



EMN Ad-Hoc Query on Conditions to be granted a residence permit

Requested by Joanna SOSNOWSKA on 14th December 2016

Residence

Responses from Austria, Belgium, Croatia, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovak Republic, Sweden, United Kingdom (20 in total)

Disclaimer:

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

Background information:

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 on Aliens of 12th December 2013) 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.



In order to support analysis, which may have an impact on further legislative process, we are interested in receiving information concerning the following issues:


Questions


1. 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. 2. Could you please cite the appropriate provision from your relevant legal act implementing art. 3 of the directive 2004/38/EC?
3. 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?


Responses



	Country	Wider Dissemination	Response
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	Austria	No	
	Belgium	Yes	<p>1. Article 3 of the directive 2004/38/EC was transposed into national legislation in the amended Belgian Immigration Act of 1980, more precisely in articles 40 § 2, 40bis § 2 and 47/1.</p> <p>2. Attached you can find the relevant articles in both Dutch and French. The actual text of legislation is unfortunately not officially available in English but we can propose the following translations: Art. 40 § 2. For the purposes of this Act, a citizen of the Union is a foreigner who is a national of a Member State of the European Union and who is staying or visiting the Kingdom. Art. 40bis §2 The following shall be considered as family members of the Union citizen: 1 the spouse or the foreigner with whom he is bound by a registered partnership considered as equivalent to a marriage in Belgium, accompanying or joining him; 2 ° the partner to whom the citizen of the Union is bound by a partnership registered in accordance with a law, and who accompanies or joins him. Partners must meet the following conditions: A) prove that they have a long-term and stable partnership relationship duly established. The lasting and stable character of this relationship is demonstrated: - if the partners prove that they have cohabited in Belgium or in another country without interruption for at least one year before the application; - or if the partners prove that they have known each other for at least two years prior to the application and provide proof that they have maintained regular contacts by telephone, regular mail or electronic mail, and that they have met three times during the two years preceding the application and that these meetings have a total of 45 days or more; - or if the partners have a common child; B) come to live together; C) both be more than twenty-one years of age. The minimum age of the partners shall be reduced to eighteen years when they bring evidence of cohabitation of at least one year before the arrival of the alien joined in the Kingdom; D) be single and not have a lasting and stable partnership with another person; E) not be a person referred to in sections 161 to 163 of the Civil Code; F) [neither was the subject of a final decision refusing to celebrate the marriage on the basis of Article 167 of the Civil Code. 3° the descendants and descendants of his spouse or partner referred to in 1 or 2, who are under twenty-one years of age or who are dependent on them, who accompany them or join them, provided that the joined foreigner, his spouse or the registered partner concerned has the right of custody and, in the case of shared custody, provided that the other custodian has given his consent; 4° the ascendants and ascendants of his spouse or partner referred to in 1 or 2, who are dependent on them, who accompany or join them; 5° the father or mother</p>


			<p>of a citizen of the European Union who is a minor of age referred to in Article 40, Â§ 4, first paragraph, in so far as he is dependent on him and under his custody of it.] 2 Art. 47/1. The following shall be considered as other members of the family of a citizen of the Union: 1 ° the partner with whom the citizen of the Union has a durable and duly attested relationship, and who is not covered by Article 40bis, § 2, 2 °; 2° members of the family, not referred to in Article 40bis, § 2, who are dependent or belong to the household of the citizen of the Union in the country of origin; 3° members of the family, not referred to in Article 40bis, § 2, of whom the citizen of the Union must imperatively and personally take care due to serious health problems.</p> <p>3. Discussions are ongoing about possible amendments to family reunification provisions. Hence it is possible that in the future a bill regarding (mostly) family reunification is tabled. If this occurs, the bill will take into account the ruling of the Belgian Constitutional Court of 26.09.2013 and the Rahman ruling that the European Court of Justice (Grand Chamber) reached on 05.09.2012. The ruling of 26.09.2013 of the Belgian Constitutional Court (n° 121/2013) annulled some family reunification related provisions of the Belgian Immigration Act. The ruling has also given an interpretation to other provisions concerning family reunification. Some of these annulments and interpretations were based on the directive 2004/38/EC. For further details on the provisions annulled and interpreted, please read the Belgian policy report 2013 pp.20-21. The Rahman ruling of 05.09.2012 contains information on how article 3.2 of the directive should be interpreted. Sources: Immigration Office Study Unit & Ruling 121/2013 of the Belgian Constitutional Court from 26 September 2013 Rahman ruling the European Court of Justice from 5 September 2012: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62011CJ0083 Belgian EMN annual policy report 2013: https://emnbelgium.be/publication/policy-report-2013-asylum-and-migration-belgium-emn</p>
	Croatia	Yes	<p>1. 1. Article 3 of the Directive 2004/38/EC was transposed into the Foreigners Act (OG, 130/11, 74/13). Provisions of Foreigners Act regulating entry, residence and work of nationals of the EEM member states and their family members was amended since 27 June 2013, and these provisions came into force on 01 July 2013.</p> <p>2. 2. X ENTRY, RESIDENCE AND WORK OF NATIONALS OF THE EEA MEMBER STATES AND THEIR FAMILY MEMBERS- Article 153 1) A national of the EEA Member State and</p>



