

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **C**

CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



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Obstacles to the right of free movement and residence for EU citizens and their families: Country report for Ireland

Study for the LIBE and PETI Committees



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**POLICY DEPARTMENT C: CITIZENS' RIGHTS AND
CONSTITUTIONAL AFFAIRS**

**CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS
PETITIONS**

Obstacles to the right of free movement and residence for EU citizens and their families: Country report for Ireland

STUDY

Abstract

This study, commissioned by the European Parliament's Policy Department for Citizen's Rights and Constitutional Affairs at the request of the LIBE and PETI Committees, analyses the current status of transposition of selected provisions of Directive 2004/38/EC in Ireland and identifies the main persisting barriers to free movement for EU citizens and their family members in Irish national law and practice. The study also examines discriminatory restrictions to free movement, measures to counter abuse of rights and refusals of entry and residence rights, in addition to expulsions.

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LIST OF ABBREVIATIONS

CAO	Central Applications Office
CJEU	Court of Justice of the European Union
CSS	Citizens' Signpost Service
EUROJUS	European Institute for Legal Studies
GNIB	Garda National Immigration Bureau
GP	General Practitioner
HRC	Habitual Residence Condition
INIS	Irish Naturalisation & Immigration Service
NASC	Irish Immigrant Support Centre
PPS	Personal Public Service
SOLVIT	Effective Problem Solving in Europe
TCN	Third Country National

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EXECUTIVE SUMMARY

In **2008** the European Commission and the European Parliament reported that Ireland had transposed **Directive 2004/38/EC** on time, with most Articles of the Directive correctly and completely transposed. However, **a number of transposition issues remained**. In the intervening period most of the issues identified by the European Commission and the European Parliament have been resolved, such as Ireland's transposition of the visa exemption for family members holding a residence card issued by another Member State, and Ireland's implementation of the *Metock* ruling. Ireland adopted **new regulations in December 2015**, namely the European Communities (Free Movement of Persons) Regulations 2015 (the 2015 Regulations) which addressed most of the transposition issues highlighted in 2008.

Crucially, other provisions included in the 2015 Regulations constitute **significant barriers to, if not violations of, the exercise of free movement and residence rights**. These include the additional requirement whereby EU citizens and their family members may reside in Ireland for a period of **up to three months** provided they can demonstrate that they do not become an unreasonable burden on the social welfare system of the State. In addition, the **documentation** required to obtain a permanent residence card seems to go beyond that what is permitted by the Directive.

EU citizens may experience a number of **persisting barriers** in exercising their free movement and residence rights in Ireland. In terms of gaining **entry**, a fundamental obstacle is the continued application of border controls between Ireland's borders and the rest of the EU. In addition, Ireland has no system to appeal against refusal of EU citizens at an airport, ferry port or at the land border. EU citizens may also face burdensome requirements from the Irish authorities when obtaining permanent **residence** cards, as well as substantial delays.

EU citizens may face numerous obstacles in accessing the Irish **social security** system. For example, frontier workers encounter substantial difficulties in obtaining welfare benefits due to the habitual residence condition (HRC). Other recurring issues concern delays in issuing social security documents and non-application of the principle of aggregation regarding sickness benefits.

EU citizens may also encounter **other** obstacles in exercising their free movement rights: **administrative services** are considered poor; people experience difficulties in getting a Personal Public Service (PPS) number in order to **work**; recognition of professional qualifications from other Member States is arduous; the HRC imposed in Ireland limits access to vocational training schools for frontier workers; **an Irish driving licence** is difficult to obtain; and people are **discouraged from marrying** in Ireland, as registrars refuse to carry out interviews as part of the investigation process of suspected marriages of convenience.

Family members of EU citizens also face significant obstacles in exercising their free movement and residence rights in Ireland. Third Country National (TCN) family members face a number of difficulties in obtaining an **entry visa**: frequently, visas have been issued with a reduced duration, fees have been charged, long delays have been encountered, extra documentation is often required and visas are often refused without a justified reason; people frequently encounter difficulties in contacting certain embassies, and there

is a lack of consistent information available. Surprisingly, there are no facilities for issuing visas at airports, ports, etc., making the right to an accelerated procedure for visas inaccessible in practice. A recurrent obstacle to obtaining visas for TCN family members is the lack of guidance on what constitutes **dependency**, making it difficult to prove for TCN family members.

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Family members of EU citizens encounter numerous obstacles in obtaining a **residence card**: they face onerous requirements (e.g. requests for extra documentation) from the authorities; they are prevented from travelling abroad, as the authorities retain passports for a four to six week period when an application is being made; applications can take at least four weeks to be acknowledged, preventing applicants from working during this period; there are unlawful delays in the determination of reviews of decisions to refuse applications, and excessive fees. The Garda (Irish police force) National Immigration Bureau (GNIB) subjects applicants for the initial five-year residency permit to an intensive interview process without notice. Difficulties are also reported in obtaining a permanent residence card.

TCN family members, particularly Roma from Romania and Bulgaria, experience a number of barriers in accessing **social protection**, including: poor information provision, verbal abuse, discriminatory behaviour and delays. TCN family members face difficulties in **accessing employment** as frequent complaints have been made that they have been required to have a residence card before taking up employment.

With regard to **discrimination based on nationality**, there have been some recurrent instances of EU citizens and TCN family members experiencing discrimination in accessing employment, using vehicles, accessing education, and getting married in Ireland. EU citizens (especially British citizens) of Middle Eastern origin face difficulties in getting a PPS number in order to work, as the authorities require an offer of employment before issuing the PPS number. There have been a number of complaints and petitions related to motor insurance, with claims that companies charge higher fees to EU citizens than they do to Irish citizens. Discriminatory treatment regarding penalty points has also been encountered by a number of EU citizens. EU citizens and TCN family members encounter discrimination in accessing vocational training and in the allocation of internships, due to the length of residence condition in Ireland. Complaints of bias have been lodged against the GNIB with respect to TCN immigrants marrying EU citizens. For example, it has been reported that a marriage registrar discriminated against a Pakistani man for marrying a UK citizen and subjected him to racial comments.

No issues of **discrimination on grounds of civil status/sexual orientation** of EU citizens and TCNs in exercising their free movement and residence rights in Ireland have been reported, as **Ireland recognises EU citizens' marriages, civil partnerships and duly attested relationships, including with a TCN, without any discrimination between same-sex and different-sex couples, for the purposes of entry and residence, as well as in family law**. Therefore, there is no difference in treatment between same-sex partners/spouses who are Irish nationals and those who are EU citizens/TCNs in exercising their free movement and residence rights.

It has been reported that **Roma** face a considerable amount of **discrimination** in Ireland. Examples include being frequently charged with the offence of failure to produce identity documents on demand without a reasonable excuse, an offence not applied to Irish nationals. Roma also face barriers and discrimination in accessing social protection in Ireland. Counter staff and deciding officers are reported to be reluctant to grant social

welfare payments to Roma, subjecting them to verbal abuse and discriminatory behaviour. Sources have also accused the Gardaí of subjecting non-Irish nationals to racial profiling. In addition, there are widespread deportations of Roma from Ireland.

Measures to combat marriages of convenience and civil marriages of convenience are provided in the 2015 Regulations. Operation Vantage was established in August 2015 by the GNIB to investigate illegal immigration, with a particular focus on marriages of convenience, given the growth of sham marriages in Ireland. Sixteen people were arrested as a result of marriages of convenience, nine of whom were subsequently deported. The Office of the Registrar General now has the power to investigate a couple prior to agreeing to a marriage.

The 2015 Regulations also include **measures to combat** the accessing of free movement and residence rights through **fraudulent** means. The measures impose a fine or imprisonment on a person who gives false information or who makes any false or misleading statement or declaration, who destroys or conceals documents with intent to deceive, who forges or fraudulently alters any document for reward, or who sells or supplies forged documents for the purposes of exercising free movement and residence rights.

Ireland applies the **restrictions on the right to entry and residence** on the grounds of public security and health in a manner consistent with the Directive. However, it could be argued that the application of the restrictions based on public policy is, in certain instances, based exclusively on previous criminal convictions, contradicting the 2015 Regulations.

There are no known cases of EU citizens being **refused entry** into Ireland. TCN family members may be refused entry if, for example, they are required to have a visa to enter and had not applied or received a visa when they seek to enter the State.

TCN family members may be **refused a residency permit** in Ireland for a number of reasons: they have not given evidence that they are a family member of an EU citizen; they have not given the proper documentation; on a technicality; they are not able to prove that they are dependant on the EU citizen; or they said that they were employed in Ireland, when in fact they were not.

Many of the causes for **expulsion** from Ireland relate to a person's conduct (i.e. criminal convictions), and there is a lot of case law in this regard. In addition, nine people were recently deported for being involved in marriages of convenience. There are no cases of an EU citizen/TCN family member being expelled from Ireland on purely economic grounds.

Overall, the most persistent obstacles to free movement and residence rights relate to administrative issues (i.e. excessive delays and extra documentation requirements) in obtaining visas, residence documents and social security documents for EU citizens and TCN family members. Frontier workers, TCNs and Roma are particularly affected in exercising their free movement and residence rights in Ireland.

1. OVERVIEW OF THE TRANSPOSITION OF DIRECTIVE 2004/38/EC AND RECENT DEVELOPMENTS

KEY FINDINGS

- In **2008** the European Commission and the European Parliament reported that Ireland had transposed Directive 2004/38/EC on time, with most Articles of the Directive correctly and completely transposed. However, **a number of Articles remained that were incorrectly/incompletely transposed**.
- **The majority of Directive 2004/38/EC has now been correctly and fully transposed into Irish law.** Most of the issues identified in 2008 by the European Commission and the European Parliament have now been resolved, such as Ireland's transposition of the visa exemption for family members holding a residence card issued by another Member State, and Ireland's implementation of the *Metock* ruling. However, **other concerns are yet to be addressed**, such as the fact that Ireland does not exclude expulsion as an automatic consequence of recourse to the social assistance system.
- Crucially, other provisions included in the recent Irish 2015 Regulations on free movement constitute **significant barriers** to the exercise of free movement and residence rights, if not **violations** of the Directive. These include the additional requirement for EU citizens and their family members that they may reside in Ireland for a period of up to three months provided they can demonstrate that they do not become an unreasonable burden on the social welfare system of the State. The required documentation to obtain a permanent residence card seems to go beyond that permitted by the Directive.

1.1. Transposition context

1.1.1. Transposition overview as assessed by the European Parliament and the Commission in 2008

According to the 2008 Commission Report, **Ireland transposed Directive 2004/38/EC on time and had correctly and completely transposed most Articles** of the Directive¹.

However, **a number of Articles were incorrectly/incompletely transposed and a few were ambiguously transposed or not transposed at all**². The European Parliament study reiterated that certain provisions of the Directive had not been transposed into Irish law³. The most important gaps and problems of compliance mostly related to family members:

¹ European Commission, Report on the application 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, COM(2008) 840 final, p. 3.

