



Ad-Hoc Query on the interpretation of article 11(1) of the Directive 2004/38/EC

Requested by FR EMN NCP on 23rd March 2015

Reply requested by 20th April 2015, compilation produced on 23rd June 2015

Responses from Austria, Belgium, Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Slovak Republic, Slovenia, Sweden, United Kingdom plus Croatia, Norway (18 in Total + France)

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1. Background Information

In the EU-Pilot case, France and the European Commission have diverging interpretations of article 11(1) of the Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (2004/38/EC).

The full article 11(1) states: “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.”

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On this matter, the Directorate of Immigration asks via the French Contact Point how other EU Member States interpret the specific following expression: “envisaged period of residence” (mentioned in article 11(1) of the Directive 2004/38/EC) and how they concretely implement it. We would like then to ask you the following questions:

1. How do you interpret the expression “envisaged period of residence” in article 11(1) of the Directive 2004/38/EC?
2. In particular: does your national legislation consider that the duration of the residence permit issued to family members who are third-country nationals must be of a duration (within the upper limit of 5 years) equals to:
 - the period during which the EU citizen declares intending to stay, i.e. without being required to provide any element of proof that he will, effectively and during his whole stay, meet the conditions to the right of residence as referred to in article 7 of the Directive 2004/38/EC;
 - Or the period during which the EU citizen can indeed justify that he will have a real right of residence (e.g. : duration of the employment contract; justified duration for sufficient resources so that he does not become a burden for the social assistance system)?

We would appreciate to have your responses by **Monday, 20th April 2015**.

2. Responses¹

		Wider Dissemination? ²	
	Austria	Yes	1. The residence card provided for in Art. 11 para 1 of the Directive 2004/38/EC is in principal being issued for a duration of validity of five years, unless the Union citizen specifies at the application for the residence card the intent to reside for a period under five years. The “envisaged period of residence of the Union citizen” therefore results from the corresponding application and the relevant information by the applicant. 2. The Union law right of residence, which is being documented by the issuance of the residence card, of the family member who is a third country national, persists until obtaining the permanent right of resident as right derived from the Union citizen, only as long as also the Union law right of residence of the reunifying Union citizen persists (and the reunifying union citizen resides in Austria) and no exceptions (particularly as referred to in Art. 12 and 13 of the Directive 2004/38/EC) apply. Source: Federal Ministry of the Interior
	Belgium	Yes	1. and 2.

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			<p>In the Belgian legislation the first case is applied (intention to stay). Only in rather exceptional cases, for example in the framework of students, au pairs, and in the case the foreigner clearly states that (s)he will stay for a limited period of time, an exception will be made to the rule that a residence permit with 5 year validity is issued.</p> <p>Article 42 §3 of the Law regarding the entry, residence, establishment and removal of the territory (15/12/1980):</p> <p>« Le droit de séjour des membres de famille du citoyen de l'Union, qui ne sont pas eux-mêmes citoyens de l'Union, est constaté par un titre de séjour. Ils sont inscrits au registre des étrangers. La durée de validité du titre de séjour est égale à la durée prévue du séjour du citoyen de l'Union qu'ils accompagnent ou rejoignent, et n'excède pas cinq ans à partir de la date de sa délivrance ».</p> <p>Article 32 §3 of the Royal Decree of 8 October 1981 states:</p> <p>« La carte de séjour de membre de la famille d'un citoyen de l'Union est renouvelée par l'administration communale du lieu de résidence pour la durée prévue du séjour du citoyen de l'Union qu'il accompagne ou qu'il rejoint, avec une durée maximale de cinq ans.</p> <p>Elle peut être renouvelée anticipativement aux conditions énumérées à l'article 41. »</p>
	Bulgaria	Yes	
	Cyprus	Yes	
	Czech Republic	Yes	<p>The residence card of a family member of a citizen of the European Union is in the Czech Republic in general issued for 5 years. In accordance with national legislation (Act No. 326/1999 Coll., on the Residence of Foreign Nationals on the Territory of the Czech Republic) and the Directive 2004/38/EC the validity of the residence card can be limited (within the limit of 5 years) for the envisaged period of residence of an Union citizen. However this happens very rarely, only if the EU citizen openly declares his/her will to remain in the Czech Republic for only a limited time period. Only in these cases, i.e. when the EU citizen explicitly discloses his/her intention to stay in the Czech Republic for a period of time shorter than 5 years (for example for the duration of his/her employment contract), then the residence card of his/her family member will be issued for the same period of time.</p> <p>With respect to your second question we can conclude that according to Czech national legislation the duration of the residence card issued to family members of EU citizens who are third country nationals equals to the period during which the EU citizen declares intending to stay but, in general, the residence card is issued for 5 years and no proof is required as regards the duration of stay of the EU citizen.</p>
	Denmark	Yes	
	Estonia	Yes	1. A citizen of the European Union acquires a temporary right of residence in Estonia automatically for five years when he or she