			<p>members of his family, regardless whether they are nationals of the EEA Member State or not, and who are entitled to residence in the Republic of Croatia, shall have equal rights as nationals of the Republic of Croatia in accordance with the Treaty on the Functioning of the European Union. (2) A national of the EEA Member State and members of his family may work and provide services in the Republic of Croatia without a residence and work permit or a work registration certificate. Family members of a national of the EEA Member State Article 162 The following categories shall be regarded as family members of a national of the EEA Member State: 1. the spouse, 2. the common law partner, in line with Croatian legislation, and persons in a durable relationship which can be demonstrated by shared residence at the same address in the duration of at least three years, and if the intention of continuing to live together is evident, 3. relatives of a national of the EEA Member State and of his spouse or common law partner by blood in the vertical line downwards, until they have reached 21 years of age, 4. adopted children and step-children of a national of the EEA Member State or of his spouse or common law partner, until they have reached 21 years of age, 5. persons referred to in Points 3 and 4 of this Paragraph who are above 21 years of age and who must be and actually have been supported by a national of the EEA Member State, or by his spouse or common law partner, 6. relatives by blood in the vertical line upwards, who must be and actually have been supported by a national of the EEA Member State or by his spouse or common law partner, 7. other members of the family of a national of the EEA Member State for whom an individual assessment determines that in view of their material and social positions in the country they arrived from, they are dependent on the national of the EEA Member State in terms of providing for their basic needs, or they are members of his household, or for whom, due to serious health-related reasons, a special personal care of the national of the EEA Member State is required3. 3. Yes, the process of amending Foreigners Act is ongoing, and article 162 is planned to be amended.</p>
	Czech Republic	Yes	<p>1. By amendment to the Act No. 326/1999 Coll., on the Residence of Foreign Nationals in the Territory of the Czech Republic.</p> <p>2. Section 1 and Section 15a paragraph 2 of the above-mentioned Act are implementing Art. 3 of the directive 2004/38/EC. Section 1 of the Act Subject Matter (1) This Act relating to the directly applicable legal provisions of the European Communities establishes the conditions for entry of foreign nationals to and their departure from the Territory, lays down conditions for the residence of</p>



			<p>foreign nationals in the Territory and defines the scope of competences of the Police of the Czech Republic (hereinafter referred to as the Police), the Ministry of the Interior (hereinafter referred to as the Ministry) and the Ministry of Foreign Affairs in this area of public administration. (2) A foreign national means a natural person, who is not a citizen of the Czech Republic, including a citizen of the European Union. (3) The provisions for entry, residence and departure of a citizen of the European Union shall also apply to a citizen of a state that is bound by an international agreement entered into with the European Community and to a citizen of a state that is bound by the Agreement on the European Economic Area, unless such agreement provides otherwise.</p> <p>Section 15a (2) A family member of a EU citizen is also considered a foreigner who proves that a) he/she is a relative of a citizen of the European Union not mentioned in paragraph 1, if 1. in the State of which he/she is a citizen, or in the state in which he/she was allowed to stay, he/she had lived before entering the Territory with a EU citizen in a common household. 2. is due to meeting his/her basic needs dependent on nutrition or other necessary care provided by a EU citizen, or he/she had been dependent on this nutrition or other necessary care immediately before entering the Territory of the State of which he/she is a citizen, or of the state where he/she was allowed to stay, or 3. he/she cannot take care of himself/herself due to serious health reasons without personal care of a citizen of the European Union, or b) he/she is in a durable relationship with a citizen of the European Union â this relationship is not a marriage, and lives with him/her in a common household; when assessing the durability of the partnership the nature of relationship, its strength and intensity are particularly taken into account. 3. NO.</p>
	Estonia	Yes	<p>1. Directive 2004/38/EC has been implemented in the Citizen of the European Union Act.</p> <p>2. § 3. Family member of a citizen of the European Union (1) For the purposes of this Act, a family member of a citizen of the European Union (hereinafter, family member) is a person who is not a citizen of the European Union or a citizen of Estonia and who is: 1) the spouse of a citizen of the European Union (hereinafter, the spouse), 2) a child under 21 years of age or a dependent adult child of a citizen of the European Union or of his or her spouse (hereinafter, dependent child), 3) a dependent parent of a citizen of the European Union or of his or her spouse, or 4) a person not covered by clauses 1 3 of this subsection who, in the country of origin of the citizen of the European Union, is</p>