² European Commission, Report on the application 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, COM(2008) 840 final, p. 12.

³ European Parliament, Comparative study on the application of Directive 2004/38/EC 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, Brussels, March 2009, p. 124.

- Article 5(2) (right of entry): Ireland did not provide for the visa exemption for family members holding a residence card issued by another Member State⁴. This led to numerous complaints to the Citizens' Signpost Service (CSS), the Effective Problem Solving in Europe (SOLVIT) service and to the European Institute for Legal Studies (EUROJUS) service⁵.
- Article 7(3) (right of residence for more than three months): The retention of the status of worker was not correctly transposed in Ireland⁶.
- Article 7(4): For family members of students, Ireland had not made use of the option of Article 7(4) to restrict the scope only to the spouse and dependent children⁷.
- Article 8(1) (administrative formalities for Union citizens): Ireland transposed the notion of 'sufficient resources' incorrectly or ambiguously, setting out an amount as to what constituted sufficient resources⁸.
- Article 12(2) (retention of the right of residence by family members in the event of death or departure of the Union citizen) and Article 13(2) (retention of the right of residence by family members in the event of divorce, annulment of marriage or termination of registered partnership): Ireland omitted the possibility of retaining the right of residence for family members of a person satisfying the requirements to retain this right⁹.
- Article 14 (retention of the right of residence): Ireland did not exclude expulsion as an automatic consequence of recourse to the social assistance system¹⁰.
- Article 27 (restrictions on the right of entry and residence on grounds of public policy, public security or public health: general principles) and Article 28 (protection against expulsion): Ireland did not transpose these material safeguards correctly¹¹.
- Article 30 (notification of decisions) and Article 31 (procedural safeguards): Ireland did not transpose these safeguards correctly¹².

1.1.2. What has changed since

Ireland adopted **new regulations in December 2015** to address some of the gaps in transposition, namely the 2015 Regulations¹³. These **2015 Regulations** came into force on

⁴ European Commission, Report on the application 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, COM(2008) 840 final, p. 5; European Parliament, Comparative study on the application of Directive 2004/38/EC 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, Brussels, March 2009, p. 113.

⁵ European Parliament, Comparative study on the application of Directive 2004/38/EC 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, Brussels, March 2009, p. 116.

⁶ European Commission, Report on the application 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, COM(2008) 840 final, p. 6.

⁷ Ibid.

⁸ Ibid; European Parliament, Comparative study on the application of Directive 2004/38/EC 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, Brussels, March 2009, p. 180..

⁹ European Commission, Report on the application 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, COM(2008) 840 final, p. 7.

¹⁰ Ibid.

¹¹ Ibid, p. 8.

¹² Ibid, p. 9.

1 February 2016¹⁴. While the 2015 Regulations have addressed most of the transposition issues highlighted in the 2008 Commission report, some transposition issues remain¹⁵. The Regulations failed to transpose Articles 27, 31(2), 31 (3) and 31(4) of the Directive effectively, as described in Section 1.2 below.

1.2. Current transposition status

1.2.1. Overall assessment of the current transposition status in Ireland

According to a 2013 report, transposition of the Directive in Ireland was described as generally complete, with the exception of one or two gaps or relatively minor inaccuracies¹⁶. Indeed, the 2015 Regulations effectively addressed most of the gaps in the transposition of the Directive. However, given that some issues with transposition remain, based on the author's estimation, transposition can be estimated at 90% complete. In relation to Regulation 18 of the 2015 Regulations, which transposed **Article 27** of the Directive concerning **restrictions on the right of entry and residence on grounds of public policy, public security or public health, there are still some important gaps in transposition**. The 2015 Regulations make no reference to:

- Article 27(1): 'These grounds shall not be invoked to serve economic ends'.
- Article 27(2): 'Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted'.
- Article 27(3): 'Such enquiries shall not be made as a matter of routine'.
- Article 27(4): 'public health' is not mentioned as a ground.

Article 31 of the Directive concerning procedural safeguards has not been sufficiently transposed in the 2015 Regulations. While Regulations 25(6) and 25(7) transpose most of Article 31(2), they do not provide that: 'where the application for appeal against or judicial review of the expulsion decision is accompanied by an application for an interim order to suspend enforcement of that decision, actual removal from the territory may not take place until such time as the decision on the interim order has been taken, except:

- where the expulsion decision is based on a previous judicial decision; or
- where the persons concerned have had previous access to judicial review'.

Article 31(3) does not appear to have been transposed into the 2015 Regulations. In addition, there is a gap in transposition of Article 31(4), as Regulations 23 (12)(a) and (b) do not provide that an individual may not be prevented from submitting his/her defence in person except when the appeal or judicial review concerns a denial of entry to Ireland.

¹³ European Communities (Free Movement of Persons) Regulations 2015, S.I. No. 548 of 2015, available at: <http://www.irishstatutebook.ie/eli/2015/si/548/made/en/pdf>.

¹⁴ Regulation 1(2) of the European Communities (Free Movement of Persons) Regulations 2015, S.I. No. 548 of 2015, available at: <http://www.irishstatutebook.ie/eli/2015/si/548/made/en/pdf>.

¹⁵ The 2015 Regulations have effectively transposed Articles 7(3), 7(4), 8 (1), 12(2), 13(2), 28, 30, 31(1) of the Directive.

¹⁶ S. Mullaly, F. O'Reagan, H. Bekker, 'Report on the Free Movement of Workers in Ireland in 2012-2013', July 2013.

With regard to **Article 14 of the Directive concerning the retention of the right of residence**, the 2015 Regulations do not include a provision stipulating that Ireland does not exclude expulsion as an automatic consequence of recourse to the social assistance system. However, the 2015 Regulations are in line with Article 14(1) of the Directive, which provides that 'a person residing in the State under Regulation 6, 9 or 10 shall be entitled to continue to reside in the State for as long as he or she satisfies the relevant provision of the Regulation concerned and does not become an unreasonable burden on the social assistance system of the State'¹⁷.

In relation to **Article 5 of the Directive (right of entry)**, the 2015 Regulations have not transposed a part of Article 5(1) of the Directive which stipulates that: 'No entry visa or equivalent formality may be imposed on Union citizens'. Also, the 2015 Regulations do not seem to have effectively transposed the requirement of a visa exemption for family members holding a residence card issued by another Member State (Article 5 (2)). No mention is made in the 2015 Regulations to visa exemptions for family members holding a residence card issued by another Member State. It only states, according to Article 4(3) (a) and 5(8) (a): 'A qualifying /permitted family member who is not a member of a class of non-nationals specified in an order made under section 17 of the Immigration Act 2004 (No.1 of 2004) as not requiring an Irish visa shall be in possession of a valid Irish visa as a condition of being granted permission to enter the State'. However, Regulation 3 of the Immigration Act 2004 (Visas) Order 2014 (S.I. No. 473/2014) provides a visa exemption for family members holding a residence card issued by another Member State¹⁸. Therefore, there is no real gap in the transposition of Article 5(2), as it is encompassed within the Immigration Act 2004 (Visas) Order 2014.

The notion of '**sufficient resources**' has not been correctly defined in Irish national law¹⁹. According to the 2015 Regulations, 'in considering whether a person—

- has sufficient resources not to become an unreasonable burden on, or
- is, or would be, an unreasonable burden on, the social assistance system of the State,
- the Minister shall have regard to any claim made by him or her for assistance under the Social Welfare Acts and any payment or service received by him or her under the Health Acts 1947 to 2015 and the Housing Acts 1966 to 2014'²⁰.

While the 2015 Regulations do not define a fixed sum of money in relation to the notion of 'sufficient resources' - which is precluded by Article 8(4) of the Free Movement Directive - **there is no mention of 'taking into account the personal situation of the person concerned'**, nor do they state that the amount of sufficient resources shall not be higher than the threshold below which nationals of Ireland become eligible for social assistance, or higher than the minimum social security pension paid by Ireland, as stipulated in the Directive. The lack of any reference to these criteria in the 2015 Regulations could be considered as insufficient transposition of the Directive. One of the stakeholders consulted noted that if Ireland defines 'sufficient resources' it will do so through administrative guidelines²¹.

¹⁷ Regulation 11(1) of S.I. No. 548 of 2015.

¹⁸ Immigrant Act 2004 (Visas) Order 2014, S.I. No. 473/2014, available at: <http://www.irishstatutebook.ie/eli/2014/si/473/made/en/print>.

¹⁹ Information obtained through consultation with stakeholder (Immigrant Council of Ireland, March 2016).

²⁰ Regulation 2(3) of S.I. No. 548 of 2015.

²¹ Ibid.

1.2.2. Additional conditions in law or practice for family members (especially third country national family members) to exercise their free movement rights

Contrary to Article 6 of the Free Movement Directive, which grants to Union citizens a right of residence for up to three months 'without any conditions or any formalities other than the requirement to hold a valid identity card or passport', and for their family members a 'valid passport', the 2015 Regulations add an additional requirement namely that they can demonstrate that they do not become an unreasonable burden on the social welfare system of the State²². **This clearly violates Article 6 of the Directive.**

1.2.3. Ireland's approach towards the partners of EU citizens

The 2015 Regulations provide that a **partner** of an EU citizen, including a same-sex partner, is entitled to the same rights of entry and residence and free movement as an EU citizen²³. In Ireland, **civil partnerships** between same-sex couples are permitted under the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010²⁴. This Act grants entry and residence rights to registered partners²⁵. The Act allows for the **recognition** of same-sex unions, either marriages or civil unions, entered into abroad²⁶. **Ireland does not, therefore, distinguish between same-sex spouses and different sex spouses of foreign EU citizens for the purposes of entry and residence rights**²⁷. Married and unmarried same-sex partners are included under the definition of 'family member' for the purposes of free movement²⁸. Moreover, there is no difficulty for a partner to apply for a residence status under the permit of his same sex partner²⁹. All that is required is evidence of the relationship with the same sex partner³⁰. Regarding the definition of a "**durable relationship**", evidence of the relationship lasting at least two years is requested in Ireland before issuing a visa³¹.

1.2.4. Ireland's implementation of the Metock ruling

Following a judgment of the Court of Justice of the European Union (CJEU) on 23 September 2003 (Case C-109/01 *Akrich*), Ireland made the right of **residence of TCN family members conditional upon their prior lawful residence in another Member State**³². The **2006 Regulations** transposing the Free Movement Directive expressly

²² Regulation 6(1) of S.I. No. 548 of 2015.

²³ Regulation 5(1)(b) and 6(4)(a) of S.I. No. 548 of 2015; Information obtained through consultation with stakeholder (Immigrant Council of Ireland, March 2016).

²⁴ The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (No. 24 of 2010), available at: <http://www.irishstatutebook.ie/eli/2010/act/24/enacted/en/html>.

²⁵ FRA, 'Protection against discrimination on grounds of sexual orientation, gender identity and sex characteristics in the EU: Comparative legal analysis Update 2015', available at: http://fra.europa.eu/sites/default/files/fra_uploads/protection_against_discrimination_legal_update_2015.pdf, p. 84.

