD 240/2007	Los miembros de la familia del trabajador por cuenta propia o ajena que residen con él en España tendrán, con independencia de su nacionalidad, derecho de residencia permanente cuando el propio trabajador haya adquirido para sí el derecho de residencia permanente por hallarse incluido en alguno de los supuestos del apartado 2 anterior, expidiéndosele o renovándose, cuando fuera necesario, una tarjeta de residencia permanente de familiar de ciudadano de la Unión.	Irrespective of nationality, the family members of a worker or a self-employed person who are residing with him in the territory of Spain shall have the right of permanent residence in that Member State, if the worker or self-employed person has acquired himself the right of permanent residence because falling under one of the situations describe in paragraph 2 and when needed a permanent residence card of family member of a Union citizen shall be issued.	Y	Almost literal transposition. In addition the provision includes the obligation to issue the permanent residence card when needed (if the person is a third country family member).
Art.17.4 (a)	4. If, however, the worker or self-employed person dies while still working but before acquiring permanent residence status in the host Member State on the basis of paragraph 1, his family members who are residing with him in the host Member State shall acquire the right	Article 10(5)(a) RD 240/2007	Si el titular del derecho a residir en territorio español hubiera fallecido en el curso de su vida activa, con anterioridad a la adquisición del derecho de residencia permanente en España, los miembros de su familia que hubieran residido con él en el territorio nacional tendrán derecho a la residencia	If the worker or self-employed person dies while still working but before acquiring permanent residence status in Spain, his family members who are residing with him in the national territory shall have the right of	Y	Almost literal transposition. EX-16 form includes as means of proof: the residence card of family member of a Union citizen and the registration certificate showing that the Union citizen had resided 2 years

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
	<p>of permanent residence there, on condition that:</p> <p>(a) the worker or self-employed person had, at the time of death, resided continuously on the territory of that Member State for two years; or</p>	<p>Form EX 16</p>	<p>permanente siempre y cuando concurra alguna de las siguientes circunstancias:</p> <p>a) Que el titular del derecho a residir en territorio español hubiera residido, de forma continuada en España, en la fecha del fallecimiento durante, al menos, dos años.</p> <p>Tarjeta de residencia permanente de familiar de ciudadano de la Unión</p> <p>5. En función del supuesto concreto, deberá presentar además:</p> <p>- El familiar de ciudadano comunitario fallecido en curso de su vida activa con anterioridad al acceso al derecho de residencia permanente:</p> <p>a. Tarjeta de residencia de familiar de ciudadano de la Unión, derivada de haber residido con el ciudadano comunitario fallecido</p> <p>b. En función del supuesto concreto, deberá presentar además:</p> <p>- certificado de registro como ciudadano de la Unión del familiar fallecido, en el que conste un periodo mínimo de 2 años de residencia continuada en España;</p> <p>- documentación acreditativa de que el fallecimiento se debió a accidente de trabajo o a enfermedad profesional;</p> <p>- documentación acreditativa de que el cónyuge superviviente fue ciudadano español</p>	<p>permanent residence when one of the following conditions are met:</p> <p>a) the primary holder to the right of residence had, at the time of death, resided continuously in Spain at least for two years; or</p> <p>Residence card of permanent residence of family member of a Union citizen</p> <p>5. According to the specific case, the family member shall also submit:</p> <p>- Family member of a Union citizen deceased during his/her active life before acquisition of the right of permanent residence:</p> <p>a. Residence card of family member of Union citizen derived from having resided with the deceased Union citizen</p> <p>b. Depending on the specific case, it shall also be submitted:</p> <p>- registration certificate as Union citizen of the deceased family member, showing a minimum of at least 2 years of continuous residence in Spain;</p> <p>- document certifying that the death was due to accident at work or occupational disease;</p> <p>- document certifying that the surviving spouse was a Spanish</p>		<p>in Spain.</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			habiendo perdido dicha nacionalidad como consecuencia del matrimonio con el ciudadano comunitario fallecido.	citizen and lost this nationality as a consequence of the marrying the deceased Union citizen.		
Art.17.4 (b)	(b) the death resulted from an accident at work or an occupational disease; or	Article 10(5)(b) RD 240/2007 Form EX-16	b) Que el fallecimiento se haya debido a accidente de trabajo o enfermedad profesional. Idem - documentación acreditativa de que el fallecimiento se debió a accidente de trabajo o a enfermedad profesional;	b) the death resulted from an accident at work or an occupational disease - document certifying that the death was due to accident at work or occupational disease;	Y	Literal transposition EX-16 form includes as means of proof: the residence card of family member of a Union citizen and document evidence showing that the death was the result of an accident at work or an occupational disease.
Art.17.4 (c)	(c) the surviving spouse lost the nationality of that Member State following marriage to the worker or self-employed person.	Article 10(5)(c) RD 240/2007 Form EX-16	c) Que el cónyuge supérstite fuera ciudadano español y hubiera perdido la nacionalidad española como consecuencia del matrimonio con el fallecido. - documentación acreditativa de que el cónyuge supérstite fue ciudadano español habiendo perdido dicha nacionalidad como consecuencia del matrimonio con el ciudadano comunitario fallecido.	c) the surviving spouse was a Spanish national who lost the Spanish nationality following marriage to the dead person - document certifying that the surviving spouse was a Spanish citizen and lost this nationality as a consequence of the marrying the deceased Union citizen.	Y	Almost literal transposition EX-16 form includes as means of proof: the residence card of family member of a Union citizen and document evidence that he/she lost nationality upon marriage.
Art.18	Acquisition of the right of permanent residence by certain family members who are not nationals of a Member State. Without prejudice to Article 17, the family members of a Union citizen to whom Articles 12(2) and 13(2) apply, who satisfy the conditions laid down therein, shall acquire the right of permanent residence after residing legally for a period of five consecutive years in the host Member State.	Article 10(1) RD 240/2006 Article 32 LO 4/2000 (Aliens Act)	<i>Derecho a residir con carácter permanente.</i> 1. Son titulares del derecho a residir con carácter permanente los ciudadanos de un Estado miembro de la Unión Europea o de un Estado parte en el Acuerdo sobre el Espacio Económico Europeo, y los miembros de la familia que no sean nacionales de uno de dichos Estados, que hayan residido legalmente en España durante un período continuado de cinco años. Este derecho no estará sujeto a las condiciones previstas en el capítulo III del presente real decreto. Tendrán derecho a residencia permanente los que hayan tenido residencia temporal durante cinco años de forma continuada.	<i>Right of permanent residence.</i> Union and EEA citizens, as well as their family members who are not nationals of one of those States, who have resided legally for a continuous period of five years in Spain shall have the right of permanent residence there. This right shall not be subject to the conditions provided for in Chapter III. The aliens who have resided continuously in Spain for five years.	N, incorrect	Incorrect transposition There is no specific provision in the RD regarding the acquisition of the right of permanent residence by those who have retained the right of permanent residence under Article 12(2) or 13(2) of the Directive. This is the consequence of the total exclusion of these family members from RD 24/2007. As shown above these family members will be subject to the Aliens Act. The condition to obtain the right of permanent residence under the Aliens Act is legal residence for five consecutive years (Article 32 LO 4/2000 and

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
				<p>citizen showing 5 years of continuous residence.</p>		<p>or passport to prove identity and the payment of the tax are in line with the Directive. However, the limitation of the means of proof of durability to the registration certificate is against the Directive. It is not clear whether these documents are compulsory or recommended documents. If this is the only documents admitted, the practice should be considered against the Directive. The right of residence derives from meeting the conditions and not from the documents attesting that condition. Admitting only the registration certificate as proof, would tantamount imply that the legality of the residence derived from holding the document, which would be against the Directive <u>and</u> RD 240/2007, where no conditions are imposed to have the right of residence.</p> <p>The Union citizen should be able to proof the continuity and legality of residence by any means admitted in law (see Article 21 of the Directive); in this case according to Spanish procedural and administrative law. Therefore, although the transposition is correct, the implementation via the EX-16 is against the Directive on this point, unless other means of proof are admitted. The Spanish responses to the questionnaire indicate that only these documents are admitted.</p> <p>In addition, as commented in Article 6 the Spanish legislation does not take into account the first three</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
						months of residence in counting the years acquisition of permanent residence.
Art.19.2	2. The document certifying permanent residence shall be issued as soon as possible.	Article 10(1) second subparagraph	A petición del interesado, la Oficina de Extranjeros de la provincia donde éste tenga su residencia o, en su defecto, la Comisaría de Policía correspondiente, expedirá, con la mayor brevedad posible y tras verificar la duración de la residencia, un certificado del derecho a residir con carácter permanente.	At the request of the concerned person, the Aliens Office of the province in which he/she is residing or, if there is none, the Commissariat of Police, shall issued as soon as possible and after having verified duration of residence, a certificate of the right of permanent residence.	Y	Effective transposition.
Art.20.1	Permanent residence card for family members who are not nationals of a Member State 1. Member States shall issue family members who are not nationals of a Member State entitled to permanent residence with a permanent residence card within six months of the submission of the application. The permanent residence card shall be renewable automatically every 10 years.	Article 11(1) RD 240/2007	<i>Tarjeta de residencia permanente para miembros de la familia que no tengan la nacionalidad de un Estado miembro de la Unión Europea o de otro Estado parte en el Acuerdo sobre el Espacio Económico Europeo.</i> 1. Las autoridades competentes expedirán a los miembros de la familia con derecho de residencia permanente que no sean nacionales de otro Estado miembro de la Unión europea o de un Estado parte en el Acuerdo sobre el Espacio Económico Europeo, una tarjeta de residencia permanente, en el plazo de tres meses contados desde la fecha en que la correspondiente solicitud haya tenido entrada en el registro del órgano competente para su tramitación. (...) Dicha tarjeta será renovable automáticamente cada diez años.	<i>Residence card of a family member of a Union or EEA citizen who has not the nationality of one of those States</i> 1. The competent authorities shall issued to family members of an Union or EEA citizen entitled to permanent residence a permanent residence card within 3 months from the date on which the application has been registered within the competent body. (...) The card shall be automatically renewable every 10 years.	Y	Effective transposition. The time period for issuance is three months.
Art.20.2	2. The application for a permanent residence card shall be submitted before the residence card expires. Failure to comply with the requirement to apply for a permanent residence card may render the person concerned liable to proportionate and non-discriminatory sanctions.	Article 11(1) second subparagraph	La solicitud deberá presentarse en el modelo oficial establecido al efecto, durante el mes anterior a la caducidad de la tarjeta de residencia, pudiendo también presentarse dentro de los tres meses posteriores a dicha fecha de caducidad sin perjuicio de la sanción administrativa que corresponda. (...)	The application shall be submitted according to the official model established for this purpose during the month before the residence card expires although it can also be requested three months after expiration of the residence card without prejudice of the administrative sanction applicable.	Y	Effective transposition. The form referred to is the EX-16. It is indicated therein that the person shall submit again document evidence of the family link and that the document shall be legalised and translated when required. The payment of the fee and registration certificate of the Union citizen from

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		<p>and 11(2) RD 240/2007</p> <p>Form EX-16</p>	<p>2. Junto con la solicitud de la citada tarjeta de residencia permanente, deberá presentarse la documentación siguiente:</p> <p>a) Pasaporte válido y en vigor del solicitante. En el supuesto de que dicho documento esté caducado, deberá aportarse copia de éste y de la solicitud de renovación.</p> <p>b) Documentación acreditativa del supuesto que da derecho a la tarjeta.</p> <p>c) Tres fotografías recientes en color, en fondo blanco, tamaño carné.</p> <p>Tarjeta de residencia permanent de familiar de ciudadano de la Unión</p> <p>1. Pasaporte válido y en vigor o si está caducado, copia de éste y del documento de solicitud de renovación</p> <p>2. Documentación acreditativa, en su caso debidamente traducida y apostillada o legalizada, de la existencia del vínculo familiar, matrimonio o union registrada.</p> <p>3. tres fortografía en color, en fondo blanco, tamaño carnet.</p> <p>4. Documento acreditativo del abono de la tasa por expedición de la tarjeta.</p> <p>5. En función del supuesto concreto, deberá presentar además:</p> <p>- El familiar de un ciudadano comunitario con derecho a residencia permanente: certificado de registro como residente permanente del ciudadano comunitario</p>	<p>2. Together with the application, the person concerned shall present the following documents:</p> <p>a) valid passport. If the passport has expired, a copy of the passport and a request for renewal</p> <p>b) Document evidence of the circumstances entitling to the right</p> <p>c) three recent photographs in colour and ID size</p> <p>Residence card of permanent residence of a family member of a Union citizen:</p> <p>1. Valid and in force passport or ID. If expired, copy of the document and of the application for renewal</p> <p>2. Document, when appropriate duly translated and certified or legalised, certifying the family link, marriage or registered partnership.</p> <p>3. three photographs in colour with white background ID size</p> <p>4. document certifying the payment of the fee to issue the card</p> <p>5. Depending on the concrete situation, he/she shall also submit:</p> <p>- Family member of a Union</p>		<p>whom the right of permanent residence is derived. For the cases mentioned in Article 17(3) please referred to comments made there.</p> <p>Regarding failure to request for the certificate, there are no specific sanctions in the RD or reference to the sanctions imposed for failures on the ID for Spanish nationals, as done in other provisions, which may imply that the regime under the Aliens Act is applicable. In this case it is an administrative fine of up to 300EUR. This is a proportionate sanction. According to LO 1/1992 of citizens security, not obtaining the ID is sanctioned with a fine of up to 300,51 EUR (Article 26(a) and Article 28(1)(a)).</p> <p>No information could be obtained on whether registration of the entry of an application form will be considered filed when the person submits the application form even with no documents, or whether some of all documents must accompany the application form for the application to be registered.</p> <p>As see in the previous paragraph, Article 11(1) second subparagraph states that “the application shall be submitted during the month before the residence card expires although <u>it can also be requested three months after expiration of the residence card without prejudice of the administrative sanction applicable</u>” [emphasis added]. If submitted within</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Article 52(b) LO 4/2000 (Aliens Act) Article 55(1)(a) LO 4/2000 (Aliens Act)	<i>Infracciones leves</i> Son infracciones leves: b. el retraso, hasta tres meses, en la solicitud de renovación de las autorizaciones una vez hayan caducado. <i>Sanciones</i> Las infracciones tipificadas en los artículos anteriores serán sancionadas en los términos siguientes: a. Las infracciones leves con multa de hasta 300 euros	citizen with right to permanent residence: registration certificate of permanent residence of the Union citizen. Petty breaches: It is to be considered as a petty breach: b. the delay of up to 3 months in the application for renewal of the authorisations once these have expired <i>Sanctions</i> The breaches listed in the previous articles shall be sanctioned according to the following: a. petty breaches with a fine for up to 300 EUR		3 months after expiration of the card and administrative sanction will be imposed. But what happens if submitted after those three months? It is as if Article 11(1) would be refusing the family members' right to be issued with a residence card if the application is submitted three months after expiration of the card. This could be considered as a disproportionate and discriminatory sanction. No similar measure exists for Spanish nationals who do not renew their ID cards (even if expired years ago). The expert believes this is a legislative flaw; ⁴ otherwise, this provision is a serious breach of the Directive. The Application form includes, as in the case of residence cards, the documents certifying the family link. Regarding the documents required to proving the acquisition of the right of permanent residence under Article 17, these have already been commented.
Art.20.3	3. Interruption in residence not exceeding two consecutive years shall not affect the validity of the permanent residence card.	Article 11(3) RD 240/2007	Las interrupciones de residencia no superiores a dos años consecutivos, no afectarán a la vigencia de la tarjeta de residencia permanente.	Interruption in residence not exceeding two consecutive years shall not affect the validity of the permanent residence card	Y	Literal transposition

⁴ Under the Aliens Act if a person does not renew the card after three months of the validity period, the failure to renew is considered a serious offence instead of a petty offence (see *Tratado de Extranjería*, cfr supra note 5, p. 444). Maybe RD 240/2007 has this in mind but it is meaningless for the Union citizens' regime because the only refusals are for public order and public security reasons. If the failure to request were to be considered a serious offence in this case, it would mean that failure to request the permanent residence document would be a violation of public order and public security which is never the case in Spain, not even under the Aliens Act (under the Aliens Act the Supreme Court has been very clear on this aspect: if the person does not request the card or the renewal, the only sanction possible is a fine; only when the person represents a threat can the expulsion measure be imposed replacing the fine- see below for more details).

