EMN Ad-Hoc Query on Family migration: not living together as a possible ground for withdrawing the right of residence of family members

Requested by Alexandra LAINÉ on 5th July 2017

Family Reunification

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovak Republic, Slovenia, Sweden, United Kingdom, Norway (23 in total)

Background information:

In Belgium, one of the conditions for family reunification is that the family member who joins a sponsor must come and live together (under the same roof) as the sponsor. The right of residence of the family member may be withdrawn, within five years following the granting of the residence right, if the family member doesn't live together with the sponsor anymore.

In the realm of political negotiations, The Belgian State Secretary for Asylum Policy and Migration urgently needs information from other (Member) States on whether they also apply the requirement of living together in the granting of family reunification and in the subsequent control of conditions for family reunification over time. The State Secretary is also willing to know whether rules differ in this matter according to whether family members of EU citizens are third country nationals or EU citizens themselves.

This ad hoc query relates to Directive 2004/38, but focuses mainly on third country national family members.

Given the priority given to this issue, answers that can be provided before the deadline are very much appreciated.

Questions

1. In the framework of family reunification is there an obligation that the family member comes to live together with the sponsor?
2. If yes, can the right of residence be withdrawn if this is no longer the case? Please specify if this is the case for: a) the family member of a TCN sponsor, b) the TCN family member of an EU sponsor, c) the EU family member of an EU sponsor

Responses

	Country	Wider Dissemination	Response
	Austria	Yes	**1.** There is no such obligation in the Austrian legislation (see Art. 35 Asylum Act; Art. 46 Settlement and Residence Act). **2.** N/A.

	Belgium	Yes	**1.** Article 10 of the Immigration Act stipulates that family members of a TCN sponsor must come and live with the sponsor. Article 40 et seq. stipulates that the family members of an EU citizen must accompany or join the EU sponsor. For article 10 et seq. (family members of a TCN sponsor), there is a requirement of real and lasting cohabitation between the spouses/ partners, whereas for article 40 et seq. (family members of an EU citizen) there is only a requirement of a minimum relationship between spouses/ partners (Council for Alien Law Litigation, 31 March 2010, n°41240). It is worth noting that family members of an EU citizen can only acquire a permanent right of residence if they have resided in Belgium for an uninterrupted period of 5 years and if there was a "joint establishment" with the EU citizen. **2.** Yes, the right of residence can be withdrawn if this is no longer the case. a) the family member of a TCN sponsor: The right of residence of a third-country national can be withdrawn - within five years following the granting of the residence right - when the TCN no longer meets the requirements of article 10 of the Immigration Act (which stipulates that family members must live with the sponsor, which means that there must proof of real and lasting cohabitation) and when the TCN and the TCN sponsor no longer live in a real marital or family relationship (article 11 of the Immigration Act). Different elements can determine whether there no longer is a real marital or family relationship. b) the TCN family member of an EU sponsor and c) the EU family member of an EU sponsor: Regarding family reunification with an EU citizen, articles 42ter (i.e. about EU family members of an EU sponsor) and 42quater (i.e. about TCN family members of an EU sponsor) of the Immigration Act stipulate that the right of residence of the family member may be withdrawn, within five years following the granting of the residence right, if there no longer is a "joint establishment" ("installation commune"/"gezamenlijke vestiging"). This absence of "joint establishment" often corresponds to the period of time during divorce proceedings or to the period of time before the end of a partnership. However, the judgement 121/2013 of the Constitutional Court stipulates that – in accordance with article 13, § 1 of Directive 2004/38/EC - article 42ter of the Immigration Act (i.e. about EU family members of EU sponsors) must be interpreted as not applying to the spouse or the registered partner (in the framework of a partnership equivalent to marriage) but only applying to the other family members. Furthermore, the requirement of "joint establishment" does not entail that the cohabitation must be permanent. The Court of Justice, in its Lida judgement of 8 November 2012 indicates the following: "The Court has previously had occasion to rule, in connection with the