²⁶ Article 5 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (No. 24 of 2010), available at: <http://www.irishstatutebook.ie/eli/2010/act/24/enacted/en/html>.

²⁷ FRA, 'Protection against discrimination on grounds of sexual orientation, gender identity and sex characteristics in the EU: Comparative legal analysis Update 2015', available at: http://fra.europa.eu/sites/default/files/fra_uploads/protection_against_discrimination_legal_update_2015.pdf, p. 82.

²⁸ Ibid, p. 90; Article 3(5) of S.I. No. 548 of 2015.

²⁹ Information obtained through consultation with stakeholder (Immigrant Council of Ireland, March 2016).

³⁰ Ibid.

³¹ Your Europe Advice, Quarterly Feedback Report: Quarter 3/2015 (July-September), p 13.

³² European Commission, Report on the application 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, COM(2008) 840 final, p. 4; European Parliament, 'Dilemmas in the implementation of Directive 2004/38 on the right of citizens

included such a requirement, notwithstanding the fact that, in the meantime, the Directive came into force without any such requirement³³:

'(2) These Regulations shall not apply to a family member unless the family member is *lawfully resident in another Member State* and is

- (a) seeking to enter the State in the company of a Union citizen in respect of whom he or she is a family member, or
- (b) seeking to join a Union citizen, in respect of whom he or she is a family member, who is lawfully present in the State³⁴.'

This adversely affected a large number of couples and was the subject of numerous complaints. The matter was ultimately resolved in the case of *Metock & Others v Minister for Justice Equality and Law Reform*, which was referred to the CJEU from the High Court in Ireland, pursuant to Article 234 of the EC Treaty³⁵. The CJEU delivered its judgment in *Metock*³⁶ that **secondary legislation requiring a non-EEA spouse of an EEA national to have lived in another Member State of the EU prior to applying for a residence card in Ireland was contrary to EU law**³⁷.

The 2006 Regulations were therefore amended by the **2008 Regulations**³⁸ in order to comply with the judgement in *Metock*³⁹. The amendment removed the requirement that family members of EU citizens who are not themselves EU citizens to be lawfully resident in another Member State in order for the Regulations to apply.

Following the *Metock* decision, the Minister for Justice and Equality announced that all applicants who had applied since 28 April 2006 for an EU family residence card and who were refused because they did not have prior legal residence, would have their applications reviewed⁴⁰. This review process was completed in 2009, however no figures are publicly available on the number of cases reviewed or the outcomes of these cases⁴¹. Although the Irish Government sought to address the *Metock* ruling in an impressively short timeframe, it also began to campaign, together with Denmark, for an amendment to the Directive with respect to marriages of convenience⁴². The Commission has not supported such an

and their family members to move and reside freely in the EU', February 2009, available at: [http://www.europarl.europa.eu/RegData/etudes/note/join/2009/410669/IPOL-LIBE_NT\(2009\)410669_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2009/410669/IPOL-LIBE_NT(2009)410669_EN.pdf), p. 7.

³³ European Communities (Free Movement of Persons) (No.2) Regulations 2006, S.I. No. 656/2006, available at: <http://www.irishstatutebook.ie/eli/2006/si/656/made/en/print>.

³⁴ Regulation 3(2) of S.I. No. 656/2006.

³⁵ *Metock & Others v Minister for Justice Equality and Law Reform* 2008 IEHC 77.

³⁶ *Metock & Others v Minister for Justice Equality and Law Reform* [2008] IEHC 77.

³⁷ European Parliament, Comparative study on the application of Directive 2004/38/EC 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, Brussels, March 2009, p xi.

³⁸ European Communities (Free Movement of Persons) (Amendment) Regulations 2008, S.I. 310 of 2008, available at: <http://www.irishstatutebook.ie/eli/2008/si/310/made/en/print>.

³⁹ European Parliament, Comparative study on the application of Directive 2004/38/EC 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, Brussels, March 2009, p. 117.

⁴⁰ INIS, 'EU Treaty Rights August 2008: Department of Justice, Equality and Law Reform European Court Judgment on Free Movement of Persons (the 'Metock' case)', Press Release, August 2008, available at: <http://www.inis.gov.ie/en/INIS/Pages/PR08000027>; S. Mullaly, F. O'Reagan, H. Bekker, 'Report on the Free Movement of Workers in Ireland in 2012-2013', July 2013, p. 15.

⁴¹ *Tagni v Minister for Justice, Equality and Law Reform*, (2009) JR 598.

⁴² 'In spite of Denmark and Ireland requests the European Commission has no intention to revise the Free Movement Directive', The European Journal, 16 December 2008, available at: <http://www.europeanfoundation.org/n-spite-of-denmark-and-ireland-requests-the-european-commission-has-no-intention-to-revise-the-free-movement-directive/>.

amendment, since Member States are already authorised to take measures against marriages of convenience under Article 35 on abuse of rights⁴³.

Therefore, since the *Metock* Case, Ireland has not included specific requirements, which are not provided for in the Directive, for TCN family members in order to obtain the right of residence.

1.2.5. Conditions attached to the right of permanent residence beyond Article 16 of the Directive

The 2015 Regulations effectively transposed **Article 16 of the Directive (right of permanent residence)**⁴⁴. However, **the required documentation to obtain a permanent residence card seems to go beyond what is permitted by the Directive**. In addition to the personal details of the EU citizen, it requires the original passport/national identity card, duration of residence of the applicant in Ireland, occupation of the applicant in Ireland, duration of employment in Ireland and, if no longer in employment/self-employment, reasons for cessation (e.g. retirement, incapacity, occupational illness). Additionally, the 'Immigration Reference Number', if any, and the Irish PPS number, a declaration of any criminal record and photographs and other documentary evidence⁴⁵.

No other transposition issues have been identified.

⁴³ S. Mullaly, F. O'Reagan, H. Bekker, 'Report on the Free Movement of Workers in Ireland in 2012-2013', July 2013, p. 15.

⁴⁴ Regulation 12 of S.I. No. 548 of 2015.

⁴⁵ Schedule 4 of S.I. No. 548 of 2015; European Report on the Free Movement of Workers in Europe in 2012-2013, February 2014, p. 7.

2. IMPLEMENTATION OF THE DIRECTIVE: DESCRIPTION OF THE MAIN PERSISTING BARRIERS

KEY FINDINGS

- **EU citizens** may experience a number of persisting barriers in exercising their free movement and residence rights in Ireland. In terms of gaining **entry**, a fundamental obstacle is the continued application of **border controls** between Ireland's borders and the rest of the EU.
- EU citizens may also face numerous obstacles in accessing the Irish **social security** system. For example, **frontier workers** encounter substantial difficulties in **obtaining welfare benefits** due to the habitual residence condition. **Delays** in issuing social security documents have also been a recurrent problem for many people.
- EU citizens also encounter **other** difficulties in exercising their free movement rights due to **administrative** and **bureaucratic** obstacles. For example, people experience difficulties in getting a PPS number in order to work in Ireland, and frontier workers face obstacles in accessing vocational training/schools, again due to the HRC imposed in Ireland.
- **Family members of EU citizens** also face significant obstacles in exercising their free movement and residence rights in Ireland. TCN family members face a number of **difficulties in obtaining an entry visa: fees** have been charged, very **long delays** have been frequently encountered, and **extra documentation** is often required. Surprisingly, there are **no facilities** for issuing visas at airports, ports, etc., making the right to an accelerated procedure for visas unavailable in practice. A recurrent obstacle for TCN family members in obtaining visas is the **issue of dependency**.
- In terms of **residence** rights, family members of EU citizens encounter numerous obstacles in obtaining a residence card: they face onerous requirements (e.g. requests for **extra documentation**) from the authorities; there are **unlawful delays** in the determination of reviews of decisions to refuse applications, and **excessive fees**. The GNIB subject applicants for the initial five-year residency permit to an **intensive interview process** without notice.
- TCN family members experience a number of barriers in accessing **social protection**, including: **poor information** provision, **verbal abuse**, **discriminatory behaviour** and **delays**. They also face difficulties in accessing **employment**, with frequent reports that they have been required to have a **residence card** before taking up employment.

2.1. Main barriers for EU citizens themselves

2.1.1. Entry

A fundamental obstacle for EU nationals and their family members seeking to exercise their free movement rights in Ireland is the **continued application of border controls between Ireland's borders and the rest of the EU**⁴⁶. In addition, in Ireland, there is **no appeal against refusal of EU citizens at an airport, ferry port or at the land border**⁴⁷. Refusal of permission to enter Ireland is regulated by the Immigration Act 2004⁴⁸. While there is an obligation to provide reasons, in writing, for the refusal of permission to enter, the decision of an immigration officer is not subject to appeal⁴⁹. A person seeking to challenge such a refusal would have to resort to judicial review proceedings before the High Court, which would have to be initiated from abroad and cannot result in a wrongful decision being replaced by a lawful one. In such cases, where the High Court quashes a wrongful decision to refuse entry into the State, the matter is referred back to the original decision maker for the making of a new decision, without any guarantee that that decision would then be to permit entry to the State⁵⁰. These elements raise serious doubts in relation to the compatibility with Articles 30 and 31 of the Free Movement Directive.

2.1.2. Residence

EU nationals are not required to register in Ireland⁵¹. Complaints have been made by EU nationals that they face **difficulties in obtaining a permanent residence card**⁵². They are subjected to onerous **requirements** (the amount of documentation required) and **delays** in getting a permanent residence card⁵³. Processing of a permanent residence card in Ireland routinely takes up to **six months**, which is hardly compatible with Article 19(2) of the Directive, which provides that the document shall be issued as soon as possible⁵⁴.

2.1.3. Access to social security and healthcare

A 2010 study by the Irish Centre for Cross Border studies, *'Measuring mobility in a changing island'*⁵⁵, reported that frontier workers commuting between Ireland and the UK encounter **substantial difficulties in claiming welfare benefits**⁵⁶. In Ireland, the **habitual residence condition** (HRC) is complicated to apply, making access to social welfare, including jobseekers' allowance, difficult for migrants and frontier workers. This condition was introduced in 2004 for obtaining certain social assistance/welfare payments.

⁴⁶ S. Mullaly, F. O'Reagan, H. Bekker, 'Report on the Free Movement of Workers in Ireland in 2012-2013', July 2013, p. 31.

⁴⁷ European Report on the Free Movement of Workers in Europe in 2012-2013, February 2014, p. 8.

⁴⁸ Section 4(3) of the Immigration Act 2004, No.1 of 2004, available at: <http://www.irishstatutebook.ie/eli/2004/act/1/enacted/en/html>.

⁴⁹ S. Mullaly, F. O'Reagan, H. Bekker, 'Report on the Free Movement of Workers in Ireland in 2012-2013', July 2013, p. 31.

⁵⁰ Ibid.

⁵¹ Information obtained through consultation with stakeholder (Immigrant Council of Ireland, March 2016).