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
Art. 21	<p>Continuity of residence</p> <p>For the purposes of this Directive, continuity of residence may be attested by any means of proof in use in the host Member State.</p>	Article 10(6) RD 240/2007	A los efectos del presente artículo, la continuidad de la residencia se valorará de conformidad con lo previsto en el presente real decreto.	For the purposes of this article, the continuity of residence shall be evaluated in accordance with the present royal decree.	No, incorrect	<p>Incorrect transposition</p> <p>This provision has already been commented. Regarding the means of proof, as shown in the previous articles, it would seem that not all means of proof are accepted. The means of proof in use in Spain are regulated in Article 80 of Law 30/92 of Administrative procedure which states that “the relevant facts for adopting a decision under an administrative procedure may be certified by any means of proof”. The means proof submitted by the person concerned may only be refused (non-admitted) when they manifestly inadequate or unnecessary and with a reasoned decision (Article 80(2) Law 30/92). This law is applicable on a subsidiary basis to RD 240/2007 in procedural aspects according to Second Additional Provision. Therefore this provision should apply when the authorities take a decision on issuance of registration certificates and residence cards.</p> <p>On the basis of the Spanish legislation, no provision prevents the admission from accepting any means of proof provided the means submitted really prove the situations described. However, the administrative practice may be against EC law.</p>
	Continuity of residence is broken by any expulsion decision duly enforced against the person concerned.	Article 15(3) RD 240/2007	La continuidad de la residencia referida en el presente real decreto se verá interrumpida por cualquier resolución de expulsión ejecutada válidamente contra el interesado	Continuity of residence referred to in this RD is broken by any expulsion decision duly enforced against the person concerned.	Y	Almost literal transposition

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
Chapter V						
PROVISIONS COMMON TO THE RIGHT OF RESIDENCE AND THE RIGHT OF PERMANENT RESIDENCE						
Art. 22	Territorial scope The right of residence and the right of permanent residence shall cover the whole territory of the host Member State.	Article 3(1) RD 240/2007	Las personas incluidas en el ámbito de aplicación del presente real decreto tienen el derecho a entrar, salir, circular y residir libremente en el territorio español, previo el cumplimiento de las formalidades previstas por éste y sin perjuicio de las limitaciones establecidas en el mismo.	The persons covered by the scope of this RD have the right of entry, exit, free movement and residence in the territory of Spain , provided they have fulfilled the formalities established herein and without prejudice of the limitations established in this RD.	Y	Effective transposition
	Member States may impose territorial restrictions on the right of residence and the right of permanent residence only where the same restrictions apply to their own nationals.	Article 3(1) RD 240/2007 Article 3 LO 4/2000 (Aliens Act)	Las personas incluidas en el ámbito de aplicación del presente real decreto tienen el derecho a entrar, salir, circular y residir libremente en el territorio español, previo el cumplimiento de las formalidades previstas por éste y sin perjuicio de las limitaciones establecidas en el mismo. Artículo 3. Derechos de los extranjeros e interpretación de las normas. 1. Los extranjeros gozarán en España de los derechos y libertades reconocidos en el Título I de la Constitución en los términos establecidos en los Tratados internacionales, en esta Ley y en las que regulen el ejercicio de cada uno de ellos. Como criterio interpretativo general, se entenderá que los extranjeros ejercitan los derechos que les reconoce esta Ley en condiciones de igualdad con los españoles. 2. Las normas relativas a los derechos fundamentales de los extranjeros se interpretarán de conformidad con la	The persons covered by the scope of this RD have the right of entry, exit, free movement and residence in the territory of Spain, provided they have fulfilled the formalities established herein and without prejudice of the limitations established in this RD. <i>Rights of Aliens and interpretation of the law.</i> 1. Aliens shall enjoy in Spain the same rights and freedoms recognised in Title I of the Constitution in the terms established in the international Treaties to which Spain is a Party and which regulate the exercise of those rights. As a general interpretative principle, it shall be understood that Aliens exercise the right recognised in this law as they will be exercised by Spanish citizens. 2. The rules regulating fundamental rights of aliens shall be interpreted according to	Y	Effective transposition The only territorial restrictions are those that may be imposed to nationals, such as the order not to get close to a person (for example in the case of domestic violence), or protective measures (protecting witnesses and so on). The Aliens Act (LO 4/2000) specifically recognise the right of free movement to all aliens in the same conditions as for nationals of Spain. This right may be limited as a consequence of the application of criminal law (for example, detention before the criminal procedure takes place) or removal from borders to avoid evasion and so on. Also if the exceptional circumstances foreseen in the Constitution apply. These exceptional measures can also be imposed to nationals. Regarding other restrictions based on the criminal code, see comments to Article 4(1) of the Directive. There are not other specific restrictions regarding movement from Schengen to non-Schengen than those already

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Article 5 LO 4/2000 (Aliens Act)	<p>Declaración Universal de Derechos Humanos y con los Tratados y Acuerdos internacionales sobre las mismas materias vigentes en España, sin que pueda alegarse la profesión de creencias religiosas o convicciones ideológicas o culturales de signo diverso para justificar la realización de actos o conductas contrarios a las mismas.</p> <p>Artículo 5. Derecho a la libertad de circulación.</p> <p>1. Los extranjeros que se hallen en España de acuerdo con lo establecido en el Título II de esta Ley, tendrán derecho a circular libremente por el territorio español y a elegir su residencia sin más limitaciones que las establecidas con carácter general por los tratados y las leyes, o las acordadas por la autoridad judicial, con carácter cautelar o en un proceso penal o de extradición en los que el extranjero tenga la condición de imputado, víctima o testigo, o como consecuencia de sentencia firme.</p> <p>2. No obstante, podrán establecerse medidas limitativas específicas cuando se acuerden en la declaración de estado de excepción o sitio en los términos previstos en la Constitución, y excepcionalmente por razones de seguridad pública, de forma individualizada, motivada y en proporción a las circunstancias que concurran en cada caso, por resolución del Ministro del Interior, adoptada de acuerdo con las garantías jurídicas del procedimiento sancionador previsto en la Ley. Las medidas</p>	<p>the Universal Declaration of Human Rights and Treaties and International Agreements to which Spain is a Party on the same subject, without being possible to invoke religion or ideological convictions or different culture to justify acts against these rights.</p> <p><i>Right of Free Movement</i></p> <p>Aliens staying in Spain and in accordance with what is established in Title II of this law, shall have the right to circulate freely within the territory of Spain and choose residence with no limitations other than those established with general character by the Treaties and laws, or decided by the judicial authorities with a precautionary character or in the criminal proceeding or procedure of extradition in which the alien has the condition of defendant, victim or witness, or as a consequence of res judicata.</p> <p>2. However, it will be possible to establish limitative measures in case the state of emergency or exception or siege is established in the terms established in the Constitution and exceptionally for reasons of public security in an individualised way, motivated and proportional to the circumstances that are at stake by resolution of the Minister of</p>		<p>mentioned in Article 4 and 5 (note that Spain has not transposed correctly Article 5(2) of the Directive.</p> <p>For a more comprehensive analysis see the CS.</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			limitativas, cuya duración no excederá del tiempo imprescindible y proporcional a la persistencia de las circunstancias que justificaron la adopción de las mismas, podrán consistir en la presentación periódica ante las autoridades competentes y en el alejamiento de fronteras o núcleos de población concretados singularmente.	Home Affairs and adopted according to the procedural guarantees of the procedure to impose a sanction established in the law. These limitative measures, which duration shall not exceed the minimum necessary and proportional to the circumstances that justified their adoption, can consist of periodical presentation before the competent authorities and the removal from specific border or specific populations.		
Art.23	<p>Related rights</p> <p>Irrespective of nationality, the family members of a Union citizen who have the right of residence or the right of permanent residence in a Member State shall be entitled to take up employment or self employment there.</p>	Article 3(2) RD 240/2007	<p>Asimismo, las personas incluidas en el ámbito de aplicación del presente real decreto, exceptuando a los descendientes mayores de veintiún años que vivan a cargo, y a los ascendientes a cargo contemplados en el artículo 2.d) del presente real decreto, tienen derecho a acceder a cualquier actividad, tanto por cuenta ajena como por cuenta propia, prestación de servicios o estudios, en las mismas condiciones que los españoles, sin perjuicio de la limitación establecida en el artículo 39.4 del Tratado Constitutivo de la Comunidad Europea.</p> <p>No alterará la situación de familiar a cargo la realización por éste de una actividad laboral en la que se acredite que los ingresos obtenidos no tienen el carácter de recurso necesario para su sustento, y en los casos de contrato de trabajo a jornada completa con una duración que no supere los tres meses en cómputo anual ni tenga una continuidad como ocupación en el mercado laboral, o a tiempo parcial teniendo la retribución el citado carácter de recurso no necesario para</p>	<p>Similarly, the persons included in the scope of application of the present RD, with the exception of descendants of more than 21 years old who are dependants and ascendants who are dependants regulated in Article 2.d of the present RD shall have the right to take up employment or self-employment and provide services in the same conditions as Spanish citizens without prejudice of the limitations established under Article 39(4) of the EC Treaty.</p> <p>The situation of dependency shall not be affected if the dependent carries out a professional activity provided it is attested that the income obtained from such activity is not basic for living, and for full time contracts that their duration is no more than three months in the year and does not have continuity in the market, or for</p>	N, incorrect	<p>Incorrect transposition</p> <p>The right is recognised. The only limitations are those of Article 39(4) of the EC treaty (public service exception). The problem is the second exception included in the Spanish legislation for dependants. Article 3(2) second subparagraph, does not allow dependant family members to take up employment at risk of losing the status of dependant family members and being subject to the Aliens Act. The provision requires to benefiting from the retention of the status of dependency that the activity is not carried out to obtain resources basic for living, considering that part-time jobs do not provide enough resources. The fact that the dependant works in a full time contract of no more than 3 months of duration and with no continuity in the labour market will not alter the situation of dependency.</p> <p>The RD is probably having in mind</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			<p>el sustento. En caso de finalización de la situación de familiar a cargo y eventual cesación en la condición de familiar de ciudadano de la Unión, será aplicable el artículo 96.5 del Reglamento de la Ley Orgánica 4/2000.</p>	<p>part time contracts, when retribution is not intended for living. If the situation of dependency ends, the family member of the Union citizen shall be subject to Article 96.5 of the Regulation of LO 4/2000</p>		<p>the situation of children or other dependent family members carrying out summer jobs or working during the year to obtain pocket money. If the person earns sufficient resources, then the status of dependency will end.</p> <p>This interpretation is against the Directive. The conditions of dependency could only be requested at the moment of entry. In <i>Jia</i> the ECJ indicates that “the need for material support must exist in the State of origin of those relatives or the State whence they came <u>at the time when they apply to join the Community national.</u>” Directive 2004/38/EC has not established any specific exception to the right to take up employment as was the case in the previous legislation. The transposition is therefore considered incorrect.</p> <p>Regarding application to other family members and family members who retained the right of residence, the transposition is correct (See CS).</p>
Art.24.1	<p>Equal treatment</p> <p>1. Subject to such specific provisions as are expressly provided for in the Treaty and secondary law, all Union citizens residing on the basis of this Directive in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. The benefit of this right shall be extended to family members who are not nationals of a</p>	Article 3(4) RD 240/2007	<p>Todos los ciudadanos de la Unión que residan en España conforme a lo dispuesto en el presente real decreto gozarán de igualdad de trato respecto de los ciudadanos españoles en el ámbito de aplicación del Tratado constitutivo de la Comunidad Europea. Este derecho extenderá sus efectos a los miembros de la familia que no tengan la nacionalidad de un Estado miembro de la Unión Europea o de un Estado parte en el Acuerdo sobre el Espacio Económico Europeo, beneficiarios del derecho de</p>	<p>All citizens of the Union who reside in Spain on the basis of this RD shall enjoy equal treatment with the nationals of Spain within the scope of application of the EC Treaty. This right shall be extended to family members who are not nationals of a MS of the EU or a State party to the EEA and who have the right of residence or the right of permanent residence.</p>	N, incorrect	<p>Incorrect transposition</p> <p>The transposition is almost literal but instead of referring to “on the basis of the Directive” it refers to “on the basis of the RD” which may create problems if the RD does not transpose the Directive correctly.</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
	Member State and who have the right of residence or permanent residence.		residencia o del derecho de residencia permanente.			
Art.24.2	2. By way of derogation from paragraph 1, the host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence or, where appropriate, the longer period provided for in Article 14(4)(b), nor shall it be obliged, prior to acquisition of the right of permanent residence, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families.	Article 9 LO 4/2000 (Aliens Act)	<p>Artículo 9. Derecho a la educación.</p> <p>1. Todos los extranjeros menores de dieciocho años tienen derecho y deber a la educación en las mismas condiciones que los españoles, derecho que comprende el acceso a una enseñanza básica, gratuita y obligatoria, a la obtención de la titulación académica correspondiente y al acceso al sistema público de becas y ayudas.</p> <p>2. En el caso de la educación infantil, que tiene carácter voluntario, las Administraciones públicas garantizarán la existencia de un número de plazas suficientes para asegurar la escolarización de la población que lo solicite.</p> <p>3. Los extranjeros residentes tendrán derecho a la educación de naturaleza no obligatoria en las mismas condiciones que los españoles. En concreto, tendrán derecho a acceder a los niveles de educación y enseñanza no previstos en el apartado anterior y a la obtención de las titulaciones que correspondan a cada caso, y al acceso al sistema público de becas y ayudas.</p> <p>4. Los poderes públicos promoverán que los extranjeros residentes que lo necesiten puedan recibir una enseñanza para su mejor integración social, con reconocimiento y respeto a su identidad cultural.</p>	<p>Right to education</p> <p>1. All aliens of less than 18 years old have the right and the duty to education in the same conditions as Spanish citizens. This right includes the right to free basic compulsory education and obtaining the correspondent academic title as well access to the public system of scholarships and grants.</p> <p>2. In the case of infant education, which is voluntary, the public administrations shall guarantee that there are enough places available to ensure the enrolment of the population requiring it.</p> <p>3. Aliens who are residents in Spain shall have the right to non voluntary education in the same conditions as Spanish nationals. In particular, they shall have the right to access to levels of education and formation non foreseen in the previous paragraphs and to obtain the corresponding titles, as well to access to the public system of scholarships and grants.</p> <p>4. Public powers shall promote that aliens who need it shall receive education for their better social integration, with recognition and respect of their</p>	Y	<p>Effective application</p> <p>This provision has not been transposed which may indicate that this limitation will not apply to EU citizens and their family members. But clarification is needed regarding whether the provisions of LO 4/2000 apply to Union citizens, since the rights granted to aliens in equal treatment as for Spaniards are for residents (people staying in Spain for more than 3 months). If the person is a resident he/she will enjoy all rights from the first day. If it is not, then it is not clear. However, there are basic social assistance benefits that are enjoyed regardless of whether the person is residing in Spain or not or regardless whether the person is legally staying in Spain or not, for example emergency sanitary services. This is included in LO 4/2000 (Aliens Act).</p> <p>Apart from the general principle of equal treatment and non discrimination (and other constitutional rights) LO 4/2000 (Aliens Act) specifically recognised the following rights:</p> <ul style="list-style-type: none"> all aliens residing in Spain have the right to education in the same conditions as Spaniards, including access to scholarships (Article 9) and actually should be promoted by the public authorities that they