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			<p>registers his or her residence pursuant to the procedure provided in the Population Register Act. After five years, the term of temporary right of residence is extended automatically for another five years if the residence of the citizen of the European Union continues to be registered in Estonia. The duration of temporary right of residence granted to the EU citizen is not related to his/her envisaged period of residence.</p> <p>2. A family member shall be granted temporary right of residence for up to five years but not for longer than the period during which the citizen of the European Union resides in Estonia. The temporary right of residence of a family member shall be extended for the period during which the citizen of the European Union resides in Estonia but not for longer than five consecutive years at a time. If EU citizen meets the conditions at the time when family member applies for the temporary right of residence, then the right of residence will be given to the family member for the same period as the EU citizen. The period does not depend on duration of the employment contract or intensions to stay.</p>
	Finland	Yes	<p>1. The article regarding the envisaged period of residence is rarely implemented. The basic rule is that the residence card is always issued with validity for five years. If the applicant states in the application that he/she intends to stay for a shorter period of time, the matter can be further investigated and a residence card with validity for less than five years can be issued.</p> <p>2. National legislation does not include a specific mention of the envisaged period of residence in conjunction to third-country national family members of the EU-national. The main issue that is taken into account is the envisaged period of residence that the applicant states in the application. An EU-national cannot be obliged to present evidence that he/she will fulfil the conditions for residence for a certain period of time.</p>
	France	Yes	<p>1. N/A. 2. N/A.</p>
	Germany	Yes	<p>1. and 2. The expression “envisaged period of residence“ as applied in Article 11, section 1, of the Directive 2004/38/EU has not been incorporated into German legislation. The residence title of a family member who is not a citizen of the European Union is issued within six months from the date of the applicant having provided the required data and generally speaking for the duration of five years. The family member promptly receives a document confirming that he/she has provided the required data. Within a period of three months after his/her entry of the country, the competent foreigner’s authority can request from the foreigners that their conditions for his/her freedom of movement are credible. If such conditions no longer exist before the expiry of the time limit of five years of residence the loss of the –deduced- right of mobility can be determined and thus the residence title can be revoked. The equivalent regulations can be found in § 5, Freedom of Movement Law/EU (in the German language under http://www.gesetze-im-internet.de/freiz_gg_eu_2004/_5.html).</p>
	Greece	Yes	
	Hungary	Yes	<p>1.-2. The relevant Hungarian provisions state that the validity of the residence card issued to family members of EEA nationals who are third-country nationals shall be determined based upon the duration of residence of the EEA nationals who have the right of residence. The residence card shall be issued for a maximum period of five years.</p> <p>As the registration certificate for EEA nationals is issued for an indefinite period, the provision that the duration of the family member’s residence card could be less than five years does not necessarily have a real practical use as the evaluation of having sufficient resources in order not to become a burden on the social assistance system is carried out based on the documents submitted at the time of application</p>