			<p>a dependent of the citizen of the European Union or is a member of his or her household, or who is permanently unable to cope independently due to health reasons, and with respect to whom it is necessary that the citizen of the European Union personally care for him or her. (2) For the purposes of this Act, a dependent is a person who resides together with a citizen of the European Union in a shared household and has no personal income. (3) For the purposes of this Act, a member of the household means: 1) a person specified in subsection 4 of section 24 of the Official Statistics Act who resides with a citizen of the European Union in a shared household and has an independent income; 2) a person who has a proven permanent and factual registered partnership with a citizen of the European Union.</p> <p>3. The amendments in the Citizen of the European Union Act came into force on 01.07.2016.</p>
	Finland	Yes	<p>1. The directive was implemented to an act in force, ie. Alien's Act (301/2004), it's chapter number 10 "Residence of citizens of the European Union or similar persons". The government's proposal was given in 2006 (proposal number HE 205/2006) and the amendments came into force April 30th 2007.</p> <p>2. Please see the document attached in "Supporting Documents"</p> <p>3. -</p>
	France	Yes	<p>1. France transposed the Directive 2004/38/EC through the Law of 24 July 2006 and the Decree n°2007-371 of 21 March 2007. These legislations are codified in the Code on Entry and Residence of Foreigners and Right of Asylum (CESEDA) in articles L.121-1 to L122-3 and R.121-1 to R.122-5. Moreover, in 2010, the COM asked France to transpose the article 3.2 of the Directive which was done through the decree n°2011-1049 of 6 September 2011.</p> <p>2. see document attached</p> <p>3. NO</p>

	Germany	Yes	<p>1. In those cases in which any implementation of Directive 2004/38/EC still was required, this was effected by amending the existing German Act on the General Freedom of Movement for EU Citizens Freedom of Movement Act/EU (Gesetz über die allgemeine Freizügigkeit von Unionsbürgern - Freizügigkeitsgesetz/EU FreizügG/EU). The amendment was carried out in the shape of Article 2 of the Act to implement Residence and Asylum related Directives of the European Union (Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union) of 19 August 2007, and came into force on 28 August 2007 (Federal Law Gazette [Bundesgesetzblatt] Part I No. 42 of 27 August 2007).</p> <p>2. Art. 3 of Directive 2004/38/EC is implemented in sections 1 to 9 of the Freedom of Movement Act/EU (FreizügG/EU). The German and English versions of the Freedom of Movement Act/EU are available on the following links: http://www.gesetze-im-internet.de/bundesrecht/freiz_gg_eu_2004/gesamt.pdf http://www.gesetze-im-internet.de/englisch_freiz_gg_eu/englisch_freiz_gg_eu.pdf</p> <p>3. No, no further requirements for implementation.</p>
	Hungary	Yes	<p>1. Directive 2004/38/EC was implemented with a separate act, Act I of 2007 on the Entry and Residence of Persons with the Right of Free Movement and Residence together with Government Decree No. 113/2007 implementing Act I of 2007 on the Entry and Residence of Persons with the Right of Free Movement and Residence.</p> <p>2. Section 1 (1) The Republic of Hungary shall ensure the right of free movement and residence in accordance with the provisions of this Act: a) with the exception of Hungarian citizens, to nationals of any Member State of the European Union and States who are parties to the Agreement on the European Economic Area, and to persons enjoying the same treatment as nationals of States who are parties to the Agreement on the European Economic Area by virtue of an agreement between the European Community and its Member States and a State that is not a party to the Agreement on the European Economic Area with respect to the right of free movement and residence (hereinafter referred to as "EEA nationals"); b) to the family member of an EEA national who does not have Hungarian citizenship, accompanying or joining the EEA national (hereinafter referred to as "family members of EEA nationals"); c) to the family member of a Hungarian citizen who does not have</p>