			instruments of European Union law prior to Directive 2004/38, that the marital relationship cannot be regarded as dissolved as long as it has not been terminated by the competent authority, and that is not the case where the spouses merely live separately, even if they intend to divorce at a later date, so that the spouse does not necessarily have to live permanently with the Union citizen in order to hold a derived right of residence (see Case 267/83 Diatta [1985] ECR 567, paragraphs 20 and 22)". Furthermore, it is also worth noting that the Immigration Act contains protection clauses in case of domestic violence. Article 11, §2, alinea 4 and article 42quater, §4, 4° allow a family member who is a victim of domestic violence, to keep a right of residence (under certain conditions) when there is no longer any cohabitation or a real marital or family relationship.
	Bulgaria	Yes	**1.** In the framework of family reunification, family member of third-country nationals and EU citizens are required to live together with the spouses to which they join. **2.** Refusal to issue a residence permit or extend the residence period of a foreigner who has married a Bulgarian citizen or a foreigner is applied if there is an evidence that the marriage was concluded only for the purpose of circumventing the rules governing the regime of aliens in the Republic of Bulgaria and obtaining a residence permit, based on the fact that the spouses do not live together. This applies both to third-country nationals, family members of third-country nationals and EU citizens, and to EU citizens who are family members of EU citizens.
	Croatia	Yes	**1.** 1. According to the Foreigners Act, in cases of family reunification of a family member of a national of the EEA Member State, who is a third country national, general rule is that TCN is accompanying a national of the EEA Member State or joining him. This should be seen as, when deciding on a residence for the purpose of family reunification, the presumption is that the family members intend to lead a family life together. **2.** 2. Residence permit issued to family member of a national of the EEA Member State, who is a third country national, will not be automatically withdrawn in case the family member does not live together at the same address with the sponsor, but it may give grounds to believe that the marriage is fictitious. If there is a reasonable explanation why the family member lives at another

			address (e.g for the reasons of work, health etc.) and it is proven that the marriage is not fictitious, the residence permit will not be withdrawn. Before deciding to withdraw the residence permit, individual circumstances are investigated.
	Cyprus	Yes	**1.** For family reunification of family members of a TCN sponsor, according to law there is an obligation for the sponsor to show evidence of accommodation regarded as normal for a comparable family. **2.** So far, the Cypriot authorities haven't received an application for family reunification of a TCN with family members not residing under the same roof. If such case arises in the future, it will be examined on its own merits.
	Czech Republic	No	
	Estonia	Yes	**1.** According to the Aliens Act as a general rule the TCN spouse or the close relative settling with whom a residence permit is applied for is required to have a registered place of residence and an actual dwelling in Estonia. The temporary residence permit will be withdrawn if the family does not have a registered place of residence in Estonia or the family does not have an actual dwelling in Estonia. It is presumed that the family member comes to live together with the sponsor. This applies in case of TCNs. In case of EU-citizens there is no obligation that the family member and the sponsor live together as long as the marriage is real. **2.** Although it is presumed that the TCN family member comes to live together with the sponsor, it does not automatically mean that the residence permit will be withdrawn in case the family member does not live together at the same address with the sponsor, but it may give grounds to believe that the marriage is fictitious. If there is a reasonable explanation why the family member lives at another address (e.g for the reasons of work, health etc.) and it is proven that the marriage is not fictitious, the residence permit will not be withdrawn. Before deciding to withdraw the residence permit, individual circumstances are investigated. When there are serious grounds to believe that the marriage is fictitious, the residence permit will be withdrawn. If there are no real

			family ties left, the family member may be issued a temporary residence permit for settling permanently in Estonia depending on the length of the previous residence permit and if leaving Estonia would be clearly burdensome. This applies to TCNs.
	Finland	Yes	**1.** Although not laid down in the Finnish Aliens Act, when deciding on a residence permit/residence card application based on family ties, the presumption is that the family members intend to lead a family life together in Finland. **2.** a) The first residence permit for family members of a TCN is issued for one year. A residence permit based on family ties may be cancelled, or an extended permit may be refused, if the grounds on which the first permit was issued no longer exist. If the sponsor and the applicant(s) do not live together, it must be investigated what their current circumstances are and whether they intend to continue their family life. Decisions are always based on an overall assessment and take into consideration all information received from the applicant and sponsor, the authorities and other parties concerned. In the event of discontinuation of family ties, the applicant's length of stay and other ties to Finland, as well as other circumstances are taken into account when considering his/her residence permit. b) The residence card for a TCN family member of an EU citizen is normally issued for five years. If the sponsor and the applicant(s) do not live together, it must be investigated what their current circumstances are and whether there is reason to doubt the veracity of their family relationship. According to Section 161e of the Aliens Act, family members of an EU citizen who themselves are not EU citizens do not lose their right of residence in the event of divorce if:1) the marriage has lasted at least three years, including one year in Finland; 2) by agreement between the spouses or a court decision, the spouse who is not an EU citizen has custody of the children of the EU citizen; 3) it is warranted by particularly difficult circumstances such as violence in the marriage; or 4) by agreement between the spouses or by a court decision, the spouse who is not an EU citizen has a right of access to a minor, and the court has ruled that the access must be in Finland. Different provisions apply to being granted permanent residence. c) Not within the scope of EMN
	France	Yes	**1.** Although it is not explicitly laid down in the French Code on Entry and Residence of Foreign Nationals and Right of Asylum (CESEDA), when deciding on an application for entry and