⁵² Your Europe Advice, Quarterly Feedback Report No. 4: Quarter 2/2013 (April-June), p. 9.

⁵³ European Parliament, Comparative study on the application of Directive 2004/38/EC 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, Brussels, March 2009, p. xi.

⁵⁴ European Report on the Free Movement of Workers in Europe in 2012-2013, February 2014, p. 7.

⁵⁵ J. Shiels & A. O'Kane, 'Measuring Mobility in a Changing Island', EURES, May 2010, available at: <http://borderpeople.info/cross-border-mobility>, p. 35.

⁵⁶ European Commission, 'Comparative Report- Frontier Workers in the EU: Report prepared under Contract No VC/2013/0300-Fressco', January 2015, p. 18.

Operation Guidelines on the HRC (updated in September 2012) make it clear that those entitled to social advantages under Article 7(2) of Regulation (EU) No. 492/2011 – which includes Supplementary Welfare Allowance – cannot be subject to the HRC⁵⁷. However, the authorities must be satisfied that the person concerned qualifies as a ‘worker’ under EU law. The HRC has, therefore, also become an issue for returning emigrants to Ireland, who are often refused social welfare assistance on the basis that they have ‘lost’ their habitual residence in the State. This issue has been raised in the Dáil (Irish parliament) on a number of occasions, most recently in July 2013, when the Minister for Social Protection stated that before a decision can be made regarding a person’s habitual residence it must be established whether the person has a legal right to reside in the State, and that all Irish nationals have this right⁵⁸.

Obstacles have been encountered for frontier workers in accessing **child benefits** in Ireland. For example, if you are an employee in Ireland but your place of residence is outside of Ireland (e.g. Northern Ireland), in order to obtain child benefits the Irish authority requires a letter signed by your employer every three months. This requirement is not imposed on Irish workers working in Ireland⁵⁹.

A number of complaints have been made about an **absence of communication and cooperation between Irish social security authorities and other national authorities**⁶⁰. For example, the Irish social security authorities refused to engage with their UK counterparts to exchange information required to deal with a citizen’s application for child benefits in Ireland as required under Regulation 987/2009/EC. As a result, the citizen has not received child benefits⁶¹. There is also a lack of consistency between the social security systems in Northern Ireland and the Republic of Ireland, and a lack of access to advice and information available to people about the interaction of the two systems⁶².

Delays have also been reported **in issuing social security documents**⁶³. For example, a Lithuanian woman left her job in Ireland in July 2013 to return to Lithuania. However, Irish authorities have delayed the sending out of the U1 form for a period longer than six months, as a result of which she was unable to register with an employment agency in Lithuania and apply for social benefits⁶⁴.

Complaints about the **non-application of the principle of aggregation** regarding sickness benefits have also been reported⁶⁵. For example, a pregnant Latvian national working in Ireland travelled to Latvia. While there, she became ill and was obliged to remain there until after the birth of her baby. Her Irish General Practitioner (GP) refused to sign the necessary documentation to enable her to claim illness benefit from Ireland,

⁵⁷ Department of Social Protection, ‘Supplement to Habitual Residence Condition Guidelines’, available at: <http://www.welfare.ie/en/Pages/Habitual-Residence-Condition--Guidelines-for-Deciding-Offic.aspx#app3>; European Report on the Free Movement of Workers in Europe in 2012-2013, February 2014, p. 88.

⁵⁸ The Irish Immigrant Support Centre (NASC), ‘PQ: Social Welfare Code Issues (HRC)’, 29 July 2008, available at: <http://www.nascireland.org/campaign-for-change/social-protection/pq-social-welfare-code-hrc/>; European Report on the Free Movement of Workers in Europe in 2012-2013, February 2014 p. 89.

⁵⁹ Ibid.

⁶⁰ Your Europe Advice, Quarterly Feedback Report No. 4: Quarter 2/2013 (April-June), p. 9.

⁶¹ Your Europe Advice, Quarterly Feedback Report No. 11: Quarter 1/2015 (January-March), p. 38.

⁶² Specialised Seminar on Free Movement of Workers, Dublin, Ireland, 5 November 2010, Mr. Les Allamby (Director, Law Centre, Northern Ireland).

⁶³ Your Europe Advice, Quarterly Feedback Report No. 7: Quarter 1/2014 (January-March), p. 8.

⁶⁴ Your Europe Advice, Quarterly Feedback Report No. 7: Quarter 1/2014 (January-March), p. 46.

⁶⁵ Your Europe Advice, Quarterly Feedback Report No. 8: Quarter 2/2014 (April-June), p. 5.

claiming that she is not entitled to illness benefit from Ireland as she is not currently in Ireland⁶⁶.

2.1.4. Others

Administrative services

Administrative services for EU citizens exercising their free movement rights in Ireland are considered 'poor'⁶⁷. Those seeking help and advice from the Irish Naturalisation & Immigration Service (INIS) in relation to their applications for residence cards, find it difficult to contact the organisation. The telephone contact details for INIS provided on the website are a lo-call number (i.e. a number prefixed by 1850 or 1890), which can only be used within Ireland, and a general contact number, linked to an automated system with a considerable waiting period to talk to an operator⁶⁸. Frequently, the automated advisor will advise that the helpline operators are so busy they cannot deal with the call and advises the caller to 'try again later'. In addition, telephone call hours are limited to between 10am and 12.30pm on Tuesdays and Thursdays⁶⁹. If the applicant seeks information from the local immigration officer at a Garda station, he/she will often receive conflicting information due to a lack of knowledge at local level⁷⁰.

Work

Numerous complaints relate to the fact that **Ireland often does not recognise professional qualifications from other Member States**. For example, an experienced radiographer moved to Ireland and sent a detailed application for the professional recognition of her qualifications to the competent authority, with the intention of undertaking work in her professional field. Two years after receiving the receipt of acknowledgement, among other correspondence, the Irish competent authority continues to refuse to make any decision on the application⁷¹. A citizen, qualified as a dietician in Portugal, began employment in Ireland in 2008, in an acute care hospital. Although the profession is regulated in Portugal, it is not regulated at present in Ireland. When she asked that her qualifications be recognised by the Irish Department of Health, they responded that they would not take into account the six and a half years that she worked in the hospital because she was not under any formal supervision there, despite working as part of a team. The Department of Health is now imposing a test in order to approve her qualifications⁷².

One recurring obstacle for which complaints have been made to the Your Europe Advice Service is that of **accessing a PPS number** (which is required to work in Ireland). For example, in the case of two people in a relationship and sharing a household, where the lease, utility bills, etc. are in the name of one of the partners, the other can find it very difficult to provide sufficient evidence to be granted a PPS number and take up work⁷³.

⁶⁶Your Europe Advice, Quarterly Feedback Report No. 8: Quarter 2/2014 (April-June), p. 30.

⁶⁷ European Parliament, Comparative study on the application of Directive 2004/38/EC 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, Brussels, March 2009, p. xi.

⁶⁸ Irish Naturalisation & Immigration Service, available at : <http://www.inis.gov.ie/>.

⁶⁹ European Parliament, Comparative study on the application of Directive 2004/38/EC 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, Brussels, March 2009, p. 119.

⁷⁰Ibid, p. 124.

⁷¹ Your Europe Advice, Quarterly Feedback Report No. 7: Quarter 1/2014 (January-March), p. 57.

⁷² Your Europe Advice, 'Quarterly Feedback Report No. 8: Quarter 2/2014 (April-June)', p 44.

⁷³ Information obtained through consultation with stakeholder (Your Europe Advice Service, March 2016).

EU citizens experience considerable **difficulty in getting a PPS number**, as the authorities (i.e. the Department of Social Protection) ask for an offer of employment (i.e. a letter confirming a job offer) before issuing the number⁷⁴. This policy shift came about in early 2015⁷⁵.

Education

In Ireland, access to **vocational training** is linked to the receipt of certain social welfare payments, which in turn may be subject to a HRC. Frontier workers, given the nature of their work and travel, cannot be deemed to be habitual residents in Ireland and subsequently have little or no access to vocational schooling and/or training⁷⁶.

Vehicles

Some **issues have been reported with driving licences and vehicles**. One petitioner claimed that he was subjected to a lengthier process than normal when exchanging his Maltese driving licence for an Irish one. During this period, he was not permitted to drive⁷⁷. A Croatian resident in Ireland complained that he was denied an Irish driving licence⁷⁸. Complaints have also been made by EU citizens that they have paid double vehicle taxes for the same period, as a result of differences in national taxation systems⁷⁹.

Marriage

As will be discussed further in Section 3, the Civil Registration (Amendment) Act 2014⁸⁰ established a process whereby a registrar who is of the opinion that an intended marriage would constitute a marriage of convenience, or who receives an objection to this effect, can refer the matter for investigation⁸¹. This applies to both Irish and non-Irish EU citizens marrying people from outside of the EU. A staff dispute, however, has prevented such investigations from taking place, with civil registrars refusing to carry out these interviews, citing lack of training. This has led to people not being able to proceed with their wedding as a result. Therefore, **marriages involving an Irish person/EU citizen and someone from outside the EU are effectively being blocked indefinitely**, which does not constitute an appropriate measure by which to combat marriages of convenience, as foreseen by Article 35 of the Free Movement Directive⁸².

2.2. Main barriers for family members of EU citizens

2.2.1. Entry

As described in Section 2.1.1, the continued application of border controls between Ireland and the rest of the EU remains a fundamental obstacle for EU nationals and their family

⁷⁴ Information obtained through consultation with stakeholder (KOD Lyons Solicitors, March 2016); Information obtained through consultation with stakeholder (Jeanne Boyle Solicitors, March 2016).

⁷⁵ Information obtained through consultation with stakeholder (Jeanne Boyle Solicitors, March 2016).

⁷⁶ European Commission, 'Comparative Report- Frontier Workers in the EU: Report prepared under Contract No VC/2013/0300-Fressco', January 2015, p 36.

⁷⁷ Petition no. 1818/2014 to the European Parliament.

⁷⁸ Your Europe Advice, 'Quarterly Feedback Report No. 8: Quarter 2/2014 (April-June)', p 47.

⁷⁹ Your Europe Advice, 'Quarterly Feedback Report : Quarter 3/2015 (July-September)', p 54.

⁸⁰ Civil Registration (Amendment) Act 2014, No.34 of 2014, available at: <http://www.irishstatutebook.ie/eli/2014/act/34/enacted/en/pdf>.

⁸¹ Section 18 of the Civil Registration (Amendment) Act 2014, No.34 of 2014, available at: <http://www.irishstatutebook.ie/eli/2014/act/34/enacted/en/pdf>.

⁸² N. Ryan, 'Sham Marriage dispute: 'My partner's parents had their flights booked, but now our wedding can't happen'', 26 November 2015, Press Release, available at: <http://www.thejournal.ie/irish-citizens-sham-marriages-2468290-Nov2015/>; Information obtained through consultation with stakeholder (Immigrant Council of Ireland, March 2016).

members seeking to exercise free movement rights in Ireland⁸³. A further problem is the lack of appeal against refusal of TCN family members at airports, ferry ports or at the land border⁸⁴.