			<p>Hungarian citizenship, accompanying or joining the Hungarian citizen (hereinafter referred to as "family members of Hungarian citizens"); and d) to any person accompanying or joining an EEA national or a Hungarian citizen, who: da) is dependant or for a period of at least one year has been member of the household of a Hungarian citizen, or where serious health grounds require the personal care of the family member by the Hungarian citizen; db) had been dependant or had been for a period of at least one year member of the household of an EEA national in the country from which they are arriving, or where serious health grounds require the personal care of the family member by the EEA national, and whose entry and residence has been authorized as family member by the authority.</p> <p>3. We are not considering the amendment of the legislation at the moment.</p>
	Ireland	Yes	<p>1. Directive 2004/38/EC is implemented in Ireland via the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548 of 2015). Please see PDF of Regulations attached. These Regulations update earlier regulations from 2006.</p> <p>2. Please refer in particular to: Regulation 4: Permission for Union citizens and qualifying family members to enter State; Regulation 5: Permission for permitted family member to enter State; Regulation 6: Residence in the State; Regulation 7: Residence card for family member when not a national of a member state. "Qualifying family member" refers to - (I) the Union citizen's spouse or civil partner, (ii) a direct descendant of the Union citizen, or of the Union citizen's spouse or civil partner, and is - (I) under the age of 21, or (II) a dependent of the Union citizen, or of his or spouse or civil partner, or (iii) a dependent direct relative in the ascending line of the Union citizen, or of his or her spouse or civil partner (See Regulation 3(5)). "Permitted family member" refers to family members of a Union citizen (other than qualifying family members) who in the country from which the person has come - (I) is a dependent of the Union citizen, (ii) is a member of the house of the Union citizen, or (iii) on the basis of serious health grounds strictly requires the personal care of the Union citizen, or (b) is the partner with whom a Union citizen has a durable relationship, duly attested. (See Regulation 5(1)(a)). A person may apply to the Minister to be considered a permitted family member.</p> <p>3. The European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548 of 2015) entered into force on 1 February 2016. No further legislative amendments are envisaged as regards</p>


			Article 3 at this time, however, a small amendment as regards the power to remove persons under the Regulation is expected shortly.
	Italy	Yes	<p>1. In Italy, Directive 2004/38/EC was implemented by 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".</p> <p>2. The provision implementing Article 3 of Directive 2004/38/EC is contained in Legislative Decree No 30/2007, which reads as follows: «1. This legislative decree is applicable to all Union citizens who move or reside in a Member State other than that in which they are a national, and to their family members [] 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, [...] 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; b. the partner with whom the Union citizen has a durable relationship, duly attested by the State of the Union citizen. 3. 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».</p> <p>3. No.</p>
	Latvia	Yes	<p>1. The Article 3 of the Directive 2004/39/EC has been implemented in the 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).</p> <p>2. Article 4 of the Regulation: 4. Within the meaning of this Regulation, an extended family member of a Union citizen shall be: 4.1. a person who is a relative of the Union citizen or his or her spouse and who is a dependant or member of the household of such Union citizen in his or her previous country of residence or who, on serious health grounds, requires personal care, and the Union citizen certifies that he or she will provide such care to the person; 4.2. a partner with whom the Union citizen has a</p>


			<p>relationship lasting for at least two years or a partner with whom the Union citizen has a registered partnership. Within the meaning of this Regulation, the term partner shall be used to safeguard the rights provided for in this Regulation and shall not cover the recognition of any such partnership, which has been the basis for granting the right of entry or residence.</p> <p>3. There is no plan to amend the existing regulation.</p>
	Lithuania	Yes	<p>1. Article 3 of the Directive 2004/38/EC was transposed into national law by the amendment of law on the legal status of aliens on June 30, 2012. After the ECJ C-83/11 - Rahman and Others case the law on the legal status of aliens was amended again on June 27, 2013.</p> <p>2. Law on the legal status of aliens Article 2. Definitions. 111. Any other person who enjoys the right of free movement under legal acts of the European Union means a person who is not a family member of a citizen of an EU Member State but is a cohabiting partner with whom the citizen of the EU Member State has durable, duly attested relationship during the past three years, as well as a person who is a dependant or a member of the household of the citizen of the EU Member State, or where serious health grounds strictly require his personal care by the citizen of the EU Member State, if duly attested.</p> <p>3. No.</p>
	Luxembourg	Yes	<p>1. Article 3 of the Directive 2004/38/EC was transposed into national law by the Law of 29 August 2008 on free movement of persons</p> <p>2. Chapter 2 The right of Union citizens, of nationals of other States party to the Agreement on the European Economic Area and of the Swiss Confederation, and of their family members, to move and reside freely on the territory of the Grand Duchy of Luxembourg Section 1 The right of entry, residence and exit of Union citizens Art. 5. Union citizens holding a valid identity card or passport shall have the right to enter the territory of the Grand Duchy of Luxembourg and to reside there for a period of up to three months, as well as the right to leave the territory in order to travel to another Member State. Art. 6. 1. A Union citizen shall have the right to reside on the territory for a period of</p>