			residence for the purpose of family reunification/family reunification of refugees, the presumption is that the family members intend to lead a family life together in France. France does not extend the scope of family reunification beyond the nuclear/core members of the family (the sponsor's spouse of at least 18 years and minor (including adopted) children of the sponsor and/or his/her spouse). Article 215 of the French Civil Code defines in terms of rights and duties among spouses inter alia a “living together” (communauté de vie). Family reunification is not open to cohabiting partners (either the same sex or different sexes), even if they have signed a so-called civil solidarity pact (registered partnership). Family reunification may not be requested by non-married partners. In the context of family reunification of refugees, in accordance with the articles L.752-1 I, 1° and 2° and L.812-5 of the CESEDA, the refugee, beneficiary of subsidiary protection or stateless person may apply to be joined by his/her spouse or partner, as long as the marriage or civil union took place prior to the date upon which they requested protection. If the family reunification application concerns the sponsor's unmarried partner, he/she must prove that a "sufficiently stable and continuous cohabiting relationship (vie commune)" existed prior to the date upon which he/she requested protection. The notion of communauté de vie/vie commune – the living together – is a broad one which goes well beyond the sharing of a common bed and residence. It signifies the will to live together and to have a common future. The Constitutional Council confirmed in its decision of 9 November 1999 that the living together “implies besides a common residence, a life as a couple”. **2.** a) For family members admitted for family reunification, in accordance with article R.311-15, 4° of the CESEDA, for the first three years after the authorisation to stay in France for family reunification has been granted, the residence permit issued to the spouse may be withdrawn or a renewal refused if the family relationship has broken down. However, these provisions "do not apply if one or several children have been born in the couple, when the foreign national holds a residence permit and he/she has effectively contributed, since the birth, to the upkeep and education of the child(ren) under the conditions stipulated in article 371-2 of the Civil Code or in the event of the death of one of the spouses (article L.431-2 of the CESEDA). This article stipulates, however, that "when the foreign national has been subject to domestic violence from their spouse and that family life has broken down, the administrative authorities may not withdraw the residence permit and will grant the renewal". Thus the first three years of stay in France following the admission for family reunification remain subject to compliance with a

			certain number of requirements regarding the renewal of the residence permit, in particular, a shared family relationship in the couple. Family members admitted for the family reunification of refugees receive pursuant to Article L.314-11 of the CESEDA a residence permit (except in the case of a threat to public policy) as soon as the sponsor has obtained refugee status and they fulfil the previously indicated conditions, particularly with regard to family ties. "The principle of family unity enables the protection granted to a refugee to be extended to their close relatives, to enable them to carry out a normal family life and offer full and complete protection". However, the residence permit may be withdrawn according to the articles L.311-8-1 and R.311-14 of the CESEDA if the third-country national loses his/her refugee status. b.) Yes, the residence permit of a TCN family member of an EU sponsor may be withdrawn or a renewal refused if the family relationship has broken down (article R. 311-15, 4° of the CESEDA). The same exceptions apply as listed above under 2.a. (article L. 431-2 of the CESEDA). c.) Not within the scope of EMN.
	Germany	Yes	**1.** Family reunification requires the creation and maintenance of co-habitation as a family, forming the fundamental purpose of residence (section 27 subsection (1) of the German Residence Act [Aufenthaltsgesetz – AufenthG]), and this is conditional as a matter of principle on all family members having a central principal place of residence in the shape of a shared dwelling. If family members are living separately for reasons which are plausible, for instance for reasons related to work or training, or because it is necessary to accommodate them in a home for persons with a disability or in a long-term care home, it is necessary to evaluate according to the circumstances of the individual case whether the supportive or caring family group, which is to be prioritised under residence law, is being practiced by other means, or whether it is only a meeting community (as between friends). The latter is unable to justify family reunification as a rule. The meaning and purpose of the derived right of freedom of movement is to be presumed in the case of family reunification to join Union citizens, namely to preserve the existing family circumstances of the Union citizen, which is based on an actual mutual relationship between relatives which is worthy of protection. This is not contingent on the existence of a shared dwelling. **2.** a) Should the purpose of the residence cease to apply, the residence permit for the purposes of family reunification may no longer be extended, and its period of validity may be subsequently