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Article 12 LO 4/2000	<p>5. Los extranjeros residentes podrán acceder al desempeño de actividades de carácter docente o de investigación científica de acuerdo con lo establecido en las disposiciones vigentes. Asimismo podrán crear y dirigir centros de acuerdo con lo establecido en las disposiciones vigentes.</p> <p>Artículo 12. Derecho a la asistencia sanitaria.</p> <p>1. Los extranjeros que se encuentren en España inscritos en el padrón del municipio en el que residan habitualmente, tienen derecho a la asistencia sanitaria en las mismas condiciones que los españoles.</p> <p>2. Los extranjeros que se encuentren en España tienen derecho a la asistencia sanitaria pública de urgencia ante la contracción de enfermedades graves o accidentes, cualquiera que sea su causa, y a la continuidad de dicha atención hasta la situación de alta médica.</p> <p>3. Los extranjeros menores de dieciocho años que se encuentren en España tienen derecho a la asistencia sanitaria en las mismas condiciones que los españoles.</p> <p>4. Las extranjeras embarazadas que se encuentren en España tendrán derecho a la asistencia sanitaria durante el embarazo, parto y postparto.</p>	<p>cultural identity.</p> <p>5. Aliens residing in Spain shall have the possibility to exercise educational activities as professors and researchers according to the law. Similarly, they shall be able to create and direct educational institutions in accordance to the legislation.</p> <p><i>Right to sanitary assistance</i></p> <p>1. Aliens staying in Spain and who are registered in the municipal register in which they usually reside shall have the right to sanitary assistance in the same conditions as Spanish citizens.</p> <p>2. Aliens staying in Spain have the right to public sanitary emergency assistance for serious illness or accidents, regardless of their cause, and to the continuity of such assistance until a doctor so declares.</p> <p>3. Aliens of less than 18 years old staying in Spain have the right to sanitary assistance in the same conditions as Spanish nationals.</p> <p>4. Pregnant women who are staying in Spain shall have the right to sanitary assistance during pregnancy, birth and post-birth.</p>		<p>have access to education to promote their integration while respecting their cultural diversity. All aliens residing in Spain have also the right to become professors or researchers as well as create educational centres in Spain.</p> <ul style="list-style-type: none"> • All aliens have the right to Sanitary assistance in the same conditions as Spaniards if they are registered in the municipality (in which they usually reside- therefore it is not necessary residence in Spain), or they are minors (less than 18 years old). Any alien, regardless on whether resident or no, regardless of whether they are legal or not, shall have the right to emergency sanitary assistance and pregnant women shall have the right to sanitary assistance as any other Spaniards during pregnancy, birth and post-birth. • All aliens residing in Spain have the right of housing aids in the same conditions as Spaniards • All aliens residing in Spain have the right to access Social security benefits and social assistance in the same conditions as Spaniards. Furthermore, basic benefits and assistances shall be granted to all aliens in Spain, regardless of whether they are resident or not, or whether they are in a legal situation or not.

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
				rights may be attested by other means of proof.		<p>read in connection with Article 12(2). Although the possession of the card is not obstacle for staying in Spain or the exercise of an activity, the law also says “provisional stay” which may imply that for residence the person shall have the card or certificate and this would seem contrary to the Directive since the card or certificate is only declaratory. This approach would also be against the RD which clearly grants the rights regardless the possession of the card.</p> <p>In addition, the card seems to be the only mean of proof admitted to obtain the permanent registration certificate or permanent residence card is the registration certificate and the residence card, which would be against the Directive.</p> <p>Finally, notice that to carry out business in a more regular way, aliens are giving a NIE (número de identidad de extrajero) or Number of Alien Identity. This number is given <i>ex officio</i> by the authorities and it is independent of the registration certificate and the card. So, it would seem that the requirement for administrative formalities or exercise of rights might be to have a NIE.</p> <p>This situation of uncertainty or contradiction is confirmed when reading the brochures and documents issued by the competent authorities in Spain to inform citizens about their rights. In addition, there is</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
						administrative practice from the old legislation in which the documents were systematically requested. Therefore a clearer provision is needed.
Art.25.2	2. All documents mentioned in paragraph 1 shall be issued free of charge or for a charge not exceeding that imposed on nationals for the issuing of similar documents.	Article 14(1) RD 240/2007	La expedición del certificado de registro o de la tarjeta de residencia se realizará de conformidad con los modelos que determinen las Autoridades competentes y previo abono de la tasa correspondiente, de conformidad con la legislación vigente de tasas y precios públicos, cuya cuantía será la equivalente a la que se exige a los españoles para la obtención y renovación del documento nacional de identidad.	The issuance of the registration certificate or the residence card according to the models established by the competent authorities and before paying the specific fee according to the legislation on public fees and taxes which in any case shall be the same as the fee required for Spanish nationals to obtain and renew the ID.	Y	Effective transposition. The fee is currently 6,80 EUR according to point 4.5 of Order of the Ministry of the Prime Minister ORDEN/PRE/3654 of 14 December establishing the fees for the issuance of administrative authorisations and issuance of documents in the area of immigration and aliens as well as issuance of visa at the borders. The Spanish ID is 6,80 EUR. The transposition of this provision should be flagged as incorrect transposition insofar as the documents quoted under Article 25(1) are not included in Article 25(2).
Art.26	Checks Member States may carry out checks on compliance with any requirement deriving from their national legislation for non-nationals always to carry their registration certificate or residence card, provided that the same requirement applies to their own nationals as regards their identity card. In the event of failure to comply with this requirement, Member States may impose the same sanctions as those imposed on their own nationals for failure to carry their identity card.	Article 4 LO 4/2000 (Aliens Act) Article 2(2) RD 1553/2005 Article 11 LO 1/1992	Artículo 4. Derecho a la documentación. 1. Los extranjeros que se encuentren en territorio español tienen el derecho y la obligación de conservar la documentación que acredite su identidad, expedida por las autoridades competentes del país de origen o de procedencia, así como la que acredite su situación en España. Todas las personas obligadas a obtener el Documento Nacional de Identidad lo están también a exhibirlo cuando fueren requeridas para ello por la Autoridad o sus Agentes. Artículo 11.	<i>Right to documentation</i> 1. Aliens staying in the territory of Spain shall have the right and the duty to carry the documentation proving their identity, issued by the competent authorities of the State of origin, as well as those proving their situation in Spain. All people obliged to obtain an ID are also obliged to exhibit when required by the authority or its agents.	Y	Effective transposition There is a general obligation in Spain to identify him/herself if so required by the police when carry out checks on the street. Although there is no specific obligation to carry out the ID, all people that are obliged to have an ID are also required to exhibit the ID when so required and therefore, there is an implicit obligation to carry the ID or at least a equivalent document that serve for identification. The same applies to aliens who have the obligation to obtain the documentation proving

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		<p>(citizens' security)</p> <p>Article 20 LO 1/1992 (citizens' security)</p>	<p>Los extranjeros que se encuentren en territorio español están obligados a disponer de la documentación que acredite su identidad y el hecho de hallarse legalmente en España, con arreglo a lo dispuesto en las normas vigentes. No podrán ser privados de esta documentación salvo en los mismos supuestos previstos para el Documento Nacional de Identidad.</p> <p>Artículo 20. 1. Los agentes de las Fuerzas y Cuerpos de Seguridad podrán requerir, en el ejercicio de sus funciones de indagación o prevención, la identificación de las personas y realizar las comprobaciones pertinentes en la vía pública o en el lugar donde se hubiere hecho el requerimiento, siempre que el conocimiento de la identidad de las personas requeridas fuere necesario para el ejercicio de las funciones de protección de la seguridad que a los agentes encomiendan la presente Ley y la Ley Orgánica de Fuerzas y Cuerpos de Seguridad.</p> <p>2. De no lograrse la identificación por cualquier medio, y cuando resulte necesario a los mismos fines del apartado anterior, los agentes, para impedir la comisión de un delito o falta, o al objeto de sancionar una infracción, podrán requerir a quienes no pudieran ser identificados a que les acompañen a dependencias próximas y que cuenten con medios adecuados para realizar las diligencias de identificación, a estos solos efectos y por el tiempo imprescindible. (...)</p>	<p>Aliens staying in the territory of Spain shall be obliged to carry documentation proving their identity and that they are legally in Spain according to the rules. They shall not be taken the documentation away except in the same cases foreseen for the National Identity Card.</p> <p>1. Agents of Forces and Corps of National Security, in the exercise of their functions of investigation and prevention s may require a person to identify themselves and carry out checks in the streets or where the request have been done, provided that knowing the identity of the person is necessary for the exercise of the functions of protection of social security appointed on the agents by the Organic Law of Forces and Corps of Security.</p> <p>2. If the identification was not possible by any means, and when it is necessary for the same ends as those listed in the previous paragraph for prevent the commission of a crime, or to sanction an violation of the law, the agents may require the person to accompany them to a establishment of police close to the place which has enough facilities to carry out the identification, but only for the purpose of identification and</p>		<p>their identity and also their situation in Spain (<i>e.g.</i>, residence card, registration certificate).Whereas for Union citizens most probably any identification form will be enough for third country family members it may be that the agent also request the residence card.</p> <p>The conduct that may be sanctioned by administrative fines is not the failure to carry the ID but the failure to obey an order to the agent- in this case identification. The sanction is for both Spanish nationals and foreigners the same: fine of up to 300€</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Article 26 LO 1/1992 (citizens' security) Article 28 LO 1/1992 (citizens' security)	4. En los casos de resistencia o negativa infundada a identificarse o a realizar voluntariamente las comprobaciones o practicas de identificación, se estará a lo dispuesto en el Código Penal y en la Ley de Enjuiciamiento Criminal. Artículo 26. Constituyen infracciones leves de la seguridad ciudadana: h) Desobedecer los mandatos de la autoridad o de sus agentes, dictados en directa aplicación de lo dispuesto en la presente Ley, cuando ello no constituya infracción penal. Artículo 28. 1. Las infracciones determinadas de acuerdo con lo dispuesto en la sección anterior podrán ser corregidas por las autoridades competentes con una o más de las sanciones siguientes: a) Multa (...) De hasta 300,51 euros, para infracciones leves.	only for the minimum necessary time. (...) 4. In case of resistance or unfounded negative to identify him/herself or to voluntarily carry out the necessary checks or practices of identification, the Criminal Code or the Criminal Procedural law may be applicable Petty breaches of citizens' security are: (...) h) disobey the orders of the authority or its agents, given in a direct manner in application of this law, provided it is not a criminal offence. 1. The breaches established in the previous section may be corrected by the competent authorities with one or more of the following sanctions: a) Fine (...) of up to 300,51EUR for petty breaches.		
Chapter VI						
RESTRICTIONS ON THE RIGHT OF ENTRY AND THE RIGHT OF RESIDENCE ON GROUNDS OF PUBLIC POLICY, PUBLIC SECURITY OR PUBLIC HEALTH						
Art.27.1	General principles 1. Subject to the provisions of this Chapter, Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends.	Article 1(1) RD 240/2007	El presente real decreto regula las condiciones para el ejercicio de los derechos de entrada y salida, libre circulación, estancia, residencia, residencia de carácter permanente y trabajo en España por parte de los ciudadanos de otros Estados miembros de la Unión Europea y de los restantes Estados parte en el Acuerdo sobre el Espacio Económico Europeo, así como las limitaciones a los derechos anteriores por	The present royal decree regulates the conditions for the exercise of rights of entry and exit, free movement, residence, permanent residence and working in Spain by Union or EEA citizens as well as the limitations for reasons of public policy, public security and public health.	Y	Effective transposition. The concept of "devolution" is defined by Article 157 of the Aliens Regulation and describes the situation of an alien already deported and who contravene the ban on entry as well as those aliens who are trying to enter Spain illegally and are intercepted in the border or close to it

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Article 15(1) RD 240/2007	razones de orden público, seguridad pública o salud pública. <i>Medidas por razones de orden público, seguridad y salud pública.</i> 1. Cuando así lo impongan razones de orden público, de seguridad pública o de salud pública, se podrá adoptar alguna de las medidas siguientes en relación con los ciudadanos de un Estado miembro de la Unión Europea o de otro Estado parte en el Acuerdo sobre el Espacio Económico Europeo, o con los miembros de su familia: a) Impedir la entrada en España, aunque los interesados presenten la documentación prevista en el artículo 4 del presente real decreto. b) Denegar la inscripción en el Registro Central de Extranjeros, o la expedición o renovación de las tarjetas de residencia previstas en el presente real decreto. c) Ordenar la expulsión o devolución del territorio español.	<i>Measures for reasons of public order, public health and public security.</i> 1. When so required by reasons of public policy, public security or public health, any of the following measures can be adopted against a Union or EEA citizen or their family members: a) prevent entry in Spain, even if the concerned people have submitted the documentation foreseen on Article 4 of the present Royal Decree. b) deny the registration in the Aliens Central Register, or the issuance or renovation of the residence cards foreseen in this Royal Decree. c) Order the expulsion or devolution from the territory of Spain.		when trying to enter Spain (e.g., the example of boats of immigrants trying to reach the Spanish coast). Therefore, even in those cases the action will not be automatic but subject to Article 27-29 and the procedural guarantees of 30-31. Article 15(5)(d) refers back to the legislation regulating public order and public security as well as the regulation developing it. This provision is an implicit reference to LO 4/2000 (and the Aliens Regulation) and Law 1/92. However, these provisions would only be applicable when they are not against to EC Law and more favourable. ⁵ The Supreme Court has been indicating on a case by case basis provisions of the Aliens Act that do not apply to the persons within the scope of RD 240/2007. ⁶ In other cases, the provisions of the Aliens Act are not applicable because they are clearly against EC law. These two principles (more favourable and conformity with EC law) are important elements that will be taken into account by the authorities and the courts when applying any expulsion measure on public order and public security. The implicit reference to the Aliens Act and Law 1/92 is thus a tool to specify conducts that may be considered as
		Article 15(5)(a)-(c) RD 240/2007	La adopción de una de las medidas previstas en los apartados anteriores 1 a 4 se atenderá a los siguientes criterios: a) Habrá de ser adoptada con arreglo a la legislación reguladora del orden público y la	5. The adoption of any of the measures foreseen in subparagraphs 1-4 shall comply with the following criteria: a) Shall be adopted according to the legislation regulating public		

⁵ It should be reminded that LO 4/2000 will apply at full to “other family members” and family members who retained the right of free movement.