			<p>more than three months if he/she fulfils one of the following criteria: (1) he/she carries on, as a worker, a salaried or self-employed activity; (2) he/she has, for him/herself and for his/her family members as referred to in Article 12, sufficient resources to avoid becoming a burden on the social assistance system, and sickness insurance cover; (3) he/she is enrolled at a public or private educational establishment, accredited in the Grand Duchy of Luxembourg in accordance with the legislation and regulations in force, for the principal purpose of following there a course of study or, in that context, vocational training, whilst guaranteeing that he/she has sufficient resources for him/herself and for his/her family members to avoid becoming a burden on the social assistance system, and sickness insurance. 2. The resources required under points (2) and (3) of paragraph 1 of this Article, and the modalities for proving possession of those resources, shall be laid down by Grand-Ducal regulation. 3. During the period of validity of the measures adopted in application of the transitional provisions of the Treaties of accession to the European Union and the Agreement on the European Economic Area, salaried workers who are nationals of the acceding States shall continue to be subject to the obligation to hold a work permit. Art. 7. 1. A Union citizen shall retain the status of worker after having worked on a salaried or self-employed basis on the territory if he/she fulfils one of the following criteria: (1) he/she is temporarily unable to work as the result of an illness or accident; (2) he/she is in involuntary unemployment after having worked for more than one year and has registered as a jobseeker with the Agence pour le développement de l'emploi [National Employment Agency]; (3) he/she embarks on vocational training connected with his/her former salaried activity, unless he/she has become involuntarily unemployed. 2. He/she shall retain the status of worker for six months if: (1) he/she is in involuntarily unemployment and has registered as a jobseeker with the Agence pour le développement de l'emploi 1 after completing a fixed-term employment contract of less than one year, or (2) he/she has become involuntarily unemployed during the first twelve months after concluding his/her employment contract and has registered as a jobseeker with the Agence pour le développement de l'emploi 1. Art. 8. 1. Without prejudice to the existing rules on population registers, a Union citizen as referred to in Article 6(1) who intends to reside on the territory for a period greater than three months shall apply to the municipal authority for the place where he/she resides, within three months from his/her arrival there, for the issue of a registration certificate. (2) In order to be issued with the registration certificate, the Union citizen must show that he/she falls within one of the categories set out in Article 6(1) and that he/she fulfils the conditions in that regard. To that end, he/she shall be required to produce the documents enumerated by Grand-Dual</p>
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			<p>regulation. 3. Upon receipt of the documents referred to in paragraph 2 of this Article, the registration certificate shall be handed over forthwith. It shall state the name and address of the registered person and the date of registration. 4. That certificate shall not establish a right of residence. Possession of such a certificate cannot in any circumstances constitute a precondition for the exercise of a right or the accomplishment of any other administrative formality. Art. 9. 1. A Union citizen who produces evidence that he/she has resided legally in the country for a continuous period of five years shall have the right of permanent residence. That right shall not be subject to the conditions laid down in Article 6(1). 2. Continuity of residence shall not be affected by temporary absences not exceeding a total of six months a year, 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 or childbirth, serious illness, study or vocational training, or a posting for professional reasons in another Member State or a third country. 3. Once acquired, the right of permanent residence shall be lost only through absence from the territory for a period exceeding two consecutive years. 4. Continuity of residence may be attested by any form of proof. It shall be interrupted by the enforcement of a decision for the removal of the person concerned from the territory. Art. 10. 1. By way of derogation from Article 9(1), the following persons shall have a right of permanent residence in Luxembourg before completion of a continuous period of residence of five years' duration: (1) a salaried or self-employed worker who, at the time of ceasing to work, has reached the age at which he/she can claim an old-age pension, or a worker who stops working on account of being placed in early retirement, provided that he/she has been working in Luxembourg for at least the preceding 12 months and has been residing there continuously for more than three years; (2) a salaried or self-employed worker who stops working as a result of permanent incapacity to work, where he/she has been residing continuously in the country for more than two years; where the incapacity results from an accident at the workplace or an occupational disease entitling the person concerned to a benefit payable wholly or in part by the State, no condition shall be imposed as to length of residence; (3) a worker who, after three years of continuous work and residence in the country, works in a salaried or self-employed capacity in another Member State whilst retaining his/her place of residence in the Grand Duchy of Luxembourg, to which he/she returns, as a rule, each day or at least once a week. 2. For the purposes of entitlement to the rights provided for in points (1) and (2) of paragraph 1 of this Article, the periods of work spent in another Member State shall be regarded as having been spent in the Grand Duchy of Luxembourg. 3. Duly recorded periods of involuntary unemployment, periods not worked for reasons not of the</p>
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		<p>worker's own making and absence from work or cessation of work due to illness or accident shall be regarded as periods of work. 4. The conditions as to work and residence respectively laid down in point (1) of paragraph 1 and in points (1) and (2) of paragraph 1 of this Article shall not apply if the worker's spouse is a Luxembourg national or if that spouse has lost his/her Luxembourg nationality by reason of marriage to the worker. Art. 11. A Union citizen who acquires the right of permanent residence shall receive a document attesting to the permanence of his/her residence, in accordance with detailed rules to be laid down by Grand-Ducal regulation. Section 2 Right of entry, residence and exit of family members of Union citizens and of nationals of other States party to the Agreement on the European Economic Area and of the Swiss Confederation Art. 12. 1. The following shall be considered to be family members: (a) the spouse; (Law of 8 December 2011) (b) the partner with whom the Union citizen has contracted a registered partnership in accordance with the substantive and formal conditions laid down by the Law of 9 July 2004 on the legal effects of certain partnerships, as amended; (c) the direct descendants who are aged under 21 or who are dependants of the Union citizen and those of the spouse or partner referred to in point (b); (d) the dependent direct relatives of the Union citizen in the ascending line for whom the Union citizen is financially responsible and those of the spouse or partner referred to in point (b). 2. The Minister may authorise any other family member, whatever his/her nationality, who is not covered by the definition in paragraph 1 to reside on the territory if he/she fulfils one of the following conditions: (1) in the country from which he/she came, he/she was a dependant of, or formed part of the household of, the Union citizen who is the principal beneficiary of the right of residence; (2) the Union citizen must personally look after the welfare, on serious health grounds, of the family member concerned; (Law of 8 December 2011) (3) the partner with whom the Union citizen has a lasting, duly certified relationship. The lasting nature of the relationship shall be examined as to its intensity, the length of time for which it has existed and the stability of the bonds between the partners. Evidence of its lasting nature may be adduced by any means. It shall be demonstrated if the partners prove: (a) that they have cohabited legally for a continuous period of at least one year prior to the application; (b) that they have a common child for whom they together assume parental responsibility. The partners must not be bound by bonds of marriage, declared partnership or lasting relationship with another person. The application for leave to enter and reside of the family members referred to in the preceding subparagraph shall be the subject of an in-depth examination taking their personal circumstances into account. (Law of 8 December 2011) Any decision refusing leave to enter or reside shall be duly reasoned in accordance with Article</p>
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			<p>109. 3. The family members, whether Union citizens or third-country nationals, of a Luxembourg citizen shall be treated in the same way as the family members of a Union citizen. Art. 13. 1. Without prejudice to the provisions on travel documents applicable to border controls, deriving from international agreements or from Community rules, family members as defined in Article 12 who are third-country nationals and who are accompanying or joining a Union citizen shall have the right to enter the territory of the Grand Duchy of Luxembourg and to reside there for a period of up to three months provided that they are in possession of a valid passport and, where necessary, of the visa required for entry onto the territory. 2. Where they are in possession of a valid residence card (carte de séjour) as referred to in Article 15, family members shall be exempt from the obligation to hold an entry visa if such visa is required, and no entry or exit stamp shall be placed in their passport. 3. They shall have the right to leave the territory in order to travel to another Member State, without being required to have an exit visa or being subject to any equivalent obligation. Art. 14. 1. Family members as defined in Article 12 who are themselves Union citizens shall have a right of residence as provided for in Article 6 if they are accompanying or joining a Union citizen. That right of residence shall also extend to family members who are third-country nationals if they are accompanying or joining a Union citizen who him/herself fulfils the conditions laid down in points (1) or (2) of Article 6(1). 2. By way of derogation from paragraph 1 of this Article, only the spouse, registered partner or dependent child, irrespective of their nationality, accompanying or joining a Union citizen who fulfils the condition laid down in point (3) of Article 6(1) shall have the right of residence as family members. However, as regards the right of residence of direct relatives in the ascending line who are dependants of a student or his/her spouse or registered partner, Article 12(2) shall apply. (french version - see attached document)</p> <p>3. No.</p>
	Netherlands	Yes	<p>1. Decree of April 24, 2006, amending the Foreigners Decree 2000 in connection with the implementation of Directive 2004/38/EC of the European Parliament and the Council of April 29 2004 on the right to move and reside freely within the territory of the citizens of the Member States and their families (PbEU L 158 and L 229).</p> <p>2. Article 3 of the Directive is implemented in article 8.7 Foreigners Degree: Section 1: This article</p>