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			and no practical limitation is used for the issuance of the residence documents of either the EEA national or his/her family members.
	Ireland	Yes	
	Italy	Yes	<p>In Italy, Directive 2004/38/EC was implemented by Legislative Decree 6 February 2007, No 30. Article 10(1) of such Decree establishes that the family members who are third-country nationals should apply for a “Residence card of a family member of a Union citizen” to the local Questura (provincial police headquarters) after three months from entry into national territory. Residence card requirements include registration with the Municipality in which the family member who is a Union citizen lives or a certificate documenting that a registration application has been submitted.</p> <p>A residence card of a family member of a Union citizen has a validity of five years from the date of issuance (Article 10(4), Decree No 30/2007). Therefore, Italian legislation does not tie the validity of the residence card to the permanence (either proved or presumed) of the EU national on Italian territory.</p>
	Latvia	Yes	<ol style="list-style-type: none"> 1. Latvia has interpreted the expression “envisaged period of residence” in such a way that the residence card of a family member is issued for a period of intended stay, for example, if a citizen of France would intend to stay in Latvia for studies and the period of studies would be for 2 years, the family member – third-country citizen would receive a residence card for 2 years. 2. Latvian legislative acts do not require any proof for sufficient financial means or proof of other conditions. The term of the residence card of the family member is shorter than 5 years only in cases where it is proved by the documents that the intended period of stay of the EU citizen will be shorter than 5 years. Usually it is related to study period or to posting of workers. In case of regular work agreement or if the registration certificate is issued on the ground of sufficient means, the residence card of family member is issued for 5 years.
	Lithuania	Yes	<ol style="list-style-type: none"> 1. This term is not clearly defined in the national legislation. Family members have right to reside in Lithuania, as long as their sponsor, the EU national, has the right to reside in Lithuania as well. 2. The EU citizen, while declaring, for which period s/he intends to reside in Lithuania, must provide some evidence of such declaration (work contract covering the duration of residence or a proof of means of subsistence which will be sufficient for the declared period of residence, or something similar). When the evidence of the EU citizen (sponsor) are accepted, the family members receive residence cards for the same duration of residence.
	Luxembourg	Yes	<ol style="list-style-type: none"> 1. Article 11 (1) of the Directive 2004/38/CE was transposed by article 15 (3) of the amended law of 29 August 2008 on the free movement of persons and immigration (Immigration Law). The article transcribes the term “envisaged period of residence” but there is no definition. However, the parliamentary document 5802/00 in the exposition of motives of article 15 indicates that the residence card will be issued to the family member if the duration of stay of the EU citizen on whom they depend is inferior to 5 years. This must be understood in the sense that it is valid for the period the EU citizen declares intending to stay. 2. Article 15 (3) of the Immigration Law establishes: “A residence card shall be issued by the Minister for a period of five years, alternatively for a period corresponding to the envisaged period of residence of the EU citizen on whom they depend if that period is less than five years. It shall be endorsed with the words “Residence permit of a family member of a Union citizen”. Therefore, the validity is linked to the duration of the EU citizen’s residence card. Nevertheless, the EU citizen’s right to residence in the country depends on whether s/he fulfils the conditions established in article 6 (1) of the Immigration Law. If the EU citizen does not fulfil the criteria and loses the right of residence, the residence card of the family member will

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			follow the same fate since it is depending on the EU citizen's right of residence, with the exceptions established in article 16 (1) of the Immigration Law. However in this case, the family member must fulfil the conditions established by article 6 (1) is foreseen by article 16 (2) of the Immigration Law.
	Malta	Yes	
	Netherlands	Yes	<p>1. The envisaged period of residence is simply the period of residence that the EU citizen plans to stay in the Netherlands. The determination of this period depends solely on the statement of the EU citizen.</p> <p>2. The declared intention of the EU citizen is leading. For instance, if an EU citizen declares that he intends to stay in the Netherlands to study for a period of two years after which period he will return to his country of origin, his third country family member will obtain a EU residence card for the duration of two years. The duration of an employment contract can be an indication of the duration of the envisaged period of residence of the EU citizen. However if the EU citizen declares that the wants to stay longer than the duration of the employment contract, this declaration is leading. Of course the lawful residence does not legally terminate after the envisaged period of residence. As long as the EU citizen meets the conditions to the right of residence as referred to in article 7 of the Directive 2004/38/EC the third-country family member also has a right of residence. Practice learns that most EU residence cards for third-country family members are issued for the duration of five years. This is because of the fact that most EU citizens can not specify their envisaged period of residence.</p>
	Poland	Yes	
	Portugal	Yes	
	Romania	Yes	
	Slovak Republic	Yes	<p>1. Although the Art. 11 (1) of the Directive 2004/38/EC has been transposed into the Slovak legislation literally, in practice family members of EU citizens are issued only residence cards valid for five years. Due to this fact Slovak republic does not face problems with the interpretation of the term "envisaged period of residence".</p> <p>2. Not applicable.</p>
	Slovenia	Yes	<p>1. In the Alien Act expression is interpreted as " for the period of the intended stay in the Republic of Slovenia if the period is less than five years",</p> <p>2. It is equal as second paragraph;"...the period during which the EU citizen can indeed justify that he will have a real right of residence (e.g. : duration of the employment contract; justified duration for sufficient resources so that he does not become a burden for the social assistance system)?</p>
	Spain	Yes	
	Sweden	Yes	<p>1. Residence Cards are habitually issued for five years with no specific control or investigation concerning the envisaged period of stay, except for family members of students. Since the planned duration of studies normally is shorter than five years the Residence Cards are issued for the estimated period of the EU/EEA citizen's studies. In other cases Residence Cards are issued for shorter periods than five years only if it's obvious that the intended stay is clearly limited for a shorter</p>