⁶ See for all STS (section 5) of 12 February 2008 “justly because citizens of Romania and Bulgaria have the consideration of Union citizens, LO 4/2000 is not applicable, at least regarding the sanction regime concerned according to its Article 1(3) [...] (being evident that the sanction regime of LO 4/2000 is not more favourable for this purpose).

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Article 54 LO 4/2000	<p>trabajar, cuando no cuente con autorización de residencia válida.</p> <p>c. Incurrir en ocultación dolosa o falsedad grave en el cumplimiento de la obligación de poner en conocimiento del Ministerio del Interior los cambios que afecten a nacionalidad, estado civil o domicilio.</p> <p>d. El incumplimiento de las medidas impuestas por razón de seguridad pública de presentación periódica o de alejamiento de fronteras o núcleos de población concretados singularmente, de acuerdo con lo dispuesto en la presente Ley.</p> <p>f. La participación por el extranjero en la realización de actividades contrarias al orden público previstas como graves en la <u>Ley Orgánica 1/1992, de 21 de febrero, sobre Protección de la Seguridad Ciudadana</u>.</p> <p>Artículo 54. Infracciones muy graves. 1. Son infracciones muy graves:</p> <p>a. Participar en actividades contrarias a la seguridad exterior del Estado o que pueden perjudicar las relaciones de España con otros países, o estar implicados en actividades contrarias al orden público previstas como muy graves en la <u>Ley Orgánica 1/1992, de 21 de febrero, sobre Protección de la Seguridad Ciudadana</u>.</p> <p>b. Inducir, promover, favorecer o facilitar con</p>	<p>previous administrative authorisation to work when the person does not hold a valid residence card.</p> <p>c. Hide willingly or serious falsification in the obligation to communicate to the Ministry of Interior of changes affecting the nationality, civil status or domicile.</p> <p>d. The non compliance with the measure imposed on public security grounds of periodic presentation or to be away from borders or agglomerations singularly established, according to the LO.</p> <p>f. Participation of the alien in the realisation of activities against the public order considered as serious in LO 1/1992 of 21 February of Citizens Security and Protection.</p> <p>Very serious breaches. 1. Are very serious breaches</p> <p>a. Participate in activities against the security of the State or that may cause prejudice to the relations of Spain with other countries or being implicated in activities against the public order considered as very serious in LO 1/1992 of 21 February of Citizens Security and Protection.</p> <p>b. Instigate, promote, favour or</p>		

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			<p>ánimo de lucro, individualmente o formando parte de una organización, la inmigración clandestina de personas en tránsito o con destino al territorio español o su permanencia en el mismo, siempre que el hecho no constituya delito.</p> <p>c. La realización de conductas de discriminación por motivos raciales, étnicos, nacionales o religiosos, en los términos previstos en el <u>artículo 23 de la presente Ley</u>, siempre que el hecho no constituya delito.</p> <p>d. La contratación de trabajadores extranjeros sin haber obtenido con carácter previo el correspondiente autorización de trabajo, incurriéndose en una infracción por cada uno de los trabajadores extranjeros ocupados.</p> <p>e. La comisión de una tercera infracción grave siempre que en un plazo de un año anterior hubiera sido sancionado por dos faltas graves de la misma naturaleza.</p> <p>2. También son infracciones muy graves:</p> <p>a. El incumplimiento de las obligaciones previstas para los transportistas en el <u>artículo 66</u>, apartados 1 y 2.</p> <p>b. El transporte de extranjeros por vía aérea, marítima o terrestre, hasta el territorio español, por los sujetos responsables del transporte, sin que hubieran comprobado la validez y vigencia, tanto de los pasaportes,</p>	<p>facilitate with lucrative intention, individually or as part of an organisation, clandestine immigration of persons in transit or with destination into the Spanish territory or their stay if the facts are not considered as a crime.</p> <p>c. The realisation of discriminatory behaviours for racial, ethnic, national or religious reasons as established in Article 23 of the law provided the behaviours are not considered as a crime.</p> <p>d. Contracting foreigner workers without having obtained previously the work authorisation, considering that one infraction is committed for each worker contracted.</p> <p>e. The commission of a third serious breach that within the previous year had been sanction with two serious breaches of the same nature.</p> <p>2. The following are also very serious breaches</p> <p>a. Non compliance with the obligation of the transporters included in Article 66(1) and (2)</p> <p>b. transporting foreigners via air, sea or land, into the Spanish territory, by the person responsible for the transport, provided they had not checked</p>		

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Article 23 LO 1/92	<p>títulos de viaje o documentos de identidad pertinentes, como, en su caso, del correspondiente visado, de los que habrán de ser titulares los citados extranjeros.</p> <p>c. El incumplimiento de la obligación que tienen los transportistas de hacerse cargo sin pérdida de tiempo del extranjero o transportado que, por deficiencias en la documentación antes citada, no haya sido autorizado a entrar en España, así como del extranjero transportado en tránsito que no haya sido trasladado a su país de destino o que hubiera sido devuelto por las autoridades de éste, al no autorizarle la entrada.</p> <p>Artículo 23. A los efectos de la presente Ley, constituyen infracciones graves:</p> <p>a) La fabricación, reparación, almacenamiento, comercio, adquisición o enajenación, tenencia o utilización de armas prohibidas o explosivos no catalogados; de armas reglamentarias o explosivos catalogados careciendo de la documentación o autorización requeridos o excediéndose de los límites permitidos, cuando tales conductas no sean constitutivas de infracción penal.</p> <p>b) La omisión o insuficiencia en la adopción o eficacia de las medidas o precauciones obligatorias para garantizar la seguridad de las armas o de los explosivos.</p> <p>c) La celebración de reuniones en lugares de tránsito público o de manifestaciones,</p>	<p>the validity and in force of the travel documents or the ID needed, as well, as they visa who should be hold by the alien.</p> <p>c. Non compliance with the obligation of the transporters to take care of the transported alien who, due to deficiencies in the documentation, has not been authorised to enter Spain, as well as the foreigner who transported in transit has not been returned to his/her country of destination or who has been returned by the authorities of destination because the entry was refused.</p> <p>Article 23. For the effects of this law, are considered as serious offences:</p> <p>a) The manufacture, reparation, storage, trade, acquisition or sell, holding or use of forbidden weapons or listed explosives; of legal weapons or listed explosives without the necessary documents and authorisation, or exceeding the allowed limits when those conducts are not considered as crimes.</p> <p>b) The omission or not adopting sufficient or efficient measures or compulsory precautions to guarantee the security of weapons and explosives.</p> <p>c) The celebration of meetings in public transit places or</p>		

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			<p>incumpliendo lo preceptuado en los artículos 4.2, 8, 9, 10 y 11 de la Ley Orgánica 9/1983, reguladora del Derecho de Reunión, cuya responsabilidad corresponde a los organizadores o promotores, siempre que tales conductas no sean constitutivas de infracción penal.</p> <p>En el caso de reuniones en lugares de tránsito público y manifestaciones cuya celebración se haya comunicado previamente a la autoridad se considerarán organizadores o promotores las personas físicas o jurídicas que suscriban el correspondiente escrito de comunicación.</p> <p>Aún no habiendo suscrito o presentado la citada comunicación, también se considerarán organizadores o promotores, a los efectos de esta Ley, a quienes de hecho las presidan, dirijan o ejerzan actos semejantes o a quienes por publicaciones o declaraciones de convocatoria de las reuniones o manifestaciones, por los discursos que se pronuncien y los impresos que se repartan durante las mismas, por los lemas, banderas u otros signos que ostenten o por cualesquiera otros hechos, pueda determinarse razonablemente que son inspiradores de aquéllas.</p> <p>d) La negativa a disolver las manifestaciones y reuniones en lugares de tránsito público ordenada por la autoridad competente cuando concurren los supuestos del artículo 5 de la Ley Orgánica 9/1983. (<i>Ley 4/1997, de 4 de agosto</i>)</p>	<p>demonstrations, not complying with Articles 4.2, 8, 9, 10 and 11 of LO 9/1983 regulating the right of manifestation, whose responsibility correspond to the organisers or promoters, provided the conducts are not considered crimes.</p> <p>In the case of meetings in public transit places and demonstrations whose celebration has been notified to the authority, the legal or physical persons who signed the notification shall be considered as the organisers or promoters.</p> <p>Those de facto presiding, directing or exercising similar activities shall be considered as organisers or promoters even if they did not sign the notification as well as those who due to publications or declarations convoking to the meetings manifestations or due to speeches or brochures distributed during these meetings or demonstrations, motto, flags or other sign wore by them or by any other facts, could reasonably be determined that they have inspired the meeting or demonstration.</p> <p>d) Refusing to dissolve demonstrations and meetings in public transit places ordered by the competent authority when the conditions laid down in Article 5 of LO 9/1983 are met.</p>		

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			<p>e) La apertura de establecimientos y la celebración de espectáculos públicos o actividades recreativas careciendo de autorización o excediendo de los límites de la misma.</p> <p>f) La admisión en locales o establecimientos de espectadores o usuarios en número superior al que corresponda.</p> <p>g) La celebración de espectáculos públicos o actividades recreativas quebrantando la prohibición o suspensión ordenada por la autoridad correspondiente.</p> <p>h) La provocación de reacciones en el público que alteren o puedan alterar la seguridad ciudadana.</p> <p>i) La tolerancia del consumo ilegal o el tráfico de drogas tóxicas, estupefacientes o sustancias psicotrópicas en locales o establecimientos públicos o la falta de diligencia en orden a impedirlos por parte de los propietarios, administradores o encargados de los mismos.</p> <p>j) El incumplimiento de las restricciones a la navegación reglamentariamente impuestas a las embarcaciones de alta velocidad.</p> <p>k) La alegación de datos o circunstancias falsos para la obtención de las documentaciones previstas por la presente Ley, siempre que no constituya infracción penal.</p> <p>l) La carencia de los registros previstos en el</p>	<p>e) Opening establishment and celebrations of public shows or entertainment activities without authorisation or exceeding the conditions laid down therein.</p> <p>f) Admission in places or establishments of more people (audience or users) than allowed.</p> <p>g) Celebration of public shows or entertainment activities in violation of the order prohibiting or suspending the show issued by the competent authority.</p> <p>h) Provoking reactions in the public that alter or may alter public security.</p> <p>i) Tolerance or illegal consumption or trade on toxic drugs, stupeficient or psychotropic substances in public places or establishments or lack of diligent by the owners, managers or responsible persons for preventing these activities.</p> <p>j) Non compliance with the restrictions imposed by regulation on navigation of high speed vessels.</p> <p>k) Giving false data or circumstances for obtaining of the documents foreseen by the law, provided these do not constitute a crime.</p> <p>l) Not having the registers</p>		

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Article 24 LO 1/92	<p>capítulo II de la presente Ley para las actividades con trascendencia para la seguridad ciudadana.</p> <p>m) La negativa de acceso o la obstaculización del ejercicio de las inspecciones o controles reglamentarios, establecidos conforme a lo dispuesto en la presente Ley, en fábricas, locales, establecimientos, embarcaciones y aeronaves.</p> <p>n) Originar desórdenes graves en las vías, espacios o establecimientos públicos o causar daños graves a los bienes de uso público, siempre que no constituya infracción penal.</p> <p>ñ) La apertura de un establecimiento, el inicio de sus actividades o el desarrollo de su funcionamiento sin autorización o sin adoptar total o parcialmente las medidas de seguridad obligatorias o cuando aquéllas no funcionen o lo hagan defectuosamente, o antes de que la autoridad competente haya expresado su conformidad con las mismas.</p> <p>o) La comisión de una tercera infracción leve dentro del plazo de un año, que se sancionará como infracción grave.</p> <p>Artículo 24. Las infracciones tipificadas en los apartados a), b), c), d), e), f), h), i), l) y n) del artículo anterior podrán ser consideradas muy graves, teniendo en cuenta la entidad del riesgo producido o del perjuicio causado, o cuando</p>	<p>foreseen in Chapter II of the law to carry out the activities of transcendence for public security.</p> <p>m) Refusing access or preventing the exercise of inspection activities and regulatory controls established by this law on industries, facilities, establishments, premises, venues, and vessels.</p> <p>n) Provoking serious disorders in the public streets, spaces and establishments or causing serious damage to public use goods, provided these activities are not crimes.</p> <p>ñ) Opening an establishment, initiating its activities or its functioning without authorisation or without adopting part or all the security measures imposed by the law or regulation or when those do not function or are default, or before the competent authority has given his approval.</p> <p>o) Committing a third petty offence within a year.</p> <p>Article 24. The offences under a), b), c), d), e), f), h), i), l) and n) of the previous Articles may be considered as very serious given the risk produced, the prejudice</p>		

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Article 25 LO 1/92	<p>supongan atentado contra la salubridad pública, hubieren alterado el funcionamiento de los servicios públicos, los transportes colectivos o la regularidad de los abastecimientos, o se hubieren producido con violencia o amenaza colectivas.</p> <p>Artículo 25. 1. Constituyen infracciones graves a la seguridad ciudadana el consumo en lugares, vías, establecimientos o transportes públicos, así como la tenencia ilícita, aunque no estuviera destinada al tráfico de drogas tóxicas, estupefacientes o sustancias psicotrópicas, siempre que no constituya infracción penal, así como el abandono en los sitios mencionados de útiles o instrumentos utilizados para su consumo.</p> <p>2. Las sanciones impuestas por estas infracciones podrán suspenderse si el infractor se somete a un tratamiento de deshabituación en un centro o servicio debidamente acreditado, en la forma y por el tiempo que reglamentariamente se determine.</p>	<p>caused, or when they are against public health or have altered the functioning of public services or collective transports or the regularity of abastecimientos, or they were carried out with violence or collective threats..</p> <p>Article 25. 1. The consumption public venues, streets, establishments or transport of toxic drugs, stupefacient, psychotropic substances as well as illicit holding, even if not aimed at trading and provided these activities are not a crime, as well as abandoning in the abovementioned places of the tools or instruments used for consumption shall also be considered as serious offences of citizen's security.</p> <p>2. The sanctions may be suspended if the responsible follows rehabilitation treatment in a certified centre or service in the time and form established by regulation.</p>		
Art.27.2	2. Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.	Article 15(5)(d) RD 240/2007	d) Cuando se adopte por razones de orden público o de seguridad pública, deberán estar fundadas exclusivamente en la conducta personal de quien sea objeto de aquéllas, que, en todo caso, deberá constituir una amenaza real, actual y suficientemente grave que afecte a un interés fundamental de la sociedad, y que será valorada, por el órgano competente para resolver, en base a los informes de las Autoridades policiales, fiscales o judiciales que obren en el	d) When taken on grounds of public health or public security, they shall be exclusively based on the personal conduct of the individual concerned who in any case shall must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, situation that shall be waived by the competent	Y	Almost literal transposition. The principle of proportionality is not specifically mentioned here but it is a general principle of law in Spain, and it is expressly mentioned in the legislation regulating the activity of the administration especially in the context of adopting coercive measures and sanctions (Article 96(1) and Article 131 of Law 30/1992 on

