

## Summary of the Polish AHQ on conditions to be granted a residence permit

Responses from Austria, Belgium, Czech Republic, Estonia, Finland, France, Germany, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovak Republic, United Kingdom (17 in total).

### Background information:

Art. 3 of the Directive 2004/38/EC of the European Parliament and the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC provides as follows:

1. 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.

2. 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:

(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;

(b) the partner with whom the Union citizen has a durable relationship, duly attested. 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.

Poland is considering amendments to its legislation (Act of 12 December 2013 on foreigners) aiming to further enhance implementation of the aforementioned provision. Relevant analysis process is on-going, and appropriate participants from governmental administration are taking various proposals into account. Therefore, feedback from other EU Member States in this regard may be of a major importance.

## Questions

1. *How was the directive 2004/38/EC (art. 3) implemented to your domestic legislation (separate act, amendments to an act in force, other)?*
2. *Could you please cite the appropriate provision from your relevant legal act implementing art. 3 of the directive 2004/38/EC (both in your native language and English)?*

	Kind of implementation of art. 3 of the directive 2004/38/EC to national legislation of the EU member state
AU*	Separate act (Chapter of the Austrian Settlement and Residence Act)
BE	Separate act (art. 40 Â§ 2, 40bis Â§ 2 and 47/1 of the Belgian Immigration Act of 1980)
CZ	Amendment to an act in force (Section 1 and Section 15a paragraph 2 of the Act No. 326/1999 Coll. on the Residence of Foreign Nationals in the Territory of the Czech Republic )
EE	Separate act (Â§ 3 of Citizen of the European Union Act)
FI	Amendment to an act in force (Chapter 10 "Residence of citizens of the European Union or similar persons" of the Alien's Act (301/2004))
DE	Amendment to an act in force (Art. 2 of the German Act on the General Freedom of Movement for EU Citizens)
IE	Separate act (Regulations 4,5,6 and 7 of the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548 of 2015))
LT	Amendment to an act in force (Art. 2 of the Law on the legal status of aliens on June 30, 2012)
LU	Separate act (Chapter 2 of the Law of 29 August 2008 on free movement of persons)
NL	Amendment to an act in force (Art. 8.7 of the Foreigners Decree 2000)
PL	Separate act (art. 160 (3) of the Act of 12 December 2013 on foreigners and art. 31 (1 and 4) of the Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union and their family members)
PT	Separate act (Art. 3 of the Act 37/2006)
SK	Amendment to an act in force (Art. 63 (1) of the Act No. 404/2011 on Residence of Aliens and Amendment and Supplementation of Certain Acts)
UK	Separate Act (Part 2 of the Immigration (European Economic Area) Regulations 2006 and Part 2 of the Immigration (European Economic Area) Regulations 2016)
IT	Separate Act (Legislative Decree No 30/2007 "Implementation 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")
LV	Separate Act (Cabinet of Ministers Regulations - Procedures for the Entry and Residence in the Republic of Latvia of Citizens of the Union and their Family Members (separate legislative act No. 675, 30th August 2011)
FR	Separate Act (Art. L.121-1 to L122-3 and R.121-1 to R.122-5 of the Code on Entry and Residence of Foreigners and Right of Asylum (CESEDA), esp. the Law of 24 July 2006; the Decree nr 2007-371 of 21 March 2007 and decree nr 2011-1049 of 6 September 2011)

\* answers not for wider dissemination

Each of EU member state implemented article 3 of the directive 2004/38/EC through a separate act or amendment to an act. The first way of implementing was chosen by 64,71 % of the countries (11 out of 17), whereas implementing the directive through amendment to an act was realized by 35,29 % of the member states (6 out of 17). Among countries which implemented directive through separate acts, Ireland and United Kingdom have the latest regulations. United Kingdom noted that the part of the 2016 Regulations will come into force on 1st February 2017. In Poland provisions contained in art. 3 of the Directive 2004/38/EC were transposed by two separate statutes, in France by three.

3. *Do you consider amending your legislation implementing the directive 2004/38/EC (art. 3 in particular)? If so, is there a legislative process on-going?*

Amending of legislation implementing the directive 2004/38/EC	
AU*	No
BE	Discussions are ongoing about possible amendments to family reunification provisions
CZ	No
EE	Amendments came into force on 01.07.2016, no changes in the future
FI	No
DE	No
IE	Small amendment as regards the power to remove persons under the Regulation is expected shortly
LT	No
LU	No
NL	No
PL	Yes/No
PT	No
SK	No

UK	The remainder of the 2016 Regulations will come into force on 1st February 2017
IT	No
LV	No
FR	No

\* answers not for wider dissemination

At the moment majority of countries (82,35 %) do not consider amendments of their legislation implementing the directive 2004/38/EC (art. 3 in particular). Only Poland, Belgium and Ireland consider amendments in that area. Ireland considers only small amendment as regards the power to remove persons under the Regulation. In Belgium discussions are ongoing. They concern possible amendments to family reunification provisions. United Kingdom has just implemented amendments to the Regulations from 2016. They will come into force on 1<sup>st</sup> February 2017. In Estonia amendments came into force on 01.07.2016, but there is no predictions of any changes in the future.