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			<p>time.</p> <p>2. See the answer above.</p>
	United Kingdom	Yes	<p>A non-EEA family member of an EU national can apply for a residence card if they are staying/intend to stay in the UK for more than 3 months. A residence card is issued for 5 years or for a shorter period of time if the length of residence is declared.</p> <p>In practice, the UK usually issues residence cards for 5 years. However, residence cards may be issued for a shorter period of time if there is evidence that the person's right of residence may be of fixed duration. For example, an individual may produce evidence to show that they are on a fixed 2 year student course and they have no obvious plans for this to be extended or they may produce evidence which demonstrates that they only have sufficient resources to last for a set period of time. Each case is considered on its individual merits.</p> <p>Residence cards are declaratory, as outlined in the Court of Justice judgment of Case C-325/09 (Dias). They do not provide evidence of the legal right of residency in the UK for their length of issue. They instead demonstrate that at the time of issue the individual had a right of residence under EU law in line with the Directive 2004/38/EC.</p> <p>Residence cards can be applied for by non-EEA nationals who are the:</p> <ul style="list-style-type: none"> o family member of an EU national who meets the requirements of Article 7 of Directive 2004/38/EC o family members who have retained a right of residence under Articles 12 or 13 of Directive 2004/38/EC o family members of British citizens who return to the UK under the judgment of the Court of Justice of the European Union in the case of Surinder Singh (C- 370/90)
	Croatia	Yes	<p>Taking into account the documents referred to in Article 10, paragraph 2 of the Directive required as evidence for the issuance of the "Residence card of a family member of a Union citizen", a family member may not be requested to present additional documents (e.g. an employment contract, a proof of disposable resources throughout the stay of an EU citizen), our view is that the first option offered applies.</p> <p>Source: Ministry of the Interior</p>
	Norway	Yes	<p>1. Article 11 governs the validity of residence cards issued to third-country national family members of Union Citizens. Pursuant to article 11(1), residence cards are to be valid for a period of five years from the issuance date or for the period of residence envisaged, if that period is less than five years.</p> <p>On a general basis, all applicants (third-country national family members of Union Citizens) are issued with a residence card valid for a period of five years from the date of issue. However, there are exceptions to this general rule, and in some cases the applicant is granted a permit having a shorter validity than five years.</p> <p>Relevant provisions in Norwegian law</p>