			<p>applies to foreigners who possesses the nationality of a state who is a formal party of the Treaty on the functioning of the European Union, or who is a formal party to the Agreement on the European Economic Area, or who possesses the nationality of Switzerland, and who wishes to move to the Netherlands or resides in the Netherlands. Section 2: This article also applies to family members who foreigners as meant in the first section, wishes to bring to the Netherlands or join him/her in the Netherlands, insofar as this family member is: a) The spouse b) The partner to whom the foreigner has a valid registered partnership, according to Dutch international private law. c) A direct relative in the descending line from either the foreigner meant in the first section, or his/her spouse or registered partner, provided that this relative is under the age of 21 or dependent on the foreigner or his/her spouse or registered partner d) A direct relative in the ascending line who is dependent on the foreigner or the family member referred to in a) or b).</p> <p>3. No, we do not consider amending the legislation at the moment.</p>
	Poland	Yes	<p>1. A. Provisions contained in art. 3 of the Directive 2004/38/EC were transposed by two separate statutes, i.e.: 1. 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, 2. Act of 2 December 2013 on Aliens in the relevant scope, the act was amended in 2007.</p> <p>2. B. According to art. 160 (3) of the Act of 2 December 2013 on Aliens, residence permit for a fixed period may be granted to a foreigner conducting family life in the meaning of the Convention on human rights and fundamental freedoms, as done in Rome on 4 November 1950 (Journal of Laws 1993, No. 61, pos. 284, with further amendments), Polish citizen, citizen of other UE Member State, member state of the European Free Trade Agreement (EFTA) party to the European Economic Area (EEA) or Swiss Confederation, residing in the territory of the Republic of Poland, with who he/she resides jointly in this territory, provided that he/she fulfills conditions enlisted in art. 159 (1) (2). According to 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: Registration of permit shall be denied to a citizen of the EU Member State, and issuance of a residence card of the EU citizen's family member to a family member foreigner shall be refused, in the following circumstances: 1) conditions for residence were not met ; 1a. The provision shall not apply to: 1) EU</p>