The 2015 Regulations introduced facilities for family members to acquire an entry visa: 'the Minister shall grant qualifying family members (i.e. TCN family members) every facility to obtain an Irish visa and, on the basis of an accelerated process, consider an application for an Irish visa from a qualifying family member referred to in subparagraph (a) as soon as possible and if the Minister decides to issue an Irish visa that visa shall be issued free of charge'⁸⁵. However, the absence of facilities for issuing visas at airports, ports, etc. in Ireland means that this provision exists solely on paper⁸⁶. **The right to an accelerated procedure for visas is not available in practice in Ireland**⁸⁷. For example, the procedures employed at Dublin Airport for family members of EU nationals are lacking, as there is no facility whereby a visa, if it were in fact necessary, could be issued immediately. The **High Court**, in the case of *Raducan & anor. v Minister for Justice, Equality and Law Reform & ors.*, determined that the fact that such visas cannot be obtained at Dublin Airport and that a TCN spouse can only apply online from abroad for such a visa '*clearly is a manifest breach of Article 5(2), since it could hardly be said that the State has afforded 'such persons every facility to obtain the necessary visas'*⁸⁸. The State was also found to be in breach of the obligation imposed by Article 5(4) of the Directive to afford every reasonable opportunity to such persons to obtain the necessary documents to corroborate or prove by other means that he or she was covered by the right of free movement and residence provided for by the Directive⁸⁹. Mr Justice Hogan concluded that '*[O]ne need hardly add that the absence of such a facility means that the State is also plainly failing in its obligation to issue such visas "as soon as possible and on the basis of an accelerated procedure"*' and held that '*[T]here was thus a clear breach of the Directive in that Ms. Raducan was not offered the possibility of securing a visa on her arrival at Dublin Airport*'. The visa regime has remained unchanged since the above judgment was delivered on 3 June 2011 (i.e. Ireland has not taken any steps to provide visa processing facilities at airports, ports, etc.)⁹⁰. **This means that Ireland remains in breach of the Free Movement Directive in this regard.**

The 2015 Regulations neither differentiate nor make any reference to a differentiation between TCN family members of EU citizens and TCNs.

A number of **practical obstacles exist for family members to obtain an entry visa in Ireland**. These are described below.

- **Issuance of visas**

In a number of cases, visas have been issued for a **reduced duration**⁹¹. For example, one complaint concerned a visa which was granted for only two months rather than three months⁹². Another complaint concerned the mother of a British citizen who was issued with

⁸³ S. Mullaly, F. O'Reagan, H. Bekker, 'Report on the Free Movement of Workers in Ireland in 2012-2013', July 2013, p. 31.

⁸⁴ European Report on the Free Movement of Workers in Europe in 2012-2013, February 2014, p. 8.

⁸⁵ Regulation 4(3)(b) of S.I. No. 548 of 2015.

⁸⁶ Information obtained through consultation with stakeholder (Immigrant Council of Ireland, March 2016).

⁸⁷ Your Europe Advice, Quarterly Feedback Report No. 6: Quarter 4/2013 (October-December), p. 22.

⁸⁸ *Raducan v Minister for Justice, Equality and Law Reform* [2011] IEHC 224, 3 June 2011; S. Mullaly, F. O'Reagan, H. Bekker, 'Report on the Free Movement of Workers in Ireland in 2012-2013', July 2013, p. 32.

⁸⁹ See, e.g., Hilka Becker 'Immigrants and the Law in Ireland', address to the Burren Law School, 4 June 2013.

⁹⁰ S. Mullaly, F. O'Reagan, H. Bekker, 'Report on the Free Movement of Workers in Ireland in 2012-2013', July 2013, p. 32; Information obtained through consultation with stakeholder (KOD Lyons Solicitors, March 2016).

⁹¹ Your Europe Advice, Quarterly Feedback Report No. 7: Quarter 1/2014 (January-March), p. 8.

⁹² Your Europe Advice, Quarterly Feedback Report No. 7: Quarter 1/2014 (January-March), p. 26.

a one-month visa by the Irish authorities, despite the fact that she intended to remain in Ireland for up to three months⁹³.

A number of complaints have also been made in respect of the **fees** charged for the issuing of visas⁹⁴.

Very long **delays** in issuing entry visas have also been experienced⁹⁵, with evidence that some family members have waited **up to eight** weeks for a visa⁹⁶. Other complaints have been made that it has taken **12 weeks or several months** for a visa to be issued⁹⁷. In addition, delays in issuing visas range **from seven to eight months**⁹⁸. In the past year, there has been a dramatic increase in the number of naturalised British citizens (coming originally from other countries e.g. Bangladesh) coming to work in Ireland. Visa applications have been made for their family members. Given the increased numbers, huge delays in processing the visa applications occurred as a result. A number of high court judicial review applications have been taken in relation to these delays and the fact that Ireland is **in breach of the requirement to have an accelerated visa processing system in place**⁹⁹. In these cases, the British citizens have not yet moved to Ireland¹⁰⁰. There are also a number of cases pending hearing before the courts where the EU citizens have already moved to Ireland and have been separated from their family members by up to a year because of the delays in issuing visas to their non-EU family members¹⁰¹. As these **cases are awaiting a hearing or are ongoing** at the moment, no judgment is available yet¹⁰².

- **Application process of visas**

Barriers reported regarding the visa application process concern **extra documentation requirements** and the **refusal to process visa applications**¹⁰³. For example, one complaint concerned a non-EU family member of a British citizen who travelled to Ireland with his British spouse and was refused entry without a justified reason. As a non-EU national married to a British citizen he is exempt from an entry visa. As a result, he was sent back to the country of departure without his family, incurring a loss of more than EUR 3000¹⁰⁴.

Complaints have been made about the **lack of information** available regarding visas. Some websites offer confusing information regarding visa requirements and do not clearly mention the visa exemption for family members of EU citizens¹⁰⁵. Difficulties contacting certain embassies were also reported¹⁰⁶.

- **Dependency Issue**

⁹³ Your Europe Advice, Quarterly Feedback Report No. 10: Quarter 4/2014 (October-December), p. 18.

⁹⁴ Quarterly Report October-December 2015, p. 10; Your Europe Advice, Quarterly Feedback Report No. 4: Quarter 2/2013 (April-June), p. 9.

⁹⁵ Quarterly Report October-December 2015, p. 5; Your Europe Advice, Quarterly Feedback Report No. 4: Quarter 2/2013 (April-June), p. 9.

⁹⁶ See, e.g., Hilkka Becker "Immigrants and the Law in Ireland", address to the Burren Law School, June 4.

⁹⁷ Quarterly Report October-December 2015, p. 18.

⁹⁸ Information obtained through consultation with stakeholder (Your Europe Advice Service, March 2016).

⁹⁹ Information obtained through consultation with stakeholder (Trinity College Dublin, March 2016).

¹⁰⁰ Information obtained through consultation with stakeholder (KOD Lyons Solicitors, March 2016).

¹⁰¹ Information obtained through consultation with stakeholder (Trinity College Dublin, March 2016).

¹⁰² Ibid.

¹⁰³ Quarterly report October-December 2015, p. 10; Your Europe Advice, Quarterly Feedback Report No.2: Quarter 3/2012 (July-September), p. 11.

¹⁰⁴ Your Europe Advice, Quarterly Feedback Report No. 10: Quarter 4/2014 (October-December), p. 20.

¹⁰⁵ Your Europe Advice, Quarterly Feedback Report: Quarter 3/2015 (July-September), p. 15.

¹⁰⁶ Your Europe Advice, Quarterly Feedback Report: Quarter 3/2015 (July-September), p. 14.

There is an issue of what constitutes **dependency** for TCNs in obtaining entry visas and no clear guidance is provided¹⁰⁷. It is very difficult, therefore, to prove dependency and this has been an issue for TCNs in obtaining entry visas as a result. For example, in one case (*Kuhn v Minister for Justice*) a German national married an Egyptian national¹⁰⁸. The Egyptian national wanted to bring her dependent sister and parents to Ireland (stating that they were dependent on her emotionally and financially). Forty-four visa applications were made on their behalf. The High Court held that the Minister had applied the wrong test for assessing dependency under EU law. The applicant made the case that the Egyptian family was dependent upon the Irish family for the essentials of life. Though the officials engaged with this concept, they never set out the *Jia* test in making their decisions (i.e. 'that whether or not the condition of dependency is fulfilled should be determined objectively, taking account of the individual circumstances and personal needs of the person requiring support')¹⁰⁹. The appropriate test is whether, in the light of those personal circumstances, the dependent's financial means permit him to live at the minimum level of subsistence in the country of his normal residence, assuming that is not the Member State in which he is seeking to reside. In addition, it should be established that it is not a temporary situation, but that it is structural in character¹¹⁰. In the end, her sister and parents were issued with Class C holiday visas. They are now living in Ireland under refugee status and were not allowed to enter the State under Directive 2004/38/EC¹¹¹.

Some **petitions** have been made to the European Union regarding issues experienced by TCN family members in gaining entry to Ireland. For example, one petitioner and his Russian wife moved to Ireland but whilst his wife had a visa for three months, she received a stamp in her passport for one month with restrictions prohibiting employment. The European Commission considered this to be contrary to Directive 2004/38/EC and suggested that the petitioner sought recourse via the SOLVIT network. It stated that it was monitoring legislative developments in Ireland relating to the adoption of amendments¹¹². Another petitioner claimed that his non-EU brother has the right to join him in Ireland under the family reunification provisions in Directive 2004/38/EC, although his visa application was refused by the Irish embassy in Abuja. The petitioner was informed that the Directive only applies to EU citizens and that, given that the applicant is not eligible for family reunification pursuant to Directive 2003/86/EC, Irish national law applied in this instance¹¹³.

2.2.2. Residence

Family members of EU citizens experience numerous obstacles in **obtaining a residence card**.

As mentioned above, in Ireland, the principal problems encountered by TCN family members, prior to the *Metock* ruling, concerned the **need to show prior lawful residence in another Member State** in order to obtain residence cards¹¹⁴. If this could

¹⁰⁷ Information obtained through consultation with stakeholder (Your Europe Advice Service, March 2016); Information obtained through consultation with stakeholder (Jeanne Boyle Solicitors, March 2016).

¹⁰⁸ *Kuhn v Minister for Justice* [2013] IEHC 424.

¹⁰⁹ *Jia v Magrationsverket* (Case-1/05) [2007] 1 KB 545.

¹¹⁰ *Jia v Magrationsverket* (Case-1/05) [2007] 1 KB 545 at para 96.

¹¹¹ Information obtained through consultation with stakeholder (Jeanne Boyle Solicitors, March 2016).

¹¹² Petition no. 0190/2012 to the European Parliament.

¹¹³ Petition no. 1002/2012 to the European Parliament.

