

Does Directive 2004/38/EC apply to you?

If any of the questions below are **answered in the negative**, the applicant is not entitled to the specific treatment under the Directive and should refer to the normal visa application procedure.

1. Is there an EU citizen from whom the visa applicant can derive any rights?

The Directive applies only to those EU citizens who travel to a Member State other than the Member State of their nationality. For example, if you are an Irish national living in Ireland and your non-EU family members want to join you in Ireland, Directive 2004/38/EC **does not apply**.

2. Does the visa applicant fall under the definition of ‘family member’?

The following persons are defined as “qualifying family members”:

- the spouse;
- the partner with whom the EU citizen has contracted a registered partnership, on the basis of the legislation of any Member State, if the legislation of the host Member State treats registered partnership as equivalent to marriage;
- the direct descendants who are under the age of 21 or are dependant as well as those of the spouse or partner as defined above; or
- the dependant direct relatives in the ascending line and those of the spouse or partner as defined above.

The following persons are defined as ‘permitted family members’ i.e. any other family members who are:

- dependants;
- members of the household of the EU citizen;
- strictly require the personal care by the EU citizen on serious health grounds; or
- ‘de facto’ partners with whom the EU citizen has a durable relationship, duly attested. A ‘de facto’ relationship means you and your partner are committed to a shared life together, i.e. as if you were married. A de facto relationship should meet the following criteria:
 - Both partners have been living together in a durable relationship which has existed for a substantial period of time
 - Both partners intend to live together indefinitely
 - Neither partner is related to the other by blood
 - Neither partner is in a relationship with another person

Question 3: Can the visa applicant prove dependency on the EU citizen?

The following persons must prove that they are dependent on their EU sponsor:

- Child 21 years and over
- Parent
- Sibling
- Cousin
- Aunt/uncle
- Niece/nephew

Question 4: Is the visa applicant accompanying or joining the EU citizen?

The Directive applies to the movements of a family member related to the movements of a Union citizen. It therefore does not apply if a family member does not accompany or join a Union citizen (i.e. when traveling alone). To prove this, you are kindly requested to include proof of this in your application.

It is up to visa applicants to prove that they are beneficiaries of the Directive. They must be able to provide documentary evidence to support their claim. If he/she fails to provide such evidence or provides no evidence at all, it may be concluded that the applicant is not entitled to the specific treatment under the Directive.