			<p>citizen family member of the EU citizen or Polish citizen other that referred to as in art. 2 (4) who joins him/her or resides with him/her in the territory of the Republic of Poland due to: a) financial dependency or living in the same household, in country, the EU citizen applying for residence registration came from, or, b) serious health grounds requiring personal assistance, provided by the EU or Polish citizen whom citizen in question joins or resides with in the territory of the Republic of Poland; 2) the EU citizen conducting family life in the meaning of the Convention on human rights and fundamental freedoms, as done in Rome on 4 November 1950 (Journal of Laws 1993, No. 61, pos. 284, with further amendments), with the EU or Polish citizen whom citizen in question joins or resides with in the territory of the Republic of Poland. 4. In case provided in art. 31 (1a) (2), authority conducting proceedings on the EU citizen residence registration shall determine, in particular, if bonds of the citizen in question with the EU or Polish citizen whom the citizen in question joins or resides with in the territory of the Republic of Poland, are of real and stable character.</p> <p>3. C. Yes/No</p>
	Portugal	Yes	<p>1. The directive was implemented through a separate act.</p> <p>2Article 3 Beneficiaries 1 This Act shall apply to all Union citizens who travel to or reside in Portugal, as well as to their family members, as defined in subparagraph e) of the preceding Article, who accompany or join them. 2 - Without prejudice of the citizen's personal right of free movement and residence, entry and residence shall be facilitated, under the general terms of law, for any other family members, irrespective of their nationality, not falling within the definition in subparagraph e) of the preceding Article 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. 3 The decision on entry and residence of the persons mentioned in the preceding paragraph can only be taken after an extensive examination of all relevant personal circumstances, and grounds shall be given for any denial of entry or residence to such persons. 4 Legal provisions making reference to Union citizens shall be deemed to cover nationals of States parties on the Agreement on the European Economic Area and to Swiss nationals. 5 Any rules of this law applicable to family members shall be extended to family members of Portuguese citizens, irrespective of their nationality.</p>