¹¹⁴ C-127/08 *Metock and others* [2008] ECR 00000; European Parliament, Comparative study on the application of Directive 2004/38/EC 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, Brussels, March 2009, p 115.

not be demonstrated, a residence card was refused and the applicant was threatened with **deportation**¹¹⁵. In a number of cases, the applicant was deported¹¹⁶. This adversely affected a large number of couples and was the subject of numerous complaints to, *inter alia*, the European Commission, the Immigrant Council of Ireland and the Migrant Rights Centre of Ireland¹¹⁷. Since the decision in *Metock*, this **no longer presents a problem** for TCN family members¹¹⁸.

Numerous complaints regarding **onerous requirements**, in particular **extra documentation** required for the issuance of residence cards, have been reported. For example, one complaint concerned an applicant who was required to provide details of his occupation, his PPS number, the declaration of any criminal record and his immigration history¹¹⁹. In another case, excessive documentation was required from the non-EU spouse of an EU citizen employed in Ireland, in order to obtain a residence card (evidence of employment, tax slips, electricity bills, rental contract, etc.)¹²⁰. This is a **violation of the Directive**, as it goes beyond what is required under Article 10 (issuance of residence cards)¹²¹.

Irish authorities have granted themselves the **right to retain passports** for a period of four to six weeks when an application is being made for a residence card¹²². This prevents such applicants from travelling during this time as a result¹²³.

Excessive delays have been encountered by non-EU family members awaiting residence cards¹²⁴. Many complaints refer to residence cards not being issued within the required six month period¹²⁵. Residence card applications have increased dramatically in the past year in Ireland, resulting in lengthy delays in the processing of such applications¹²⁶. The requirement that a notice of acknowledgement shall 'immediately' be issued is not always respected in practice, being received in some cases weeks or even months later¹²⁷. Residence card applications can take at least four weeks to be acknowledged¹²⁸, within which time the family member is unable to work¹²⁹.

During 2011, a number of cases came before the High Court in which applicants complained of **unlawful delays** in the determination of reviews of decisions to refuse EU Treaty Rights **review applications**. The difficulties caused for applicants was further compounded by the Minister's practice not to extend the temporary permission granted to a person the subject of an EU Treaty Rights application during the period when a decision on the review was pending.

¹¹⁵ European Parliament, Comparative study on the application of Directive 2004/38/EC 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, Brussels, March 2009, p. 116.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ C-127/08 *Metock and others* [2008] ECR 00000.

¹¹⁹ Your Europe Advice, Quarterly Feedback Report: January-March 2015, p.32.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Your Europe Advice, Quarterly Feedback Report: April-June 2015, p. 30.

¹²³ Your Europe Advice, Quarterly Feedback Report: July-September 2015, p. 18.

¹²⁴ Your Europe Advice, Quarterly Feedback Report: October-December 2015, p. 27; Information obtained through consultation with stakeholder (Your Europe Advice Service, March 2016).

¹²⁵ Your Europe Advice, Quarterly Feedback Report: April-June 2013, p. 25.

¹²⁶ Information obtained through consultation with stakeholder (The Irish Immigrant Support Centre (NASC), March 2016).

¹²⁷ Brazil, P., 'The Irish experience of the Citizens Directive' paper delivered at Invisible EU Migrants Training Seminar for NGOs and Legal Practitioners, European Parliament Information Office in Ireland, 26 February 2015.

¹²⁸ Information obtained through consultation with stakeholder (KOD Lyons Solicitors, March 2016).

¹²⁹ Ibid.

The first case in which the High Court addressed the issue of the acceptable timeframe for determination of review applications was *El Menkari v Minister for Justice, Equality and Law Reform*¹³⁰. The applicants' initial application for a residence card pursuant to the Regulations was refused on the basis of an alleged inconsistency in the proof of address furnished by the applicants to the Minister. The applicants thereafter submitted an application for a review of that refusal, and subsequently instituted judicial review proceedings complaining of the delay in determining that review; at the time of the hearing of the substantive judicial review application, the decision on the review was outstanding for a period of eight months. **Judge Cooke was satisfied that the Minister had unlawfully delayed in the determination of the appeal and accordingly granted an order of mandamus directing the Minister to determine the appeal within 28 days.** A similar conclusion was reached in the cases of *Saleem v Minister for Justice, Equality and Law Reform*¹³¹, *Chikhi v Minister for Justice, Equality and Law Reform*¹³² and *Mohamud v Minister for Justice, Equality and Law Reform*¹³³.

Excessive fees have also been charged for issuing residence cards. For example, one complaint concerned a non-EU family member who was required to pay an application fee of EUR 300 for her residence card because her husband was unemployed when she made the application¹³⁴.

It has also been reported that the GNIB subjects applicants for the initial five-year residency permit to an **intense interview process** without any forewarning/letter indicating that they will have to go through this rigorous interview process¹³⁵.

The notice of acknowledgement of an application for a residence card is usually (although not always) accompanied by confirmation that the applicant is entitled to a temporary six month stamp 4, allowing the holder to work pending a decision on the application. In 2010 the Department of Justice sought to **restrict TCN family members** who had applied for a residence card **from working, pending a decision on the application**. Instead, the acknowledgement of application was accompanied by a letter allowing the applicant to register on stamp 3 dependent conditions (which prohibited the holder from taking up employment or self-employment). The legality of this measure was challenged in *Decsi & Levalda v Minister for Justice, Equality and Law Reform*¹³⁶, and the attempt to limit the rights of TCN family members in this way was strongly criticised by Judge Cooke, who held: 'the entitlement of the spouse of an EU citizen to take up employment is not dependent upon and delayed until the issue of the residence card but is exercisable at least as from the receipt of the acknowledgment of the application'¹³⁷. Accordingly, the **court concluded that the applicant was entitled to take up employment as and from the date of receipt of the notice of acknowledgement**. If, within the period of six months, the residence card is lawfully refused, this right to take up employment shall be revoked with retroactive effect¹³⁸.

Difficulties have also been reported in obtaining a permanent residence card for TCN family members. A non-EU family member married to a British citizen and living in

¹³⁰ *El Menkari v Minister for Justice, Equality and Law Reform* [2011] IEHC 29.

¹³¹ *Saleem v Minister for Justice, Equality and Law Reform* [2011] IEHC 49.

¹³² *Chikhi v Minister for Justice, Equality and Law Reform* [2011] IEHC 53.

¹³³ *Mohamud v Minister for Justice, Equality and Law Reform* [2011] IEHC 54.

¹³⁴ Your Europe Advice, Quarterly Feedback Report: April-June 2014, p. 25.

¹³⁵ Information obtained through consultation with stakeholder (Jeanne Boyle Solicitors, March 2016).

¹³⁶ *Decsi & Levalda v Minister for Justice, Equality and Law Reform* [2010] IEHC 342.

¹³⁷ *Ibid* at para.22.

¹³⁸ Brazil, P., 'The Irish experience of the Citizens Directive' paper delivered at Invisible EU Migrants Training Seminar for NGOs and Legal Practitioners, European Parliament Information Office in Ireland, 26 February 2015.

Ireland for more than five years, for example, had his application for permanent residency refused on the basis that his wife had not worked continuously for five years¹³⁹.

Interestingly, no issues were found in practice regarding the notion of **sufficient resources**¹⁴⁰. Two stakeholders consulted both indicated that they had not dealt with a case where an applicant had been refused a residence permit on grounds of a lack of sufficient resources¹⁴¹. However, in the case of *Singh and Others v Minister for Justice and Equality*¹⁴², the Minister for Justice argued that sufficient resources could not be derived wholly or partly from TCN family members, but must come only from the EU citizen in question¹⁴³. A reference was made to the CJEU. The CJEU clarified that the term to 'have sufficient resources' must be interpreted as meaning that it suffices that such resources are available to the EU citizen, and there is no requirement as to the origin of the resources, and thus can be provided by the spouse of the EU citizen¹⁴⁴.

Some **petitions** have also been made to the European Parliament regarding issues experienced by TCN family members in gaining residence rights in Ireland. For example, a petitioner who is the estranged husband of a Latvian national is resident in Ireland. As his residence permit will shortly expire, the Irish authorities informed him that his application for renewal will not be considered because he is no longer the spouse of an EU national and is not recognised as the parent of an EU child. The European Commission considered that the Irish authorities may have misinformed the petitioner and advised him to submit a complaint directly with the Commission should he have problems enforcing his rights¹⁴⁵.

2.2.3. Access to social security and healthcare

In addition to the barriers described in Section 2.1.3, the report 'Person or Number' revealed that migrants in general experience a number of barriers in accessing social protection. These include: poor information provision, verbal abuse, discriminatory behaviour (especially towards **Roma** from Romania and Bulgaria), significant delays in the processing of applications, obstruction in the processing of applications, a marked resistance to grant a payment to Roma people, misapplication of the HRC, excessive requests for additional and unnecessary documentation, and lack of knowledge about the rights and entitlements of migrants in accessing social protection¹⁴⁶.

¹³⁹ Your Europe Advice, Quarterly Feedback Report: July-September 2013, p. 35.

¹⁴⁰ Information obtained through consultation with stakeholder (Your Europe Advice Service, March 2016).

¹⁴¹ Information obtained through consultation with stakeholders (Immigrant Council of Ireland, March 2016 and Your Europe Advice Service, March 2016).

¹⁴² *Singh v Minister for Justice and Equality* ECLI:EU:C:2015:476.

¹⁴³ Information obtained through consultation with stakeholder (Trinity College Dublin, March 2016).

¹⁴⁴ 'EU Treaty Rights Retention Cases- The Court of Justice Decision in *Singh and Others v Minister for Justice and Equality*', Brophy Solicitors Website, available at: <http://brophysolicitors.ie/eu-treaty-rights-retention-cases-the-court-of-justice-decision-in-singh-and-others-v-minister-for-justice-and-equality/>.

¹⁴⁵ Petition No. 1940/2012 to the European Parliament.

¹⁴⁶ In from the margins - Roma in Ireland: Addressing the Structural Dimension of the Roma Community in Ireland', 30 May 2013, available at: <http://www.nascireland.org/wp-content/uploads/2013/05/NASC-ROMA-REPORT.pdf> p. 50.

2.2.4. Others

Work

In relation to access to employment for TCNs, the Irish authorities insist that such family members must have a **residence card before taking up employment**¹⁴⁷. A number of complaints have been made with respect to this requirement, as it creates difficulties in circumstances where a temporary Stamp 4 entitling the holder to work is not given during the period in which an applicant's application is being reviewed¹⁴⁸. Although applicants can seek a concession, this is not applied uniformly¹⁴⁹.

¹⁴⁷ Your Europe Advice, Quarterly Feedback Report: October-December 2014, p. 4; Your Europe Advice, Quarterly Feedback Report: July-September 2014, p. 6.

¹⁴⁸ Ibid.