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			<p>expediente. La existencia de condenas penales anteriores no constituirá, por sí sola, razón para adoptar dichas medidas.</p>	<p>authorities based on the reports from police authorities, the prosecutor and the judge participating in the dossier. The existence of previous criminal convictions shall not in themselves constitute grounds for taking such measures.</p>		<p>the public administration and administrative procedure). The principle of proportionality is included in Article 131 of Law 30/92 of administrative procedure. According to this provision the principle implies that:</p> <ol style="list-style-type: none"> 1. administrative sanctions, pecuniary or not, cannot imply directly or indirectly, privation of liberty; 2. if pecuniary sanctions, they cannot be more beneficial for the infringer than the non compliance the law 3. to determine the application of the sanction, the administration shall consider the necessary adequacy between the seriousness of the facts (and offence) and the sanction. The law establishes three criteria to modulate the sanction: <ol style="list-style-type: none"> a. the existence of intentionality or reiteration b. the nature of the prejudice caused c. recidivism, for the commission within one year of more than one offence of the same nature, when so declare by non-appealable decision. <p>Article 55(3) of LO 4/2000 also establishes the application of the principle of proportionality by imposing the assessment of “the degree of culpability, and when applicable, the damage or prejudice caused, or the risk derived from the offence and its significance (transcendence).” For the adoption of economic sanctions, the</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
Art.27.3	3. In order to ascertain whether the person concerned represents a danger for public policy or public security, when issuing the registration certificate or, in the absence of a registration system, not later than three months from the date of arrival of the person concerned on its territory or from the date of reporting his/her presence within the territory, as provided for in Article 5(5), or when issuing the residence card, the host Member State may, should it consider this essential, request the Member State of origin and, if need be, other Member States to provide information concerning any previous police record the person concerned may have. Such enquiries shall not be made as a matter of routine. The Member State consulted shall give its reply within two months.	Article 12(3) RD 240/2007	Las Autoridades competentes para tramitar y resolver las solicitudes de certificado de registro o de tarjetas de residencia que se regulan en el presente real decreto podrán, excepcionalmente, recabar información sobre posibles antecedentes penales del interesado a las autoridades del Estado de origen o a las de otros Estados.	The competent authorities may exceptionally before issuing a registration certificate or residence card regulated in this RD obtain information about possible past criminal convictions from the State of origin or other Member States	N, incomplete	Incomplete transposition The obligation to respond to other MS within two months has not been transposed. It should also be noticed that Spain may require a medical certificate on the health conditions (see article 29 below).
Art.27.4	4. The Member State which issued the passport or identity card shall allow the holder of the document who has been expelled on grounds of public policy, public security, or public health from another Member State to re-enter its territory without any formality even if the document is no longer valid or the nationality of the holder is in dispute.				NT	Not transposed Spain has signed but never ratified Protocol 4 to the ECHR. Article 19 of the Constitution recognises the fundamental right of every Spanish national to entry and exit Spain. No specific provision has been found recognising the obligation to accept Spanish nationals expelled from other MS. This issue shall be clarified with the authorities.
Art.28	Protection against expulsion 1. Before taking an expulsion decision on grounds of public policy or public security, the host Member State shall take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation,	Article 15(1) second subparagraph second sentence RD 240/2007	Asimismo, antes de adoptarse una decisión en ese sentido, se tendrán en cuenta la duración de la residencia e integración social y cultural del interesado en España, su edad, estado de salud, situación familiar y económica, y la importancia de los vínculos con su país de origen.	Similarly, before taking any decision, it shall be taken into account how long the individual concerned has resided in Spain and social and cultural integration, his/her age, state of health, family and economic situation, and the extent of his/her links with the country of	Y	Almost literal transposition. The list is not exhaustive

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
	social and cultural integration into the host Member State and the extent of his/her links with the country of origin.			origin		
	2. The host Member State may not take an expulsion decision against Union citizens or their family members, irrespective of nationality, who have the right of permanent residence on its territory, except on serious grounds of public policy or public security.	Article 15(1) second subparagraph first sentence RD 240/2007	Únicamente podrá adoptarse una decisión de expulsión respecto a ciudadanos de un Estado miembro de la Unión Europea o de otro Estado parte en el Acuerdo sobre el Espacio Económico Europeo, o a miembros de su familia, con independencia de su nacionalidad, que hayan adquirido el derecho de residencia permanente en España, si existen motivos graves de orden público o seguridad pública.	An expulsion decision may only be taken against a Union or EEA citizen or his/her family members, regardless of nationality, who have the right of permanent residence in Spain, on serious grounds of public order or public security.	Y	Effective transposition. It should also be noticed that the LO 4/2000 always give the option between the expulsion and a fine and in some cases the expulsion can never be imposed. A more detailed assessment of the interlinks between the reasons of public order and public security listed in LO 4/2000 and the RD shall be carried out in the national report.
	3. An expulsion decision may not be taken against Union citizens, except if the decision is based on imperative grounds of public security, as defined by Member States, if they: (a) have resided in the host Member State for the previous 10 years; or	Article 15(6)(a) RD 240/2007	No podrá adoptarse una decisión de expulsión o repatriación respecto a ciudadanos de un Estado miembro de la Unión Europea o de otro Estado parte en el Acuerdo sobre el Espacio Económico Europeo, salvo si existen motivos imperiosos de seguridad pública, en los siguientes casos: a) Si hubiera residido en España durante los diez años anteriores, o:	A decision of expulsion or repatriation against Union or EEA citizens may not be taken except if the decision is based on grounds of public security if they: a) have resided in Spain for the previous 10 years; or	Y	Almost literal transposition.
	(b) are a minor, except if the expulsion is necessary for the best interests of the child, as provided for in the United Nations Convention on the Rights of the Child of 20 November 1989.	Article 15(6)(b) RD 240/2007 Article 3(2) LO 4/2000	b) Si fuera menor de edad, salvo si la repatriación es conforme al interés superior del menor, no teniendo dicha repatriación, en ningún caso, carácter sancionador. Las normas relativas a los derechos fundamentales de los extranjeros se interpretarán de conformidad con la Declaración Universal de Derechos Humanos y con los Tratados y Acuerdos internacionales sobre las mismas materias vigentes en España, sin que pueda alegarse la profesión de creencias religiosas o convicciones ideológicas o culturales de signo diverso para justificar la realización de	b) are a minor, except if the repatriation is necessary for the best interest of the minor, not being this repatriation in any case a sanction. The rules relating to fundamental principles of foreigners shall be interpreted according to the Universal declaration of Human Rights and the treaties and international agreements to which Spain is a Party, without being possible to invoke religious beliefs or ideological or cultural	Y	Effective transposition Reference to the Convention is not made but there is a general reference under the Aliens Act to the respect in the application of the law of international treaties, especially in the area of Human Rights. Spain is a Party since 1991 to the Convention of the Rights of the Child. In addition, the Spanish Constitution makes special reference to the protection of the rights of the child under international covenants

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			actos o conductas contrarios a las mismas	convictions to justify the exercise of acts or conducts contrary to those agreements.		
Art. 29.1	Public health 1. The only diseases justifying measures restricting freedom of movement shall be the diseases with epidemic potential as defined by the relevant instruments of the World Health Organisation and other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to nationals of the host Member State.	Article 15(9) first subparagraph RD 240/2007	Las únicas dolencias o enfermedades que pueden justificar la adopción de alguna de las medidas del apartado 1 del presente artículo serán las enfermedades con potencial epidémico, como se definen en los instrumentos correspondientes de la Organización Mundial de la Salud, así como otras enfermedades infecciosas o parasitarias contagiosas, de conformidad con la legislación española vigente.	The only diseases or sickness that may justify the adoption of any of the measures listed in paragraph 1 of this article shall be the diseases with epidemic potential as defined by the WHO, as well as any other diseases or contagious parasitic diseases according to the national legislation in place.	Y	Effective transposition.
Art.29.2	2. Diseases occurring after a three-month period from the date of arrival shall not constitute grounds for expulsion from the territory.	Article 15(9) second subparagraph RD 240/2007	Las enfermedades que sobrevengan tras los tres primeros meses siguientes a la fecha de llegada del interesado, no podrán justificar la expulsión de territorio español.	Diseases occurring after a three-month period from the date of arrival of the concerned person shall not be basis to justify an expulsion decision from the Spanish territory.	Y	Literal transposition
Art.29.3	3. Where there are serious indications that it is necessary, Member States may, within three months of the date of arrival, require persons entitled to the right of residence to undergo, free of charge, a medical examination to certify that they are not suffering from any of the conditions referred to in paragraph 1. Such medical examinations may not be required as a matter of routine.	Article 15(9) third subparagraph RD 240/2007 Article 12(4) RD 240/2007	En los casos individuales en los que existan indicios graves que lo justifiquen, podrá someterse a la persona incluida en el ámbito de aplicación del presente real decreto, en los tres meses siguientes a la fecha de su llegada a España, a un reconocimiento médico gratuito para que se certifique que no padece ninguna de las enfermedades mencionadas en este apartado. Dichos reconocimientos médicos no podrán exigirse con carácter sistemático. Asimismo, cuando así lo aconsejen razones de salud pública y según lo previsto en el artículo 15 del presente real decreto, podrá exigirse al interesado la presentación de certificado médico acreditativo de su estado de salud.	In individual cases where there are serious indications that it is necessary, the persons covered by this RD may be required to, within three months of the date of arrival in Spain, undergo, free of charge, a medical examination to certify that they are not suffering from any of the conditions referred to in this paragraph. Such medical examinations may not be required as a matter of routine. Similarly, when so required by reasons of public health in accordance with Article 15 of the RD, the applicant may be required to present a medical certificate certifying their health status.	Y	Effective transposition The provision has been literally transposed. In addition, the RD includes the possibility to require a medical certificate when requesting the registration certificate or residence card if any of there are indications of risks for public health. More information shall be requested to the authorities.

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
Art.30.1	<p>Notification of decisions</p> <p>1. The persons concerned shall be notified in writing of any decision taken under Article 27(1), in such a way that they are able to comprehend its content and the implications for them.</p>	<p>2nd Additional Provision RD 240/2007</p> <p>Article 20 LO 4/2000</p> <p>Article 18(1) RD 240/2007</p>	<p>Disposición adicional segunda. <i>Normativa aplicable a los procedimientos.</i></p> <p>En lo no previsto en materia de procedimientos en el presente real decreto, se estará a lo dispuesto en la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social, en su Reglamento, aprobado por Real Decreto 2393/2004, de 30 de diciembre, en la Ley 30/1992, de 26 de noviembre, de régimen jurídico de las Administraciones Públicas y del procedimiento administrativo común, y en su normativa de desarrollo, con carácter supletorio y en la medida en que no se oponga a lo dispuesto en los Tratados constitutivos de las Comunidades Europeas y el derecho derivado de los mismos.</p> <p>Artículo 20. Derecho a la tutela judicial efectiva.</p> <p>1. Los extranjeros tienen derecho a la tutela judicial efectiva.</p> <p>2. Los procedimientos administrativos que se establezcan en materia de extranjería respetarán en todo caso las garantías previstas en la legislación general sobre procedimiento administrativo, especialmente en lo relativo a publicidad de las normas contradicción, audiencia del interesado y motivación de las resoluciones, salvo lo dispuesto en el Artículo 27 de esta Ley.</p> <p><i>Resolución.</i></p> <p>1. Las resoluciones de expulsión serán dictadas por los Subdelegados del Gobierno o Delegados del Gobierno en las</p>	<p>Rules for procedures</p> <p>In everything not regulated by this RD regarding procedures, LO 4/2000 (Aliens Act) and its Regulation approved by RD 2393/2004 (the Aliens Regulation) and Law 30/1992 on administrations and administrative procedures and its secondary legislation, shall be applicable provided it does not go against EC law and derived legislation.</p> <p><i>Right to fair trial</i></p> <p>All aliens have the right to fair trial</p> <p>Administrative proceedings in this area shall respect in all cases the procedural guarantees established in the procedural administrative legislation, especially regarding the publicity of the rules of contradiction, audience of the person concerned, and motivation of the resolution except in the case of Article 27 of this law.</p> <p><i>Resolution</i></p> <p>1. The resolutions ordering an expulsion shall be issued by the Sub-delegate, or Delegate of the</p>	Y	<p>Effective transposition</p> <p>The general rule is that the administrative decisions are taken in writing with very limited exceptions. Within this context, and as part of the right to fair trial, decisions will always be notified in writing. In fact, the administrative procedure is a procedure which is mainly carried out in writing although there would always be an audience of the concerned persons. On the other hand, there is no specific provision that unequivocally states that the notification shall be in writing. However, given the Spanish tradition of administrative procedures in writing, the transposition was considered correct on this point. Notice as well that in this case administrative silence can only be favourable for the concerned person.</p> <p>Regarding comprehension, LO 4/2000 includes the right to be assisted by an interpreter when the person does not comprehend or speak the language. The Spanish text does not use the verb “understand”, but “comprehend” and differentiates it from “speak”. This nuance in the Spanish text suggests that as part of the principles of fair trial and administrative procedure, the important thing is that the person comprehends the content of the resolution and the implications.</p> <p>For these reasons, and although a express transposition would have</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Article 22(1) second subparagraph LO 4/2000	<p>los interesados puedan ejercitar, en su caso, cualquier otro que estimen procedente,</p> <p>3. Las notificaciones que conteniendo el texto íntegro del acto omitiesen alguno de los demás requisitos previstos en el apartado anterior surtirán efecto a partir de la fecha en que el interesado realice actuaciones que supongan el conocimiento del contenido y alcance de la resolución o acto objeto de la notificación o resolución, o interponga cualquier recurso que proceda.</p> <p>4. Sin perjuicio de lo establecido en el apartado anterior, y a los solos efectos de entender cumplida la obligación de notificar dentro del plazo máximo de duración de los procedimientos, será suficiente la notificación que contenga cuando menos el texto íntegro de la resolución, así como el intento de notificación debidamente acreditado.</p> <p>Además, tendrán derecho a la asistencia de intérprete si no comprenden o hablan la lengua oficial que se utilice.</p>	<p>prejudice of any other appeals procedure that the concerned person may consider as adequate.</p> <p>3. The notification, that while containing the text of the resolution omits some of the requirements foreseen in the previous paragraph, shall only be enter into effect from the date in which the interested person carries out activities implying that the person had knowledge of the content and implications of the resolution or act subject to notification, or lodges an appeal.</p> <p>4. Without prejudice of the previous paragraph, and only to considered that the resolution has been notified within the time limit, it will be enough if the notification includes the full text of the resolution as well as the accreditation that the notification was tried.</p> <p>In addition, they shall have the right to receive the assistance of an interpreter when they do not comprehend or speak the official language used in the proceedings</p>		
Art.30.2	2. The persons concerned shall be informed, precisely and in full, of the public policy, public security or public health grounds on which the decision taken in their case is based, unless this is contrary to the interests of State security.	Article 4(3) RD 240/2007	Cualquier resolución denegatoria de una solicitud de visado o de entrada, instada por una persona incluida en el ámbito de aplicación del presente real decreto deberá ser motivada. Dicha resolución denegatoria indicará las razones en que se base, bien por no acreditar debidamente los requisitos	3. Any negative resolution regarding visa or entry against a person covered by this Royal Decree must be motivated. This negative resolution shall indicate the reasons on which it is based, which may be either because the	Y	Effectvie transposition Although it is not transposed literally, all the resolutions have to be motivated. Under Administrative procedural law, this implies that the resolution will include a description