			3. No for now.
	Slovak Republic	Yes	<p>1. The Directive has been transposed through an Amendment to an act in force (Act No. 404/2011 on Residence of Aliens and Amendment and Supplementation of Certain Acts). Article 3 (2) was already partially in compliance with the Act No. 71/1967 on Administrative Procedures and partially it has also been transposed through an Amendment to Act No. 404/2011 on Residence of Aliens and Amendment and Supplementation of Certain Acts.</p> <p>2. Article 3 (1) has been transposed into the Article 63 (1) of the Act No. 404/2011 on Residence of Aliens and Amendment and Supplementation of Certain Acts: This provision regulates the right to reside in the territory of the Slovak Republic for EU citizens and their family members who accompany them or join them. Article 3 (2 a) has been transposed into the Article 2 (5 d, e, f) of the Act No. 404/2011 on Residence of Aliens and Amendment and Supplementation of Certain Acts: A family member of an EU citizen is a third-country national who is: d) any other family member to whom paragraphs (a) to (c) do not apply and s/he is a dependent person in the country of his/her origin; e) any other family member to whom paragraphs (a) to (c) do not apply and s/he is the member of his/her household; f) any other family member to whom paragraphs (a) to (c) do not apply and s/he depends on his/her care due to serious health reasons. Article 3 (2 b) has been transposed into the Article 2 (5 g) of the Act No. 404/2011 on Residence of Aliens and Amendment and Supplementation of Certain Acts: A family member of an EU citizen is a third-country national who is: g) his/her partner with whom the Union citizen is in a permanent, duly certified relationship. Article 3 (2) has been partially in compliance with the Act No. 71/1967 on Administrative Procedures (see 1 below) and partially it has been transposed into the Article 66 (9) of the Act No. 404/2011 on Residence of Aliens and Amendment and Supplementation of Certain Acts (see 2 below): (1) According to the Article 32 (1) of the Act No. 71/1967 on Administrative Procedures, the Authority is obliged to exactly and fully ascertain the actual state of affairs and for this purpose to obtain the documents necessary for the ruling. Whereas the Authority is not bound solely by the parties proposals. According to the Article 47 (1) of the Act No. 71/1967 on Administrative Procedures, the ruling shall include a statement, justification and instruction about the appeal. An appeal is not needed if all parties are fully satisfied. (2) According to the Article 66 (9) of the Act No. 404/2011 on Residence of Aliens and Amendment and Supplementation of Certain Acts, a police department shall individually evaluate</p>

			<p>submitted documents as per paragraphs 2 to 7 , whereas they investigate the facts which are demonstrated by the Union citizen by means of them. The police department shall, following to inspecting the documents, decide, whether the submitted documents as per paragraphs 2 to 7 are sufficient or not. If the submitted documents are not sufficient in order to demonstrate in a trustworthy way the facts as per paragraphs 2 to 7, the particular person shall not be registered by the police department. Such a person shall be at the same time informed in writing which documents are to be submitted in order to demonstrate the facts as per paragraphs 2 to 7 in a trustworthy way so that the person would be registered. Slovak version of this Act is available here: http://www.zakonypreludi.sk/zz/2011-404</p> <p>3. No.</p>
	Sweden	Yes	<p>1. Amendment to the Aliens Act.</p>
	United Kingdom	Yes	<p>1. Directive 2004/38/EC was transposed into UK domestic legislation through the Immigration (European Economic Area) Regulations 2006 (the 2006 Regulations) (See: http://www.legislation.gov.uk/uksi/2006/1003). This regulation was recently replaced by the Immigration (European Economic Area) Regulations 2016 (the 2016 Regulations) (See: http://www.legislation.gov.uk/uksi/2016/1052/contents/made) The UK publishes accompanying guidance at https://www.gov.uk/government/collections/eea-swiss-nationals-and-ec-association-agreements-modernised-guidance</p> <p>2. Part 2 (sections 11-15) of the 2006 Regulations above specifically covers rights of entry and residence under article 3 of the directive 2004/38/EC. From 1 February 2017 the relevant provision will be Part 2 (sections 11-16) of the 2016 Regulations above.</p> <p>3. As stated above, the 2006 Regulations were recently replaced by the 2016 Regulations. Regulation 44 and Schedule 5 of the 2016 Regulations (see: http://www.legislation.gov.uk/uksi/2016/1052/contents/made) came into force on 25th November 2016. The remainder of the 2016 Regulations will come into force on 1st February 2017.</p>