¹⁴⁹ Ms. Catherine Cosgrave, Senior Solicitor, Immigrant Council of Ireland, 'Free Movement: Key Issues for EC Nationals and Their Family Members' in seminar P. 3; Specialised Seminar on Free Movement of Workers, Dublin, Ireland, 5 November 2010, p. 9.

3. DISCRIMINATORY RESTRICTIONS TO FREE MOVEMENT

KEY FINDINGS

- **Discrimination based on nationality:** issues reported concern EU citizens and TCN family members experiencing discrimination in accessing employment, using vehicles, accessing education and getting married in Ireland. EU citizens (especially British citizens) of Middle Eastern origin face difficulties in getting a PPS number in order to work, as the authorities ask for an offer of employment before issuing the PPS number. The GNIB are reportedly biased against TCNs marrying EU citizens.
- **Discrimination on grounds of civil status/sexual orientation:** No issues have been reported for EU citizens and TCNs. There is no difference in treatment between same-sex partners/spouses who are Irish nationals and those who are EU citizens/TCNs in exercising their free movement and residence rights.
- **Discrimination based on race or ethnicity:** Roma face a considerable amount of discrimination in Ireland. For example, they are frequently charged with the offence of failure to produce identity documents on demand without a reasonable excuse which is not applied as an offence to Irish nationals. In addition to facing barriers and discrimination in accessing social protection, there are widespread deportations of Roma from Ireland.

3.1. Discrimination based on nationality

- **Access to employment**

As mentioned above **EU citizens (especially British citizens) who are of Middle Eastern origin** experience difficulty in getting a PPS number in order to work, as the authorities ask for an offer of employment before issuing the number¹⁵⁰. This could be considered discrimination on the ground of nationality.

- **Vehicles**

Discrimination based on nationality regarding the use of vehicles in Ireland by EU citizens has been a recurrent problem. The main issues concern **insurance companies charging higher fees to EU citizens than they do to Irish citizens**. A number of complaints and **petitions** have been made in this regard. For example, one petitioner claimed that his car insurance premium was 44% higher because he holds a Maltese driving licence and not an Irish one¹⁵¹. One complaint concerned the fact that an insurance company charged higher fees to a Czech citizen because he had a Belgian driving licence, rather than an Irish one¹⁵². Another complaint related to the fact that an Irish insurance company charged a 15% higher premium to the holder of a Polish driving licence who was living in Ireland¹⁵³. Discriminatory treatment in respect of penalty points has also been encountered by EU citizens, with one such case study described below.

¹⁵⁰ Information obtained through consultation with stakeholder (KOD Lyons Solicitors, March 2016).

¹⁵¹ Petition no. 1819/2014 to the European Parliament.

¹⁵² Your Europe Advice, Quarterly Feedback Report: July-September 2014, p. 48.

¹⁵³ Your Europe Advice, Quarterly Feedback Report: October-December 2014, p. 55.

Case study: Discriminatory treatment regarding penalty points

A Polish national residing in Ireland committed a traffic offence for which he received penalty points. His penalty points are preserved until his Polish licence expires, after which all penalty points accumulated will be placed on his new Irish licence. This is discriminatory treatment by comparison with Irish driving licence holders whose points are placed on their licence but which expire after three years¹⁵⁴.

- **Access to education**

Some cases of discriminatory treatment encountered by EU citizens and TCN family members in accessing education have also been reported. The main problems concern **discrimination** encountered by EU citizens and TCN family members **in accessing vocational training and in the allocation of internships**. For example, a British/Canadian student living and studying in Ireland sought to apply for an internship to complete his medical training in Ireland. However, he discovered that he was being discriminated against in comparison to Irish students in the allocation of the internships. Those students who applied to study medicine in Ireland through the national third level entrance system's Central Applications Office (CAO) are prioritised over non-CAO students. This operates as indirect discrimination against non-Irish students¹⁵⁵. In a January 2013 report, the **Council of Europe Committee of Social Rights** found a lack of equality in access to vocational training for nationals of other States in Ireland¹⁵⁶. The report states that the length of residence condition which applies to access to vocational training amounts to **indirect discrimination**, as nationals of other States lawfully residing or working in Ireland are potentially more often affected by this condition than Irish nationals¹⁵⁷.

- **Marriage**

As will be described in further detail in Section 4, there is a high prevalence of TCN men (e.g. Pakistanis) marrying Eastern European and Portuguese women in Ireland in order to get a residence permit. The **Garda Vantage Point Project** has introduced an **interview assessment procedure for EU citizens and TCNs who have applied to get married in Ireland**. There is no evidence to indicate if this interview assessment procedure is being applied to all EU citizens and TCN marriage applications, or just to Eastern European/Portuguese/Pakistanis. This could therefore be considered **racial profiling** and thus could be **discrimination** based on nationality¹⁵⁸. One stakeholder described a case where the marriage registration officers refused to allow the marriage of a Pakistani man to a UK citizen, subjecting her client (the Pakistani man) to racial comments and telling him to go back to Pakistan¹⁵⁹. It has also been reported that the GNIB are biased against TCN immigrants marrying EU citizens¹⁶⁰.

¹⁵⁴ Your Europe Advice, Quarterly Feedback Report: April-June 2014, p. 49.

¹⁵⁵ Your Europe Advice, Quarterly Feedback Report: October-December 2015, p. 45.

¹⁵⁶ European Committee of Social Rights, Conclusions 2012 (IRELAND) Articles 1, 9, 10, 15, 18, 20, 24 and 25 of the Revised Charter (January 2013) available at:

http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/Ireland2012_en.pdf; European Report on the Free Movement of Workers in Europe in 2012-2013, February 2014, p. 69.

¹⁵⁷ European Report on the Free Movement of Workers in Europe in 2012-2013, February 2014, p. 69.

¹⁵⁸ Information obtained through consultation with stakeholder (Immigrant Council of Ireland, March 2016).

¹⁵⁹ Information obtained through consultation with stakeholder (Jeanne Boyle Solicitors, March 2016).

¹⁶⁰ Ibid.

3.2. Discrimination based on civil status/sexual orientation

The Marriage Act 2015 legalised same-sex marriages in Ireland¹⁶¹. In addition, the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 recognises same-sex partnerships in Ireland.

Ireland does not distinguish between same-sex spouses and different sex spouses of non-Irish EU citizens and their family members for the purposes of entry and residence rights¹⁶². Married and unmarried same-sex partners are included in the definition of 'family member' for the purposes of free movement¹⁶³. There is no difficulty for a TCN to apply for residence status under the permit of his/her same-sex partner. The authorities only require evidence of the relationship with the same sex partner¹⁶⁴. No discrimination issues in accessing free movement and residence rights are reported with respect to civil status/sexual orientation¹⁶⁵. Same-sex unions, either marriages or civil unions, entered into abroad are recognised in Ireland¹⁶⁶.

Ireland recognises EU citizens' marriages, civil partnerships and duly attested relationships, including with a TCN, without any discrimination between same-sex and different sex couples, for the purposes of entry and residence, as well as in family law.

3.3. Discrimination based on ethnic/racial origin

The European Commission found that the National Traveller Roma Integration Strategy was lacking in that Ireland met only four of the 22 criteria used to assess strategies¹⁶⁷. This outcome indicates that this group continues to face considerable integration challenges in Ireland¹⁶⁸. For example, members of the Roma community are frequently charged with the offence of failure to **produce identity documents** on demand without a reasonable excuse¹⁶⁹ and concerns had been raised that this **may be in breach of the equal treatment provisions contained in Article 24 of Directive 2004/38/EC as this**

¹⁶¹ Ireland, Marriage Act No. 35 of 2015, signed by the President of Ireland on 29 October 2015.

¹⁶² FRA, 'Protection against discrimination on grounds of sexual orientation, gender identity and sex characteristics in the EU: Comparative legal analysis Update 2015', available at: http://fra.europa.eu/sites/default/files/fra_uploads/protection_against_discrimination_legal_update_2015.pdf, p. 82.

¹⁶³ Ibid, p. 90.

¹⁶⁴ Information obtained through consultation with stakeholder (Immigrant Council of Ireland, March 2016)

¹⁶⁵ Information obtained through consultation with stakeholder (Your Europe Advice Service, March 2016); Information obtained through consultation with stakeholder (Jeanne Boyle Solicitors, March 2016).

¹⁶⁶ Section 5 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (No.24 of 2010), available at: <http://www.irishstatutebook.ie/eli/2010/act/24/enacted/en/html>; FRA, 'Protection against discrimination on grounds of sexual orientation, gender identity and sex characteristics in the EU: Comparative legal analysis Update 2015', available at: http://fra.europa.eu/sites/default/files/fra_uploads/protection_against_discrimination_legal_update_2015.pdf, p. 84.

¹⁶⁷ European Commission, 'The European Union and Roma-Country Factsheet: Ireland', available at: http://ec.europa.eu/justice/discrimination/files/roma_country_factsheets_2013/ireland_en.pdf; S. Mullaly, F. O'Reagan, H. Bekker, 'Report on the Free Movement of Workers in Ireland in 2012-2013', July 2013, p. 3.

¹⁶⁸ S. Mullaly, F. O'Reagan, H. Bekker, 'Report on the Free Movement of Workers in Ireland in 2012-2013', July 2013, p. 3.

¹⁶⁹ Section 12 of the Immigration Act 2004 No.1 of 2004, available at: <http://www.irishstatutebook.ie/eli/2004/act/1/enacted/en/html>.

requirement has not been applied to Irish nationals¹⁷⁰. There have also been **widespread deportations of Roma from Ireland**¹⁷¹.

A report published in 2013 by the Irish Immigrant Support Centre (NASC)¹⁷² highlighted a number of areas presenting particular barriers to integration for the Roma community in Ireland, and which constitute structural discrimination¹⁷³. For example, as indicated in Section 2.2.3 above, migrants, particularly Roma, experience a number of **barriers and discrimination in accessing social protection**. Counter staff and deciding officers are reluctant to grant social welfare payments to Roma and they are frequently subjected to **verbal abuse, racist comments and discriminatory behaviour**, sometimes from counter staff in Social Welfare Offices. For example, one Roma man reported being told by frontline staff to go to his own country to apply for his social welfare payments¹⁷⁴.

On the other hand, the Your Europe Advice Service has **not received any complaints of discrimination against Roma and discrimination on grounds of racial or ethnic origin** in accessing free movement and residence rights in recent years¹⁷⁵. One stakeholder also indicated that she was not aware of cases of discrimination against Roma (or discrimination against persons on grounds of racial or ethnic origin) in exercising their free movement and residence rights in Ireland¹⁷⁶.

Although the European Commission against Racism and Intolerance concluded that the Gardaí do not engage in racial profiling, other sources suggest that non-Irish nationals may be subject to such treatment. The lack of legislation outlawing racial profiling increases the risk of this practice¹⁷⁷. Sources including the **UN Committee on the Elimination of Racial Discrimination** state that, 'there are reports that many non-Irish people are subjected to **police stops** and are required to produce identity documents, which in practice can result in racist incidents and the profiling of individuals on the basis of the colour of their skin'¹⁷⁸.