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		<p>Article 18(2) second sentence RD 240/2007</p> <p>Article 20 LO 4/2000</p>	<p>exigidos a tal efecto por el presente real decreto, bien por motivos de orden público, seguridad o salud públicas. Las razones serán puestas en conocimiento del interesado salvo que ello sea contrario a la seguridad del Estado.</p> <p>(...) Las citadas resoluciones deberán ser motivadas, con información acerca de los recursos que se puedan interponer contra ella, plazo para hacerlo y autoridad ante quien se debe formalizar.</p> <p>Artículo 20. Derecho a la tutela judicial efectiva.</p> <p>1. Los extranjeros tienen derecho a la tutela judicial efectiva.</p> <p>2. Los procedimientos administrativos que se establezcan en materia de extranjería respetarán en todo caso las garantías previstas en la legislación general sobre procedimiento administrativo, especialmente en lo relativo a publicidad de las normas contradicción, audiencia del interesado y motivación de las resoluciones, salvo lo dispuesto en el Artículo 27 de esta Ley.</p> <p>3. En los procedimientos administrativos estarán legitimadas para intervenir como interesadas las organizaciones constituidas legalmente en España para la defensa de los inmigrantes, expresamente designadas por éstos.</p> <p>4. En los procesos contencioso-</p>	<p>requirements are not accredited, or because of reasons of public order, public health or public security. The reasons shall be made known to the concerned person except when it is contrary to the interest of the State.</p> <p>2 (...) These resolutions shall be motivated with information regarding appeals, time to lodge the appeal and the authority with which the person may lodge the appeal.</p> <p><i>Right to fair trial</i></p> <p>All aliens have the right to fair trial</p> <p>2. Administrative proceedings in this area shall respect in all cases the procedural guarantees established in the procedural administrative legislation, especially regarding the publicity of the rules of contradiction, audience of the person concerned, and motivation of the resolution except in the case of Article 27 of this law.</p> <p>3. In the administrative proceedings organisations constituted for the defence of immigrants shall have the right to intervene when the person concerned designate them.</p> <p>4. In the judicial administrative</p>		<p>of the facts and the analysis of the considerations one by one and all the grounds. The administration has to motivate each of the reasons and all aspects discussed shall be included in the resolution. This will guarantee that the text includes the full text and it is very precise. This is also a consequence of one of the main guarantees which is also include in the RD 240/2007 which is the participation of the State Attorney (Abogado del Estado) which will issue an opinion that will have to be taken into account by the competent authority who will include the arguments by the State Attorney in the resolution. Other guarantee is the possibility for association defending immigrants' interests to participate in the procedure. This guarantee would be particularly relevant apply when the family member is a third country national.</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			interesado podrá presentar personalmente sus medios de defensa ante el órgano consultivo, a no ser que se opongan a ello motivos de seguridad del Estado. El dictamen de la Abogacía del Estado será sometido a la autoridad competente para que confirme o revoque la anterior resolución.	may be subject to the analysis of the Legal Service of the State or the State Attorney of the province. The concerned person may present personally his/her defence before the consultative body unless it is contrary to the State security. The opinion of the State Attorney shall be submitted to the competent authority for confirmation or revocation of the resolution.		
Art.30.3	3. The notification shall specify the court or administrative authority with which the person concerned may lodge an appeal, the time limit for the appeal and, where applicable, the time allowed for the person to leave the territory of the Member State.	Article 18(2) RD 240/2007 Article 16(2) RD 240/2007	2. Las resoluciones de expulsión fijarán el plazo en el que el interesado debe abandonar el territorio español. Excepto en casos de urgencia debidamente justificados, en los que la resolución se ejecutará de forma inmediata, en los demás supuestos se concederá al interesado un plazo para abandonarlo, que no podrá ser inferior a un mes a partir de la fecha de la notificación de la resolución. Las citadas resoluciones deberán ser motivadas, con información acerca de los recursos que se puedan interponer contra ella, plazo para hacerlo y autoridad ante quien se debe formalizar. 2. Sin perjuicio de los recursos administrativos y judiciales legalmente procedentes, la resolución de la Autoridad competente que ordene la expulsión de personas solicitantes de tarjeta de residencia o certificado de registro será sometida, previa petición del interesado, a examen de la Dirección del Servicio Jurídico del Estado o de la Abogacía del Estado en la provincia. El interesado podrá presentar personalmente sus medios de defensa ante el órgano consultivo,	2. Resolutions declaring the expulsion shall establish the time allowed for the person to leave the Spanish territory. Save in duly substantiated cases of urgency, in which case the resolution shall be enforced immediately, the resolution will indicate the time allowed to leave the country which shall not be less than one month from the date of notification of the resolution. These resolutions shall be motivated with information regarding appeals, time to lodge the appeal and the authority with which the person may lodge the appeal. 2. Without prejudice of the possible administrative or judicial appeal according to the law, the resolution of the competent authority ordering the expulsion of the persons requesting a residence card or a registration certificate, upon request of the concerned person, may be subject to the analysis of the Legal Service of the State or	Y	Effective transposition. In addition, as mentioned before, there is the possibility to request the opinion of the Legal Service of the State or the State Attorney, the competent authority being obliged to modify the resolution accordingly when needed.

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Article 25, Law on Administrative judicial procedure	<p>previo de la Abogacía del Estado en la provincia, salvo en aquellos casos en que concurren razones de urgencia debidamente motivadas.</p> <p>2. Sin perjuicio de los recursos administrativos y judiciales legalmente procedentes, la resolución de la Autoridad competente que ordene la expulsión de personas solicitantes de tarjeta de residencia o certificado de registro será sometida, previa petición del interesado, a examen de la Dirección del Servicio Jurídico del Estado o de la Abogacía del Estado en la provincia. El interesado podrá presentar personalmente sus medios de defensa ante el órgano consultivo, a no ser que se opongan a ello motivos de seguridad del Estado. El dictamen de la Abogacía del Estado será sometido a la autoridad competente para que confirme o revoque la anterior resolución.</p> <p>Artículo 25. 1. El recurso contencioso-administrativo es admisible en relación con las disposiciones de carácter general y con los actos expresos y presuntos de la Administración pública que pongan fin a la vía administrativa, ya sean definitivos o de trámite, si estos últimos deciden directa o indirectamente el fondo del asunto, determinan la imposibilidad de continuar el procedimiento, producen indefensión o perjuicio irreparable a derechos o intereses legítimos.</p>	<p>residence card shall require before it is issued the report of the State Attorney, save in duly substantiated cases of urgency.</p> <p>2. Without prejudice of the possible administrative or judicial appeal according to the law, the resolution of the competent authority ordering the expulsion of the persons requesting a residence card or a registration certificate, upon request of the concerned person, may be subject to the analysis of the Legal Service of the State or the State Attorney of the province. The concerned person may present personally his/her defence before the consultative body unless it is contrary to the State security. The opinion of the State Attorney shall be submitted to the competent authority for confirmation or revocation of the resolution.</p> <p>1. The administrative judicial appeal is possible in relation to the provisions of general character and express or implied acts of the administration, definitive or incidental, if the latter also ruled directly or indirectly on the substance, prevent the continuation of the procedure or lead to lack of defence or irreparable damage of rights and interest of the concerned person.</p>		possible to go the Supreme Court and under certain circumstances (e.g., for violation of the right to fair trial) to the Constitutional Court. In addition there are specific judicial procedures for the violation of fundamental rights.

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			2. También es admisible el recurso contra la inactividad de la Administración y contra sus actuaciones materiales que constituyan vía de hecho, en los términos establecidos en esta Ley.	2. It is also possible the administrative judicial appeal against the omissions of the administration or against material action according to the law.		
Art.31.2	2. Where the application for appeal against or judicial review of the expulsion decision is accompanied by an application for an interim order to suspend enforcement of that decision, actual removal from the territory may not take place until such time as the decision on the interim order has been taken, except: — where the expulsion decision is based on a previous judicial decision; or — where the persons concerned have had previous access to judicial review; or — where the expulsion decision is based on imperative grounds of public security under Article 28(3).	Article 17(1) RD 240/2007	1. Cuando la presentación de recurso administrativo o judicial contra la resolución de expulsión vaya acompañada de la solicitud de una medida cautelar de suspensión de la ejecución de dicha resolución, no podrá producirse la expulsión en sí hasta el momento en que se haya adoptado la decisión sobre la medida cautelar, excepto si se da una de las siguientes circunstancias: a) Que la resolución de expulsión se base en una decisión judicial anterior. b) Que las personas afectadas hayan tenido acceso previo a la revisión judicial. c) Que la resolución de expulsión se base en motivos imperiosos de seguridad pública según lo señalado en el artículo 15.5.a) y d) del presente real decreto.	Where the application for administrative appeal or judicial review against an expulsion decision is accompanied by an application for an interim order to suspend enforcement of that decision, actual removal from the territory may not take place until such time as the decision on the interim order has been taken, except: — where the expulsion decision is based on a previous judicial decision; or — where the persons concerned have had previous access to judicial review; or — where the expulsion decision is based on imperative grounds of public security under Article 15(5)(a) and (d).	Y	Almost literal transposition. In Spain, appeal does not have suspensory effect, therefore this provision grants more rights to EU citizens and their family members.
Art.31.3	3. The redress procedures shall allow for an examination of the legality of the decision, as well as of the facts and circumstances on which the proposed measure is based. They shall ensure that the decision is not disproportionate, particularly in view of the requirements laid down in Article 28.	Article 62 Law 30/92 administrative procedure	Artículo 62. Nulidad de pleno derecho 1. Los actos de las Administraciones públicas son nulos de pleno derecho en los casos siguientes: a. Los que lesionen los derechos y libertades susceptibles de amparo constitucional. b. Los dictados por órgano manifiestamente incompetente(...). c. Los que tengan un contenido imposible. d. Los que sean constitutivos de	<i>Nulity of administrative acts</i> 1. Administrative acts are void if: a. they violate the rights or freedoms protected by constitutional protection b. they are issued by a body which manifestly lacks competence c. they have an impossible content d. they constitute a crime or a	Y	Effective transposition As a principle the appeal procedures, either before the administration or before the judge allows for the examination of the facts and the law. New facts and new provisions can be examined during the appeal procedure. The principle of proportionality is part of the assessment of the legality of the action. The examination of the facts is even possible under the final

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Article 63 Law 30/92 administrative procedure	<p>infracción penal o se dicten como consecuencia de ésta.</p> <p>e. Los dictados prescindiendo total y absolutamente del procedimiento legalmente establecido o de las normas(...).</p> <p>f. Los actos expresos o presuntos contrarios al ordenamiento jurídico por los que se adquieren facultades o derechos cuando se carezca de los requisitos esenciales para su adquisición.</p> <p>g. Cualquier otro que se establezca expresamente en una disposición de rango legal.</p> <p>2. También serán nulas de pleno derecho las disposiciones administrativas que vulneren la Constitución, las leyes u otras disposiciones administrativas de rango superior, las que regulen materias reservadas a la Ley, y las que establezcan la retroactividad de disposiciones sancionadoras no favorables o restrictivas de derechos individuales.</p> <p>Artículo 63. <i>Anulabilidad.</i></p> <p>1. Son anulables los actos de la Administración que incurran en cualquier infracción del ordenamiento jurídico, incluso la desviación de poder.</p> <p>2. No obstante, el defecto de forma sólo determinará la anulabilidad cuando el acto carezca de los requisitos formales indispensables para alcanzar su fin o dé lugar a la indefensión de los interesados.</p> <p>3. La realización de actuaciones</p>	<p>issued as a consequence of a crime</p> <p>e. they are issued with absolute disregard of the procedures and procedural rules (...)</p> <p>f. they are express or implied acts against the legal order granting faculties or right when the person does not have the essential requirements for acquiring them</p> <p>g. any other reasons established by the law.</p> <p>2. it should also be considered void the administrative provisions which violate the Constitution, the laws and other rules of superior rank which regulate issues reserved to law, as well as those act establishing the retroactivity of the non favourable sanctions or measures restricting individual rights.</p> <p><i>Possibility to declare nullity</i></p> <p>1. It can be declared the nullity of the administrative acts which violate the legal order, including abuse of power.</p> <p>2. The defect in the form can only lead to the declaration of nullity when the act does not contain the essential elements to allow the achievement of its ends or if it leads to a situation of lack of defence.</p>		<p>appeal before the Supreme Court but in that case the facts considered will only be those considered as proven by the inferior court or even other facts that although omitted by the inferior court are sufficiently justified and are needed to assess the violation of the law or the jurisprudence (Article 88 of the law on administrative judicial procedure)</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		<p>Article 112 Law 30/92 administrative procedure</p> <p>Article 31 Law on administrative judicial procedure</p>	<p>administrativas fuera del tiempo establecido para ellas sólo implicará la anulabilidad del acto cuando así lo imponga la naturaleza del término o plazo.</p> <p>Artículo 112. Audiencia de los interesados. 1. Cuando hayan de tenerse en cuenta nuevos hechos o documentos no recogidos en el expediente originario, se pondrán de manifiesto a los interesados para que, en un plazo no inferior a diez días ni superior a quince, formulen las alegaciones y presenten los documentos y justificantes que estimen procedentes. No se tendrán en cuenta en la resolución de los recursos, hechos, documentos o alegaciones del recurrente, cuando habiendo podido aportarlos en el trámite de alegaciones no lo haya hecho.</p> <p>Artículo 31. 1. El demandante podrá pretender la declaración de no ser conformes a Derecho y, en su caso, la anulación de los actos y disposiciones susceptibles de impugnación según el Capítulo precedente. 2. También podrá pretender el reconocimiento de una situación jurídica individualizada y la adopción de las medidas adecuadas para el pleno restablecimiento de la misma, entre ellas la indemnización de los daños y perjuicios, cuando proceda.</p>	<p>3. Actions carried out by the administration ex tempore shall lead to the declaration of nullity when it is so required by the nature of the time limit or deadline.</p> <p><i>Audience of the concerned persons.</i> 1. when new facts or documents not included in the resolution shall be taken into account, the appellate body shall notify this to the concerned parties so that within a period of time which cannot be less than 10 days or more than 15, they present arguments and document evidence considered relevant for the case. Those facts, documents or arguments that could have been brought to light during the adoption of the administrative resolution subject to appeal shall not been taken into account.</p> <p>The appellant may based the appeal on the ground that the administrative act does not conform to the law and, when so needed, may request the declaration as void of acts and provisions mentioned in the previous chapter.</p> <p>2. The appellant may also request the recognition of a individual legal situation and the</p>		

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		<p>Article 32 Law on administrative judicial procedure</p> <p>Article 31 Law on administrative judicial procedure</p>	<p>Artículo 32.</p> <p>2. Si el recurso tiene por objeto una actuación material constitutiva de vía de hecho, el demandante podrá pretender que se declare contraria a Derecho, que se ordene el cese de dicha actuación y que se adopten, en su caso, las demás medidas previstas en el artículo 31.2.</p> <p>Artículo 33.</p> <p>1. Los órganos del orden jurisdiccional contencioso-administrativo juzgarán dentro del límite de las pretensiones formuladas por las partes y de los motivos que fundamenten el recurso y la oposición.</p> <p>2. Si el Juez o Tribunal, al dictar sentencia, estimare que la cuestión sometida a su conocimiento pudiera no haber sido apreciada debidamente por las partes, por existir en apariencia otros motivos susceptibles de fundar el recurso o la oposición, lo someterá a aquéllas mediante providencia en que, advirtiéndole que no se prejuzga el fallo definitivo, los expondrá y concederá a los interesados un plazo común de diez días para que formulen las alegaciones que estimen oportunas, con suspensión del plazo para pronunciar el fallo. Contra la expresada providencia no cabrá recurso alguno.</p>	<p>adoption of the appropriate measures for the complete reestablishment of the situation, including compensation for damages.</p> <p>2. When the appeal is against the executive action of the administration, the appellant may require this action be declared as non conformed to the law and the adoption of all necessary measures according to Article 31.2</p> <p>1. The administrative judicial bodies shall rule within the limits of the pretensions put forward by the parties and based on the arguments indicated in the appeal and the opposition to the appeal.</p> <p>2. If the judge or court, when issuing the ruling, considers that the issue subject to the appeal has not been adequately appreciated by the parties, since there are other grounds for appeal, shall so indicate to the parties, indicating that this shall not preclude the final ruling, and will present the reasons giving the parties 10 days for presenting arguments declaring the suspension of the time to issue</p>		