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		<p>Article 11(1) of Directive 2004/38 was transposed into Norwegian law in Section 118 in the Norwegian Immigration Act of 15 May 2008 and Section 19-23 in the Norwegian Regulations of 15 October 2009 on the entry of foreign nationals into the Kingdom of Norway and their stay in the realm. The relevant provisions are presented below.</p> <p>Section 118 in the Norwegian Immigration Act (Residence cards for foreign nationals with a right of residence under section 114 who are not EEA nationals)³ transposes Article 10 and 11 in the Directive 2004/38/EC reads as follows:</p> <p>A foreign national who stays in the realm under section 114 for more than three months is obliged to obtain a residence card. The application deadline for residence cards is three months from the date of entry. When the foreign national submits documentation as mentioned in the second paragraph, a certificate showing that an application for a residence card has been submitted is issued immediately.</p> <p>In connection with an application for a residence card for family members, the following shall be produced:</p> <ul style="list-style-type: none"> (a) a valid passport, (b) a document that certifies the family relationship that is the basis of the right of residence, (c) the registration certificate of the EEA national whom the foreign national is accompanying or being reunited with, (d) documentation of dependence in cases in which status as a family member <p>In connection with an application for a residence card for foreign nationals as mentioned in section 110, fourth paragraph, the following shall be produced:</p> <ul style="list-style-type: none"> (a) a valid passport, and (b) documentation that the foreign national is to carry out work under the rules in the EEA Agreement relating to free movement of services, or is to establish an economic activity in accordance with the rules in the EEA Agreement relating to freedom of establishment. <p>An application for a residence card is decided upon within six months of submission of the application. The residence card is valid for five years, or for the period of stay of the EEA national if its duration is expected to be shorter than five years. Unless special grounds apply, the residence card will cease to be valid in the event of a stay outside the realm of more than six months per year.</p> <p>The King may by regulations make further provisions, including which authority receives applications for and issues residence cards, and regarding the fixing of issuing fees. The King may make further provisions regarding documentation under the second and third paragraphs, regarding the validity period of the residence card and regarding validity in the event of stays outside the realm under the fourth paragraph.</p> <p>Norwegian Regulations of 15 October 2009 on the entry of foreign nationals into the Kingdom of Norway and their stay in the realm</p>
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³ [Act of 15 May 2008 on the entry of foreign nationals into The Kingdom of Norway and their stay in the realm \(Immigration Act\)](#)

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			<p>Section 19-23 Residence cards for family members who are not EEA nationals</p> <p>An application for a residence card under section 118 of the Act shall be submitted through a Norwegian Foreign Service mission to the police in the district in which the applicant is habitually resident or to a Service Centre for Foreign Workers. The application shall be submitted within three months after entry. The applicant shall immediately receive a receipt confirming that a complete application has been submitted.</p> <p>Foreign nationals whose application is being processed shall give written notice to the police of any change of address during the processing of the application. The Directorate of Immigration will establish further guidelines.</p> <p>When there is no doubt as to whether the conditions are met, the police may grant an application for a residence card. In other cases, the Directorate of Immigration decides whether a residence card shall be issued.</p> <p>A decision not to issue a residence card cannot be appealed.</p> <p>The Directorate of Immigration may establish guidelines as to how and when renewal of the card shall take place.</p> <p>A residence card containing biometric personal data, see section 64, section 100a and section 100b of the Act, shall as a general rule be issued free of charge and is valid for five years or less if the EEA national's period of residence is shorter. The validity of the residence card will not be affected by brief stays outside the realm of up to six months a year, or by absence outside the realm that is due to factors as mentioned in section 19-17, second paragraph. Section 12-16 of the Regulations regarding the obligation to present a residence card, section 12-17 regarding the obligation to take care of the residence card, notification of loss of a card, etc., section 12-18 regarding surrender of the residence card, etc. and section 17-11a regarding fees shall apply correspondingly.</p> <p>Family members shall apply for a residence card immediately when the sponsor's employment relationship commences, see section 19-22, fifth paragraph. The provisions of section 19-22, sixth paragraph, apply correspondingly.</p> <p>2. When issuing a residence card according to Article 11(1) in the Directive 2004/38/C to family members of EU/EEA citizens who are third-country nationals the Norwegian authorities will decide the period of validity of the residence card based on the EU citizen's period of intended stay, i.e. without being required to provide any element of proof that he will, effectively and during his whole stay, meet the conditions to the right of residence as referred to in article 7 of the Directive 2004/38/EC.</p> <p>In recent years the issue of evidentiary means to justify whether the EU citizen (here in after applicant) has indeed a real right of residence (e.g. : duration of the employment contract; justified duration for sufficient resources so that he does not become a burden for the social assistance system) became highly important in our administrative practices. There are an increasing number of cases where the applicant has not substantiated that s/he has sufficient resources to subsist in Norway for more than a year, while in other cases, the applicant merely submits a work contract of a short length (2-3 months) with no real prospect of</p>
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			obtaining a new work contract. A valid question arising is whether the envisaged period of residence of the applicant in those cases is to be considered as less/shorter than five years.
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