			shortened (section 87 subsection (1) and section 8 subsection (1) of the Residence Act). The spouse's residence permit may be extended by one year as an independent right of residence unrelated to the purpose of family reunification in the event of termination of marital cohabitation, if it has existed for at least three years – or shorter in hardship cases –, or if the "principal person entitled" (sponsor) dies while marital cohabitation existed (section 31 of the Residence Act). An independent right of residence is created for the child of a "principal person entitled" (sponsor) upon a child coming of age (section 34 subsection (2) of the Residence Act). b) The family member loses his or her right of residence which continued after the death of the EU citizen, or if the EU citizen leaves the federal territory, following divorce or the annulment of their marriage, subject to certain conditions (e.g. as the provider, but not as the recipient of benefits) should these prerequisites cease to apply (section 3 subsections (3) to (5) and section 4a subsections (3) to (5) of the Freedom of Movement Act/EU [Freizügigkeitsgesetz/EU – FreizügG/EU]). The special protection against loss of the right of freedom of movement (sections 6 and 7 of the Freedom of Movement Act/EU) does not apply here, and the decision is taken in accordance with the general provisions contained in the Residence Act. c) If the family member does not personally satisfy the preconditions for freedom of movement as a Union citizen, the remarks at b) apply to the continuation and termination of his or her derived right of freedom of movement. The following links lead to the translation of the cited legislation (please note the date of the translations): http://www.gesetze-im-internet.de/englisch_aufenthg/index.html http://www.gesetze-im-internet.de/englisch_freiz_gg_eu/index.html
	Hungary	Yes	**1.** There are no exact legal obligations, but it is the common practice of the Immigration and Asylum Office (IAO) to check if the family member is living together with the sponsor. **2.** It can be withdrawn but only if there are no other reasons for staying. If the family member changes his/her place of residence he/she has the obligation to report it to the IAO. The family member has the possibility to change the purpose of his/her residence permit if the purpose for family reunification is not applicable anymore.
	Italy	Yes	**1.** No, in the framework of family reunification (Legislative Decree 286/1998) there is not an obligation that the family member comes to live with the sponsor. In Italy, the requirements

			foreseen by the law for family reunification are: housing suitability and income. The sponsor can indicate an accommodation different from the one he has residence in. The family member can live/have residence in this different place, separated from the sponsor. **2.** n/a
	Latvia	Yes	**1.** Latvian Immigration Law requires the common household (which means cohabitation of persons in the same address) in case of family reunification. **2.** Immigration Law allows to revoke the residence permit in case the persons do not live together anymore but this reason of revoking of permit is not applied in case if the sponsor is the EU citizen. Of course, the decision to revoke the permit cannot be taken automatically – each case is being examined individually as there could be various justified circumstances for short-time interruption of cohabitation.
	Lithuania	Yes	**1.** No. But this is one of the grounds to believe that the marriage can be of convenience. **2.** When a TCNs spouse/partner applies for a residence permit the officer must assess whether the contracted marriage is not that of convenience. One of the grounds permitting to believe that a marriage can be of convenience is that spouses do not have a common domicile and do not run a common household. The decision is based on evaluating all other factors. When there is serious grounds to believe that the marriage is one of convenience the residence permit can be withdrawn. This is applied for TNCs only.
	Luxembourg	Yes	**1.** Articles 13 and 14 of the amended law of 29 August 2008 on free movement of persons and immigration establish that the TCN family members of a Union citizen who accompany or join the Union citizen have the right to move and reside freely within the territory of the Member States. The framework does not especially provide that they have to live under the same roof as the sponsor. It is necessary to note that case law from the EU Court of Justice (Ogieriakhi, C-