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Article 60 Law on administrative judicial procedure	<p>3. Esto mismo se observará si, impugnados directamente determinados preceptos de una disposición general, el Tribunal entendiera necesario extender el enjuiciamiento a otros de la misma disposición por razones de conexión o consecuencia con los preceptos recurridos.</p> <p>Artículo 60. 1. Solamente se podrá pedir el recibimiento del proceso a prueba por medio de otrosí, en los escritos de demanda y contestación y en los de alegaciones complementarias. En dichos escritos deberán expresarse en forma ordenada los puntos de hecho sobre los que haya de versar la prueba.</p> <p>2. Si de la contestación a la demanda resultarán nuevos hechos de trascendencia para la resolución del pleito, el recurrente podrá pedir el recibimiento a prueba dentro de los tres días siguientes a aquel en que se haya dado traslado de la misma, sin perjuicio de que pueda hacer uso de su derecho a aportar documentos conforme a lo dispuesto en el artículo 56.4.</p> <p>3. Se recibirá el proceso a prueba cuando exista disconformidad en los hechos y éstos fueran de trascendencia, a juicio del órgano jurisdiccional, para la resolución del pleito. Si el objeto del recurso fuera una sanción administrativa o disciplinaria, el proceso se recibirá siempre a prueba cuando exista disconformidad en los hechos</p>	<p>the ruling.</p> <p>3. Similarly, if he/she considers that certain provisions have not been put forward by the parties in the appeal, the court may extend when examining the case, the provisions on grounds of connexion of the appeal procedures.</p> <p>1. The celebration of the phase of proof shall only be admitted when so required by the parties when submitting the appeal. The appeal shall also include a list of the facts that shall be subject to proof.</p> <p>2. If in the opposition to the appeal new facts which are transcendent for the resolution of the case arise, the appellant may require the celebration of the phase of proof within 3 days after being notified of the defendant position and without prejudice of the right to bring new documents according to Article 56.4.</p> <p>3. The phase of proof shall be opened when there is contradiction between the facts alleged by the parties and when according to the judge those facts are essential for the adopting the final resolution. The phase of proof shall always be opened in the case of an</p>		

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
				administrative sanction and there is contradiction regarding the facts.		
Art.31.4	4. Member States may exclude the individual concerned from their territory pending the redress procedure, but they may not prevent the individual from submitting his/her defence in person, except when his/ her appearance may cause serious troubles to public policy or public security or when the appeal or judicial review concerns a denial of entry to the territory.	Article 17(2) RD 240/2007	2. Durante la sustanciación del recurso judicial, el interesado no podrá permanecer en territorio español, salvo en el trámite de vista, en que podrá presentar personalmente su defensa, excepto que concurran motivos graves de orden público o de seguridad pública o cuando el recurso se refiera a una denegación de entrada en el territorio.	Pending the appeal procedure, the individual concerned shall be excluded from the territory of Spain save during the phase of audience, in which he/she shall submit his/her defence in person, except when his/ her appearance may cause serious troubles to public policy or public security or when the appeal or judicial review concerns a denial of entry to the territory.	Y	Almost literal transposition.
Art.32.1	Duration of exclusion orders 1. 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 15(2) first subparagraph RD 240/2007	Aquellas personas que hayan sido objeto de una decisión de prohibición de entrada en España, podrán presentar, en un plazo no inferior a dos años desde dicha prohibición, una solicitud de levantamiento de la misma, previa alegación de los motivos que demuestren un cambio material de las circunstancias que justificaron la prohibición de entrada en España. 5. La adopción de una de las medidas previstas en los apartados anteriores 1 a 4 se atenderá a los siguientes criterios: [...] b) Podrá ser revocada de oficio o a instancia de parte cuando dejen de subsistir las razones que motivaron su adopción.	Persons subject to a ban on entry may submit an application for lifting of the ban order not before two years from the adoption of the ban, by putting forward arguments to establish that there has been a material change in the circumstances which justified the decision of banning the person from Spain. 5. The adoption of one of the measures listed in paragraphs 1 to 4 shall be adopted according to the following criteria: [...] b) They may be revoked ex officio or at the request of the person concerned when the reasons that justified its adoption no longer exist.	N, Ambiguous	Ambiguous transposition The provision is broader and not only include the case of expulsion but also a ban on entry, basically because it is possible that the decisions on grounds of public order and so on it is not only an expulsion but also a refusal to entry, in which case the person may not be in Spain. Expulsion orders always include a ban on entry for a period of 3 years as a minimum and 10 as a maximum (Article 58(1) of LO 4/200- Aliens Act). The transposition could be considered incorrect because the text of the Spanish provision only allows applying for lifting the ban order after two years from the date on which it was taken. Therefore, it restricts the possibility given by the Directive of allowing this application after a reasonable period, depending on the circumstances, which may be less than 2 years in certain cases.

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
						On the other hand, Article 15(5)(b) indicates that the decision adopted on the basis of public order and public security, which includes the ban in entry, can be revoked ex officio and at the request of the person concerned when the circumstances which justified the adoption of the measures no longer exist. This implies that, on the one hand the public authorities are requested to adopt an active behaviour and revise periodically the decision and on the other hand, that it may be that the circumstances appear before the 2 years have elapsed. In this case, the transposition would be correct. Since Article 15(5)(b) apply to all decisions based on public order and public security, it should also apply to ban in entry. There is an internal contradiction in the legislation. The practice and the tribunal will probably clarify whether Article 15(5)(b) would allow for revisions before the two years have elapsed.
	The Member State concerned shall reach a decision on this application within six months of its submission.	Article 15(2) second subparagraph RD 240/2007	La Autoridad competente que resolvió dicha prohibición de entrada deberá resolver dicha solicitud en un plazo máximo de tres meses a partir de su presentación.	The competent authority which ordered the ban shall reach a decision on this application within 3 months of its submission.	Y, more favourable	Effective and more favourable transposition 3 months instead of 6.
Art.32.2	2. The persons referred to in paragraph 1 shall have no right of entry to the territory of the Member State concerned while their application is being considered.	Article 15(2) third subparagraph RD 240/2007	Durante el tiempo en el que dicha solicitud es examinada, el afectado no podrá entrar en España.	The person concerned shall have no right of entry to the territory of Spain while their application is being considered	Y	Almost literal transposition
Art.33.1	Expulsion as a penalty or legal consequence 1. Expulsion orders may not be issued by the host Member State as a penalty or	Article 15(5)(a) RD 240/2007	La adopción de una de las medidas previstas en los apartados anteriores 1 a 4 se atenderá a los siguientes criterios: a) Habrá de ser adoptada con arreglo a la	5. The adoption of any of the measures foreseen in subparagraphs 1-4 shall comply with the following criteria: a) Shall be adopted according to	Y	Effective transposition The provision is not expressly transposed. However the transposition has been considered in

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
	<p>legal consequence of a custodial penalty, unless they conform to the requirements of Articles 27, 28 and 29.</p>	<p>Article 28(3)(a) LO 4/2000</p> <p>Article 57(2) LO 4/2000</p> <p>Article 57(5)-(8) LO 4/2000</p>	<p>legislación reguladora del orden público y la seguridad pública y a las disposiciones reglamentarias vigentes en la materia.</p> <p>3. La salida será obligatoria en los siguientes supuestos:</p> <p>a) Expulsión del territorio español por orden judicial, en los casos previstos en el Código Penal</p> <p>2. Asimismo constituirá causa de expulsión, previa la tramitación del correspondiente expediente, que el extranjero haya sido condenado, dentro o fuera de España, por una conducta dolosa que constituya en nuestro país delito sancionado con pena privativa de libertad superior a un año, salvo que los antecedentes penales hubieran sido cancelados [...]</p> <p>5. La sanción de expulsión no podrá ser impuesta, salvo que la infracción cometida sea la prevista en el <u>artículo 54, letra a del apartado 1</u>, o suponga una reincidencia en la comisión en el término de un año de una infracción de la misma naturaleza sancionable con la expulsión, a los extranjeros que se encuentren en los siguientes supuestos:</p> <p>a. Los nacidos en España que hayan residido legalmente en los últimos cinco años.</p> <p>b. Los que tengan reconocida la residencia permanente.</p> <p>c. Los que hayan sido españoles de origen y hubieran perdido la nacionalidad española.</p>	<p>the legislation regulating public order and public security and the secondary legislation applicable in this area.</p> <p>3. The exit shall be compulsory in the following cases:</p> <p>a) Expulsion from the Spanish territory by judicial order in the cases foreseen in the Criminal Code</p> <p>2. It shall be considered as a cause of expulsion, provided the file has been opened, that the aliens has been found guilty in Spain or abroad, for a willingful conduct which constitute a crime punished in Spain with a imprisonment of more than one year, except when the conviction has been cancelled.</p> <p>5. The expulsion may not be imposed, except when the infraction committed is that listed in Article 54(1)(a), or in case of recidivism within one year of a infraction of the same nature and which is sanctioned with expulsion, to aliens following under one of these situations:</p> <p>a. Aliens born in Spain and who have resided legally in the last 5 years</p> <p>b. Those who have recognised permanent residence</p> <p>c. Those who were originally Spanish or have lost their</p>		<p>conformity. Article 15(1) of RD 240/2007 establishes that “When so required by reasons of public policy, public security or public health, any of the following measures can be adopted against a Union or EEA citizen or their family members:</p> <p>a) prevent entry in Spain, even if the concerned people have submitted the documentation foreseen on Article 4 of the present Royal Decree.</p> <p>b) deny the registration in the Aliens Central Register, or the issuance or renewal of the residence cards foreseen in this Royal Decree.</p> <p>c) Order the expulsion or devolution from the territory of Spain.</p> <p>Article 15(1) of RD 240/2007 establishes that the only expulsion measures possible are those based on public policy and public security. This implies that a potential expulsion decision for the commission of a crime has to be based not on the commission of a crime as such but on the person’s conduct being against public order or public security. As shown above, the commission of a crime certainly provides evidence that a conduct against public order or public security might be present but does not justify in itself and expulsion decisions (see comments above on the application of public order and public security). The Council of State follows the same line.</p> <p>This general provision of RD 240/2007 implies that whichever</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			<p>d. Los que sean beneficiarios de una prestación por incapacidad permanente para el trabajo como consecuencia de un accidente de trabajo o enfermedad profesional ocurridos en España, así como los que perciban una prestación contributiva por desempleo o sean beneficiarios de una prestación económica asistencial de carácter público destinada a lograr su inserción o reinserción social o laboral.</p> <p>6. Tampoco podrán ser expulsados los cónyuges de los extranjeros, ascendientes e hijos menores o incapacitados a cargo del extranjero que se encuentre en alguna de las situaciones señaladas anteriormente y hayan residido legalmente en España durante más de dos años ni las mujeres embarazadas cuando la medida pueda suponer un riesgo para la gestación o para la salud de la madre.</p> <p>7.</p> <p>a. Cuando el extranjero se encuentre procesado o inculpado en un procedimiento judicial por delito o falta para el que la Ley prevea una pena privativa de libertad inferior a seis años o una pena de distinta naturaleza, y conste este hecho acreditado en el expediente administrativo de expulsión, la autoridad gubernativa someterá al juez que, previa audiencia del Ministerio Fiscal, autorice, en el</p>	<p>Spanish nationality.</p> <p>d. The beneficiaries of a pension for permanent incapacity to work as a consequence of an accident at work or occupational disease that occurred in Spain, as well as those benefiting from a contributive benefit for unemployment or beneficiaries of a public assistance economic benefit aimed at ensuring the social or labour insertion or reinsertion.</p> <p>6. Spouses of aliens, ascendants or minors children or handicapped dependant of the alien in one of the situations indicated above and who have legally resided in Spain for more than 2 years, and pregnant women shall not be expelled if the expulsion may pose risk to the pregnancy or the mother's health.</p> <p>7.</p> <p>a. When the alien is prosecuted or a defendant in a judicial criminal procedure for crime or fault for which the law foresees a penalty of imprisonment of less than 6 years or a penalty of different nature, and the facts are certified in the administrative file for expulsion, the government authority shall request to the judge, having heard previously the prosecutor,</p>		<p>expulsion decision, also those that may be as penalty or legal consequence of the commission of a crime, have to respect the principles listed in Article 15 of RD 240/2007. This general provision thus ensures that Articles 27-29 are taken into account also for expulsion decisions as penalties or legal consequence of the commission of a crime. For this reasons the transposition is considered correct. Keeping there are two cases where is possible an expulsion as a penalty under the Spanish regime. However, this does not always apply to Union citizens. to determine whether they are applicable to Union citizens and their family members and if so, under which conditions. However, it should also be kept in mind that in the current sociological environment where there is a increased mistrust in foreigners (especially when coming from specific countries), may lead to a more flexible application of expulsion.</p> <p>Judicial expulsion Article 89 of the <i>Criminal Code</i> foresees the expulsion for the commission of certain crimes and Article 108 the substitution of security measures with an expulsion decision.</p> <p>Article 89 and 108 refers to person not legally residing in Spain. This reference excludes Union citizens</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			<p>plazo más breve posible y en todo caso no superior a tres días, su expulsión, salvo que, de forma motivada, aprecie la existencia de circunstancias excepcionales que justifiquen su denegación.</p> <p>En el caso de que el extranjero se encuentre sujeto a varios procesos penales tramitados en diversos juzgados, y consten estos hechos acreditados en el expediente administrativo de expulsión, la autoridad gubernativa instará de todos ellos la autorización a que se refiere el párrafo anterior.</p> <p>b. No obstante lo señalado en el párrafo a anterior, el juez podrá autorizar, a instancias del interesado y previa audiencia del Ministerio Fiscal, la salida del extranjero del territorio español en la forma que determina la <u>Ley de Enjuiciamiento Criminal</u>.</p> <p>c. No serán de aplicación las previsiones contenidas en los párrafos anteriores cuando se trate de delitos tipificados en los <u>artículos 312, 318 bis, 515.6.a, 517 y 518 del Código Penal</u>.</p> <p>8. Cuando los extranjeros, residentes o no, hayan sido condenados por conductas</p>	<p>the authorisation in the shortest time possible and in no case in more than three days, the expulsion, except when by reasoned decision it is considered that there are exceptional circumstances justifying the refusal of the expulsion.</p> <p>In case the alien is going through different criminal procedures in different courts, and the facts certified are included in the administrative file of expulsion, the governmental authority shall promote from all of them the authorisation referred to in the previous paragraph.</p> <p>b. Without prejudice of the previous paragraph, the judge may authorised, upon request of the concerned person or the Prosecutor, the exit of the alien according to the Criminal Procedure Law.</p> <p>c. The previous paragraphs shall not be applicable when the crimes are those of Article 312, 318 bus, 515.6.a, 517 and 518 of the Criminal Code.</p> <p>8. When the alien, residents or not, have been convicted by</p>		<p>and their family members since they cannot be illegal residents⁷ basically because if they meet the conditions (which are almost none in Spain) they are not illegal residents. The only possibility is that they do not meet the conditions in which case they will not be covered by the Directive and the general aliens rules will apply. This provision will nevertheless apply to other family members and family members who retained the right of free movement under Article 12 and 13 of the Directive since they are subject to general aliens legislation, of they reside illegally.</p> <p>Therefore, it is not possible to expel Union citizens and their family members on the basis of Article 89 or 108 of the Criminal Code</p> <p>Administrative expulsion after the compliance with the penalty.</p> <p>Commenting Article 57(7) of LO 4/2000, some academics have indicated that the “legal requirements vary significantly depending on whether the subject of the administrative expulsion procedure is a Union citizen or not. Aliens not nationals of a Member State of the European Union or EEA States are subject to the causes of expulsion under Article 57; on the contrary, when the expulsion measure affects a</p>