			244/13) and national case law stipulate that living together under the same roof is not one of the conditions for family reunification. **2.** See a) and b) a) the family member of a TCN sponsor: Directive 2003/86/EC of 22 September 2003 on the right to family reunification is applicable and was transposed into articles 69 to 77 of the amended law of 29 August 2008 on free movement of persons and immigration. Article 69 (1) 2 of the law of 29 August 2008 requires that the sponsor disposes of appropriate housing to receive the family member. According to article 75 2. of the law of 29 August 2008 the Minister may withdraw or refuse to renew a family member's residence permit, when the sponsor and his/her family member(s) do not or no longer live in a real marital or family relationship. b) the TCN family member of an EU sponsor: No. Article 17 of the amended law of 29 August 2008 establishes the conditions for TCN family members of an EU sponsor: 1. The EU citizen's death shall not entail loss of the right of residence of his/her family members who are third-country nationals, provided that they have been residing in the country for at least one year before the EU citizen's death. 2. The EU citizen's departure from the country or death shall not entail loss of the right of residence of his/her children or of the parent who has actual custody of them, irrespective of nationality, if those family members are residing in the country and the children are enrolled there at an educational establishment with a view to studying there, until completion of their studies. 3. Divorce or annulment of the marriage or termination of the registered partnership of a EU citizen shall not entail loss of the right of residence of his/her family members who are third-country nationals, provided that one of the following conditions is fulfilled: (1) prior to initiation of the divorce or annulment proceedings or termination of the registered partnership, the marriage or registered partnership has lasted for at least three years, including at least one year in Luxembourg; (2) by agreement between the spouses or partners or by court order, the spouse or partner who is a third-party national has custody of the EU citizen's children; (3) particularly difficult circumstances so require, in particular where the consortium and cohabitation has been terminated by reason of acts of domestic violence; (4) by agreement between the spouses or partners or by court order, the spouse or partner who is a third-country national has visitation rights to a minor, provided that the court has ruled that such rights must take place in Luxembourg and for as long as is required. c) the EU family member of an EU sponsor: N/A. Outside of the scope of the EMN.

	Malta	Yes	**1.** Maltese law only provides that the application for family reunification shall be accompanied by documentary evidence attesting the family relationship that exists between the sponsors and the persons who are the subject of the application. However, the right of residence may be withdrawn if the sponsor and his family members do not or no longer live in a real marital or family relationship as specified in the answer to question 2. **2.** A right of residence may be withdrawn where the sponsor and his family members do not or no longer live in a real marital or family relationship. This applies with regard to the family member of a TCN sponsor.
	Netherlands	Yes	**1.** Yes. The Dutch family reunification policy distinguishes between family reunification for a holder of a regular residence permit (e.g. a highly skilled migrant employed in the Netherlands) and family reunification for holders of an asylum residence permit (‘’nareis’’). For family reunification with a holder of a regular residence permit the following rules apply, Article 3.17 of the Aliens Decree (2000) stipulates that the referent and the family member need to live together in the Netherlands (called the "cohabitation requirement", in Dutch ‘’samenwoningsvereiste’’). For family reunification with holders of an asylum residence permit (‘’nareis’’), the same conditions apply, which are stipulated in the Aliens Act Implementation Guidelines, section C2.4.1. As of February 2017, the separate condition that partners need to have lived together outside of the Netherlands, no longer exists. Instead, this question is involved in the examination whether an actual family tie exists. After arrival of the family member, it is expected that he/she will live together with the referent. However, this is not always possible in the case of asylum family reunification since it can happen that there is a shortage of suitable housing in a municipality. In that case, the reason of not living together is outside the influence sphere of the referent and the family. In that case, the right of residence will not be withdrawn. If the referent and the family member themselves decide not to live together, the right of residence can be withdrawn. **2.** Yes, if the Immigration- and Naturalization Services (INS) suspects the third-country national does not (any more) fulflll the requirements regarding the residence permit, the third-country national is always notified about this circumstance. This mostly happens through an intended