⁷ This interpretation applies since the entry into force of the revision in 1995. In the same sense Carrascosa et al. *Curso de Nacionalidad y Extranjería*, cfr supra note 35 p.413, Rodríguez Candela, “La expulsión del extranjero en el nuevo Código Penal”, p.63

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			<p>a seis años impuestas a un extranjero no residente legalmente en España serán sustituidas en la sentencia por su expulsión del territorio español, salvo que el juez o tribunal, previa audiencia del Ministerio Fiscal, excepcionalmente y de forma motivada, aprecie que la naturaleza del delito justifica el cumplimiento de la condena en un centro penitenciario en España.</p> <p>#Igualmente, los jueces o tribunales, a instancia del Ministerio Fiscal, acordarán en sentencia la expulsión del territorio nacional del extranjero no residente legalmente en España condenado a pena de prisión igual o superior a seis años, en el caso de que se acceda al tercer grado penitenciario o una vez que se entiendan cumplidas las tres cuartas partes de la condena, salvo que, excepcionalmente y de forma motivada, aprecien que la naturaleza del delito justifica el cumplimiento de la condena en un centro penitenciario en España.</p> <p>La expulsión se llevará a efecto sin que sea de aplicación lo dispuesto en los <u>artículos 80, 87 y 88 del Código Penal.</u></p> <p>La expulsión así acordada llevará consigo el archivo de cualquier procedimiento administrativo que tuviera por objeto la autorización para residir o trabajar en</p>	<p>of less than 6 years imposed on a foreigner not residing legally in Spain shall be replaced by a sentence of expulsion from the Spanish territory, except when the judge or tribunal, having previously heard the Prosecutor, exceptionally and by a reasoned decision, considers that the nature of the crime justifies the execution of the penalty in a penitentiary centre in Spain.</p> <p>Similarly, the judges and tribunals, on request of the Prosecutor shall decide the expulsion from the national territory of the foreigner not residing legally in Spain and convicted with a penalty of prison equal or superior to 6 years, in those cases where the person has access to the third degree [conditional liberty] or once the ¾ of the penalty have been executed, except when in exceptional cases and by reasoned decision, they considered that the nature of the crime justify the execution of the penalty in a penitentiary centre in Spain.</p> <p>The expulsion shall be executed without applying Article 80, 87 and 88 of the Criminal Code.</p> <p>The expulsion so decided shall be accompanied by the abandoned of the administrative proceeding having as an object</p>		

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
		Article 108 Criminal Code	<p>España.</p> <p>En el supuesto de que, acordada la sustitución de la pena privativa de libertad por la expulsión, ésta no pudiera llevarse a efecto, se procederá al cumplimiento de la pena privativa de libertad originariamente impuesta o del período de condena pendiente.</p> <p>2. El extranjero no podrá regresar a España en un plazo de 10 años, contados desde la fecha de su expulsión, y, en todo caso, mientras no haya prescrito la pena.</p> <p>3. El extranjero que intentara quebrantar una decisión judicial de expulsión y prohibición de entrada a la que se refieren los apartados anteriores será devuelto por la autoridad gubernativa, empezando a computarse de nuevo el plazo de prohibición de entrada en su integridad.</p> <p>4. Las disposiciones establecidas en los apartados anteriores no serán de aplicación a los extranjeros que hubieren sido condenados por la comisión de delitos a que se refieren los <u>artículos 312, 318 bis, 515.6, 517 y 518 del Código Penal.</u></p> <p>Artículo 108. 1. Si el sujeto fuera extranjero no residente legalmente en España, el juez o tribunal acordará en la sentencia, previa audiencia de aquél, la expulsión del territorio nacional como sustitutiva de las medidas de seguridad que le sean aplicables, salvo que el juez o tribunal, previa audiencia del Ministerio</p>	<p>the authorisation for residence or work in Spain.</p> <p>If the substitution of the imprisonment with expulsion is decided, the imprisonment originally foreseen shall be executed or the remaining time of imprisonment.</p> <p>2. The alien may only return to Spain within 10 years, from the date in which the expulsion was executed, and in any case, while the penalty has not prescribed.</p> <p>3. The alien who tries to break the judicial decision of expulsion or entry ban referred to in the previous paragraphs shall be returned by the government, and the time period for the entry ban shall start again from the beginning.</p> <p>4. The provisions of the previous paragraphs shall not apply to aliens convicted by crimes referred to in Articles 312, 318 bis, 515.6, 517 and 518 of the Criminal Code.</p> <p>1. If the person is a non legally resident alien in Spain, the judge or tribunal shall, previous audience of the alien, the expulsion of the Spanish territory as a replacement of the security measures applicable,</p>		

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			<p>Fiscal, excepcionalmente y de forma motivada, aprecie que la naturaleza del delito justifica el cumplimiento en España.</p> <p>La expulsión así acordada llevará consigo el archivo de cualquier procedimiento administrativo que tuviera por objeto la autorización para residir o trabajar en España.</p> <p>En el supuesto de que, acordada la sustitución de la medida de seguridad por la expulsión, ésta no pudiera llevarse a efecto, se procederá al cumplimiento de la medida de seguridad originariamente impuesta.</p> <p>2. El extranjero no podrá regresar a España en un plazo de 10 años, contados desde la fecha de su expulsión.</p> <p>3. El extranjero que intentara quebrantar una decisión judicial de expulsión y prohibición de entrada a la que se refieren los apartados anteriores será devuelto por la autoridad gubernativa, empezando a computarse de nuevo el plazo de prohibición de entrada en su integridad.</p>	<p>except when the judge or tribunal, having previously heard to the prosecutor, exceptionally and via reasoned decision, considers that the nature of the crime justifies the execution in Spain.</p> <p>The expulsion so decided, shall be accompanied by the abandoned of any administrative procedure aiming at the authorisation of the residence or work in Spain.</p> <p>In the case that, decided the replacement of the security measure with the expulsion, this could not be executed, the security measure originally established shall be executed.</p> <p>2. The alien shall not be able to return to Spain in 10 years, from the date of the execution of the expulsion.</p> <p>3. The alien who tries to break the judicial decision of expulsion or entry ban referred to in the previous paragraphs shall be returned to the governmental authority and the time period shall start again from the beginning.</p>		
Art.33.2	2. If an expulsion order, as provided for in paragraph 1, is enforced more than two years after it was issued, the Member State shall check that the individual concerned is currently and genuinely a threat to public policy or public security	Article 15(4) RD 240/2007	En los casos en los que una resolución de expulsión vaya a ejecutarse más de dos años después de haberse dictado, las autoridades competentes deberán comprobar y valorar posibles cambios de circunstancias que pudieran haberse producido desde el	If an expulsion order is enforced more than two years after it was issued, the competent authorities shall check and evaluate whether there has been any material change in the circumstances	Y	Effective transposition. Notice that it applies to all type of expulsion decisions: administrative expulsion and judicial expulsion for commission of a crime.

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
	and shall assess whether there has been any material change in the circumstances since the expulsion order was issued.		momento en el que se adoptó la decisión de expulsión, así como la realidad de la amenaza que el interesado representa para el orden público o la seguridad pública.	since the expulsion order was issued as well as whether the real and present threat to public policy or public security posed by the individual concerned.		
Art.34	Publicity Member States shall disseminate information concerning the rights and obligations of Union citizens and their family members on the subjects covered by this Directive, particularly by means of awareness-raising campaigns conducted through national and local media and other means of communication.				Y	There are brochures on Spanish, French, English and German as well as Bulgarian and Romanian (for workers). The information is also available on the following websites. http://www.map.es/servicios/servicios_on_line/extranjeria.html http://extranjeros.mtas.es/es/general/Folletos_informativos.html http://www.mir.es/SGACAVT/extranje/ The Ministry of Labour together with the Ministry of Foreign Affairs and the Ministry of Interior have issued an Instruction (DGI/SGRJ/03/2007) Finally the ToC provided by Spain indicates that they have held meetings with the Consulates of the other 26 MS.
Art.35	Abuse of rights Member States may adopt the necessary measures to refuse, terminate or withdraw any right conferred by this Directive in the case of abuse of rights or fraud, such as marriages of convenience. Any such measure shall be proportionate and subject to the procedural safeguards provided for in Articles 30 and 31.		<i>**Instrucción de 31 de enero de 2006 sobre los matrimonios de complacencia</i> <i>**Circular 1/2002, de 19 de febrero, sobre aspectos civiles, penales y contencioso-administrativos de la intervención del Fiscal en materia de extranjería.</i>	Instruction 31 January 2006 Circular 1/2002 intervention of the prosecutor in Aliens legislation	N, Ambiguos	Ambiguous transposition Marriage of convenience is considered as fraud under civil law and can also lead to prosecution. - Marriage of convenience is considered as fraud under civil law and can also lead to prosecution. The instruction of 31 January 2006 of the General Direction of the Registries and Notaries regulates this institution. The rights granted by nationality, obtaining residence and the family reunification of the family members of the spouse third country national.

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
						<p>- Nothing in RD 240/2007 regarding false documents but it is a general offence under criminal law.</p> <p>Any provision adopted under this provision may be based on public policy and thus subject to the same procedural guarantees although. If the decisions are not considered restrictions of the right of residence but not for public order and public security which implies that the not all the guarantees of Article 30 and 31 apply. For this reason the transposition is considered ambiguous. A more express provision would have been better.</p>
Art.36	<p>Sanctions</p> <p>Member States shall lay down provisions on the sanctions applicable to breaches of national rules adopted for the implementation of this Directive and shall take the measures required for their application.</p> <p>The sanctions laid down shall be effective and proportionate. Member States shall notify the Commission of these provisions not later than 30 April 2006 and as promptly as possible in the case of any subsequent changes.</p>				Y	<p>Effective transposition</p> <p>As mentioned in previous provisions the sanctions are proportionate.</p> <p>RD 240/2007 only foresees sanctions for the failure to request the registration certificate and residence card. The fine imposed is 300EUR. No other sanctions have been identified apart for general behaviours described in previous sections (public order, public security) which apply to both Spanish nationals, Union citizens and third country nationals.</p>
Art.37	<p>More favourable national provisions</p> <p>The provisions of this Directive shall not affect any laws, regulations or administrative provisions laid down by a Member State which would be more favourable to the persons covered by this Directive.</p>	Fourth Final Provision	<p><i>Normativa subsidiaria y supletoria.</i></p> <p>2. Las normas de carácter general contenidas en la citada Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social, así como las normas reglamentarias vigentes sobre la materia, serán aplicables a los supuestos comprendidos en el ámbito de</p>	The rules of general character included in LO 4/2000 as well as the regulation developing it shall be applicable to the persons covered by the RD on a complementary basis and provided they are more	Y	<p>Effective transposition</p> <p>In addition, there are many provisions that offer a more favourable treatment.</p>

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
			aplicación del presente real decreto, con carácter supletorio y en la medida en que pudieran ser más favorables y no se opongan a lo dispuesto en los Tratados constitutivos de las Comunidades Europeas, así como en el Derecho derivado de los mismos.	favourable and not contrary to EC Treaty or its secondary legislation.		
Art.38	<p>1. Articles 10 and 11 of Regulation (EEC) No 1612/68 shall be repealed with effect from 30 April 2006.</p> <p>2. Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC shall be repealed with effect from 30 April 2006.</p> <p>3. References made to the repealed provisions and Directives shall be construed as being made to this Directive.</p>	<p>Single Repealing Provision RD 240/2007</p> <p>First final provision RD 240/2007</p>	<p><i>Derogación normativa.</i> Queda derogado el Real Decreto 178/2003, de 14 de febrero, sobre entrada y permanencia en España de nacionales de Estados miembros de la Unión Europea y de otros Estados Parte en el Acuerdo sobre el Espacio Económico Europeo, así como todas aquellas normas de igual o inferior rango que contradigan lo dispuesto en el presente real decreto.</p> <p>Disposición final primera. <i>Incorporación de derecho de la Unión Europea.</i> Mediante el presente real decreto se incorpora al derecho español la Directiva 2004/38/CE, del Parlamento Europeo y del Consejo, de 29 de abril de 2004, relativa al derecho de los ciudadanos de la Unión y de los miembros de sus familias a circular y residir libremente en el territorio de los Estados miembros por la que se modifica el Reglamento (CEE) n.º 1612/68 y se derogan las Directivas 64/221/CEE, 68/360/CEE, 72/194/CEE, 73/148/CEE, 75/34/CEE, 75/35/CEE, 90/364/CEE, 90/365/CEE y 93/96/CEE.</p>	RD 178/2003 is repealed as well as any other provision of inferior rank.		
Art.39	No later than 30 April 2008 the Commission shall submit a report on the application of this Directive to the European Parliament and the Council, together with any necessary proposals, notably on the opportunity to extend the period of time during which Union citizens and their family members may reside in the territory of the host					

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

Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
	Member State without any conditions. The Member States shall provide the Commission with the information needed to produce the report.					
Art.40	Transposition 1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 April 2006.	Fifth Final Provision	<i>Entrada en vigor.</i> El presente real decreto entrará en vigor al mes de su publicación en el «Boletín Oficial del Estado».	This law shall enter into force one month after its publication on the Official Journal.	N	Publication 28 March 2007. Entry into force 28 March 2007
	When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.	First Final Provision RD 240/2007	Disposición final primera. <i>Incorporación de derecho de la Unión Europea.</i> Mediante el presente real decreto se incorpora al derecho español la Directiva 2004/38/CE, del Parlamento Europeo y del Consejo, de 29 de abril de 2004, relativa al derecho de los ciudadanos de la Unión y de los miembros de sus familias a circular y residir libremente en el territorio de los Estados miembros por la que se modifica el Reglamento (CEE) n.º 1612/68 y se derogan las Directivas 64/221/CEE, 68/360/CEE, 72/194/CEE, 73/148/CEE, 75/34/CEE, 75/35/CEE, 90/364/CEE, 90/365/CEE y 93/96/CEE.	Incorporation of Community law. This RD transposes Directive 2004/38/EC	Y	Reference made.
	2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive together with a table showing how the provisions of this Directive correspond to the national provisions adopted.				Y	Communicated. No other provisions have been identified.