			decision to withdraw the residence permit. Additionally, the INS may impose fines. a) the family member of a TCN sponsor Yes, the right of residence can be withdrawn. b) the TCN family member of an EU sponsor Yes, the right of residence can be withdrawn. c) the EU family member of an EU sponsor Yes, the right of residence can be withdrawn.
	Portugal	Yes	**1.** Yes. The family member (either a TCN our an EU Citizen) must live together with the PT resident sponsor. **2.** Yes. a) The sponsor with a valid residence permit has the right to family reunification with the family members that are abroad, whether the family relationship arose before or after the sponsor's entry in Portugal. However, the residence permit issued under the right to family reunification is cancelled when the marriage, registered partnership or adoption had as only purpose to allow the entry of the interested party into the country. b) The family member cannot be granted the right to permanent residence if he/she did not live with the sponsor, for five consecutive years, in Portugal, or if he/she left Portugal for more than six consecutive months per year, ore twelve consecutive months without a valid justification. c) The same as b).
	Slovak Republic	Yes	**1.** Yes, in case of temporary residence for the purpose of family reunification with a third-country national, temporary residence for the purpose of family reunification with a third-country national who was granted the EU long-term residence, permanent residence for the purpose of family reunification with a Slovak citizen and permanent residence of a family member of an EU citizen with whom the applicant shares household. **2.** a) yes b) no (yes only in case he/she applies as a household member) c) no
	Slovenia	Yes	**1.** No. The Aliens Act of Slovenia does not foresee specific demand that sponsor and his/her family members should “live together” (under the same roof). Regular controls of conditions of “living together”, after the residence permits for family reunification have been issued are not foreseen in the legislation as well. Nevertheless, they are done in practice as abuses of such residence permits are investigated accordingly. Main requirements for obtaining a residence permit based on family reunification are the following: a valid passport, appropriate healthcare

			insurance and proof of sufficient means of subsistence for those family members who will reside in Slovenia. However, misuses and/or violations of rights and obligations, in form of family members and his/her sponsor “absence of living together”, could be a reason for withdrawing or rejection for extension of the residence permit. In case that Police recognise such illegal act, they immediately inform responsible authority. Further assessment of situation of respective family reunification case is carried out. Rules are different in cases where family members are EU citizens. In Slovenia, EU citizens need to register their residence at responsible authority. **2.** /
	Sweden	Yes	**1.** If the family member is married to the sponsor and the sponsor is an EU-citizen holding right of residence (meaning that Directive 2004/38 is applicable), there´s no obligation that they are actually living together as long as they still are married and it´s not a marriage of convenience. If the sponsor is a TCN ((meaning that Directive 2004/38 is not applicable) there is an obligation that the sponsor and the family members live together. **2.** 2 a. Yes, the residence permit can be withdrawn. 2 b. It´s considered that the family member still have right of residence as long as the parties are married and it´s not a marriage of convenience. 2 c. See above under 2 b.
	United Kingdom	Yes	**1.** In the context of Directive 2004/38/EC, which was transposed into UK domestic law by the Immigration (European Economic Area) Regulations 2016: The CJEU judgment in the case of Diatta (C-267/83) stated that “… members of a migrant worker’s family … are not necessarily required to live permanently with him in order to qualify for a right of residence …”. Following this, an obligation for the non-EEA national family member of an EEA national sponsor to be resident with that sponsor has not been written into UK domestic legislation. However, it should be noted that, in order for that family member to have a right to reside, the family member must remain related to that sponsor and the sponsor must continue to exercise Treaty rights or have a right of permanent residence in the UK.

			2. This question does not arise as there is no obligation.
	Norway	Yes	**1.** If an application for family immigration is considered to be within the scope of Directive 2004/38 it is not an absolute requirement that the family live together. Applications that are not within the scope of Directive 2004/38, e.g. if the sponsor is a third country national (TCN), are considered according to the relevant Norwegian legislation. **2.** a: If the sponsor is a third country national his or her family member will not be within the scope of Directive 2004/38 and an application for family immigration will be assessed according to national legislation. According to the Norwegian immigration Act chapter 6 one of the conditions for family reunification for a spouse or a cohabitant is that the family are living together in Norway. If a person has been granted residence in Norway as a spouse or a cohabitant, the right of residence may be withdrawn, if s/he is not living together with the sponsor. When a person is granted a temporary residence permit as a family member and has resided in the realm for three years, s/he may apply for a permanent residence permit. With this permit it is no longer required that the family live together. b and c: If an application is considered to be within the scope of Directive 2004/38 it is not an absolute requirement that the family live together. Applications from TCN family members of EEA nationals are assessed according to the same criteria as applications from family members who themselves are EEA nationals. If a family choose not to live together for some time, motivated by reasons such as work or education, the right of residence will not be withdrawn. A right of residence might be withdrawn in the case of abuse of rights or fraud, such as a marriage of convenience.