¹⁷⁰ Specialised Seminar on Free Movement of Workers, Dublin, Ireland, 5 November 2010, <http://www.ru.nl/law/cmr/projects/fmow-2/seminars-fmw/sem-2010-dublin/>; S. Mullaly, F. O'Reagan, H. Bekker, 'Report on the Free Movement of Workers in Ireland in 2012-2013', July 2013, p. 11.

¹⁷¹ 'Key Issues in Free Movement in Ireland, Seminar-Law Society of Ireland, 5 November 2010 Record of Proceedings', 5 November 2010, p. 1.

¹⁷² In the margins - Roma in Ireland: Addressing the Structural Dimension of the Roma Community in Ireland', 30 May 2013, p. 45, available at <http://www.nascireland.org/wp-content/uploads/2013/05/NASC-ROMA-REPORT.pdf>.

¹⁷³ Ibid, p. 45.

¹⁷⁴ Ibid, p. 50.

¹⁷⁵ Information obtained through consultation with stakeholder (Your Europe Advice Service, March 2016).

¹⁷⁶ Information obtained through consultation with stakeholder (Jeanne Boyle Solicitors, March 2016).

¹⁷⁷ S. Mullaly, F. O'Reagan, H. Bekker, 'Report on the Free Movement of Workers in Ireland in 2012-2013', July 2013, p. 4.

¹⁷⁸ S. Mullaly, F. O'Reagan, H. Bekker, 'Report on the Free Movement of Workers in Ireland in 2012-2013', July 2013, p. 31.

4. MEASURES TO COUNTER ABUSE OF RIGHTS

KEY FINDINGS

- **Measures to combat marriages of convenience:** Operation Vantage was established in 2015 by the GNIB to investigate illegal immigration, with a particular focus on marriages of convenience due to the growth in sham marriages in Ireland. Sixteen people were arrested for engaging in marriages of convenience, nine of whom were subsequently deported from the State. The Office of the Registrar General now has the power to investigate a couple prior to agreeing to a marriage.
- **Measures to combat accessing free movement and residence rights through fraudulent means:** The measures impose a **fine or imprisonment** on a person who gives false information or makes any false or misleading statements or declarations, who destroys/conceals/forges documents or who sells or supplies forged documents for the purposes of exercising free movement and residence rights.
- **No information is yet available** on whether these measures disproportionately affect free movement and residence rights and on how frequently they are implemented.

Article 35 of the Directive was transposed effectively into the 2015 Regulations by providing that the right to entry or residence shall be refused or revoked if it is based on abuse of rights or fraud (such as marriage/civil partnership of convenience)¹⁷⁹. Enquiries may be made to obtain such information as is reasonably necessary to investigate such an abuse of rights or fraud¹⁸⁰. In addition, a **written notification** shall be given to the person concerned, setting out the reasons for the refusal and giving the person 21 days within which to give submissions as to why the right, entitlement or status should not be revoked¹⁸¹.

4.1. Marriage of convenience

The 2015 Regulations contain a number of references to marriages of convenience. Principally, the Regulations state that the term 'spouse' does not include a party to a marriage of convenience¹⁸². The 2015 Regulations also provide that the Minister may disregard a particular marriage/civil partnership where he or she deems or determines it to be one of convenience¹⁸³. Where the Minister has reasonable grounds for considering that the marriage/civil partnership is one of convenience, he or she may send a **notice** to the parties concerned, to provide within the **time limit** specified, such information as is reasonably necessary, to satisfy the Minister that the marriage/civil partnership is not one of convenience¹⁸⁴. Where the parties concerned fail to provide such information within the time limit specified, **the Minister may deem the marriage/civil partnership to be one of convenience**¹⁸⁵.

¹⁷⁹ Regulation 27 of S.I. No. 548 of 2015.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Regulation 2(1) of S.I. No. 548 of 2015.

¹⁸³ Regulations 28 and 29 of S.I. No. 548 of 2015.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

Operation Vantage was established by the GNIB on 10 August 2015, with the objective of **investigating illegal immigration with a particular focus on marriages of convenience** as defined under the Civil Registration Act 2014¹⁸⁶. There is increasing concern about the growth in so-called 'sham marriages', as evidenced by statistically improbable patterns of marriages. These include a large number of new notifications by males from the Indian sub-continent (e.g. Pakistan, India, Bangladesh) of intention to marry females from EU countries such as Portugal and Eastern European countries. On 25 November 2015, a large number of searches across the country were conducted, on both business and residential premises, to gather evidence of suspected fraud offences related to the organised facilitation of marriages of convenience. The focus of the operation specifically targeted those engaged in the organised facilitation of sham marriages for financial gain (i.e. criminal networks providing false documentation)¹⁸⁷. It also targeted those seeking to gain illegal immigration status by engaging in such arranged marriages (i.e. the men pay up to EUR 20,000 for the marriage, which grants them EU Treaty rights and enables them and their families to reside and work in Europe)¹⁸⁸. Gardaí claim that criminal networks are profiting considerably from such practices, with the Criminal Assets Bureau tracking EUR 27m through one individual's accounts¹⁸⁹. **Sixteen people have been arrested in relation to marriages of convenience, nine of whom were subsequently deported from the State**¹⁹⁰. Operation Vantage is ongoing and forms part of the overall response of the Department of Justice and Equality to prevent marriages of convenience from taking place. This includes a review of relevant applications by INIS, with a view to revoking immigration permission which may have been obtained under false pretences¹⁹¹.

In addition, the Office of the Registrar General has been granted more extensive powers to prevent the institution of marriage being abused for immigration purposes. The Registrar will now have the power to **investigate a couple prior to agreeing to a marriage**. Basing its opinion on evidence available from both parties, the body has the right to refuse a marriage registration form if they feel that a marriage is not legitimate¹⁹².

No effects of these measures to combat marriages of convenience on free movement and residence rights have been reported or found through the information reviewed. The Your Europe Advice Service has not received any complaints in respect of marriages of convenience¹⁹³.

It is interesting to note that none of the complaints filed as a result of the *Metock* ruling related to marriage of convenience. Regarding these cases, the Department of Justice never once refused a residence permit on grounds of a marriage of convenience, they were all refused on grounds that the TCN had not lived in another Member State before coming

¹⁸⁶ Civil Registration (Amendment) Act 2014, S.I. No. 34 of 2014, available at: <http://www.irishstatutebook.ie/eli/2014/act/34/enacted/en/pdf>.

¹⁸⁷ RTE News, '11 arrested over marriage-of-convenience fraud', 22 December 2015, Press Release, available at: <http://www.rte.ie/news/ireland/2015/1125/749111-marriages/>.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

¹⁹⁰ Bardon, S., 'Marriage registrars fail to comply with rules on sham unions', 24 September 2015, Press Release, available at: <http://www.irishtimes.com/news/politics/marriage-registrars-fail-to-comply-with-rules-on-sham-unions-1.2365149>.

¹⁹¹ Department of Justice and Equality, Irish Naturalisation and Immigration Service, 'Immigration in Ireland: Annual Review 2015', available at: <http://www.justice.ie/en/JELR/INIS%20-%20Immigration%20in%20Ireland%20Annual%20Review%202015.pdf/Files/INIS%20-%20Immigration%20in%20Ireland%20Annual%20Review%202015.pdf>, p. 11.

¹⁹² Sheils McNamee, M., 'Couples suspected of entering sham marriages in Ireland will be investigated', 18 August 2015, Press Release, available at: <http://www.thejournal.ie/powers-crack-down-sham-marriages-convenience-change-2278510-Aug2015/>.

to Ireland. Therefore, not one application was turned down for being deemed a marriage of convenience/immigration fraud¹⁹⁴.

4.2. Fraud

Ireland has adopted measures to combat accessing free movement and residence rights through fraudulent means (including giving/making any false or misleading statement/declaration/information, destroying/concealing documents with intent to deceive, forging/fraudulently altering any document for reward, selling/supplying forged documents)¹⁹⁵. The 2015 Regulations provide that a person who is found guilty of one of the abovementioned offences is liable to pay a **fine** not exceeding EUR 100,000, or to be sentenced to **imprisonment** for a term not exceeding three years, or both¹⁹⁶.

No information has been found on the **effects of these measures on free movement and residence rights**. Moreover, **no information** has been found on **how frequently these measures** are **implemented**.

¹⁹³ Information obtained through consultation with stakeholder (Your Europe Advice Service, March 2016).

¹⁹⁴ Information obtained through consultation with stakeholder (Immigrant Council of Ireland, March 2016).

¹⁹⁵ Regulation 30 of S.I. No. 548 of 2015.

¹⁹⁶ Regulation 30 of S.I. No. 548 of 2015.

5. REFUSAL OF ENTRY OR RESIDENCE AND EXPULSIONS OF EU CITIZENS AND THEIR FAMILY MEMBERS

KEY FINDINGS

- Ireland applies the **restrictions on the right to entry and residence** on the grounds of public security and health in a manner **consistent with the Directive**. However, it is arguable that there are instances where the application of the restrictions based on public policy have been **based exclusively on previous criminal convictions**, contrary to the 2015 Regulations.
- There are no known cases of EU citizens being **refused entry** into Ireland. **TCN family members** may be refused entry if, for example, they are required to have a visa to enter but have neither applied for, nor received, a visa when they seek to enter the State.
- TCN family members may be **refused a residence card** in Ireland for a number of reasons: they have not given evidence that they are a family member of an EU citizen; they have not provided the proper documentation; on a technicality; they are not able to prove that they are dependent on the EU citizen; or they claimed to be employed in Ireland when that was not the case.
- Many of the causes for **expulsion** from Ireland relate to a **person's conduct** (i.e. **criminal convictions**), and there is extensive case law in this regard. As described earlier, nine people were recently deported from Ireland due to being involved in marriages of convenience. There are no cases of an EU citizen/TCN family member being expelled from Ireland on purely economic grounds.

5.1. Refusal of entry or residence

Ireland applies the restrictions to the right to entry and residence on the grounds of public security and health in a manner which is **consistent with the Directive**. However, it is arguable that there are instances of the application of the restrictions based on public policy being exclusively based, in practice, **on previous criminal convictions** (described further in the case law in Section 5.2)¹⁹⁷. Despite this, the **2015 Regulations** state that a previous criminal conviction shall not in itself constitute a ground for restricting somebody's right to freedom of movement and residence on grounds of public policy and public security¹⁹⁸. No clear administrative guidelines are in place in Ireland with regard to restrictions on the right to free movement and residence based on public policy, public security or public health¹⁹⁹.

Refusal of entry does not appear to be overly problematic in principle²⁰⁰. Although some cases have been reported, it is not clear how widespread such cases are²⁰¹. One reason for

¹⁹⁷ Information obtained through consultation with stakeholder (Trinity College Dublin, March 2016).

¹⁹⁸ Regulation 18(4) of S.I. No. 548 of 2015.

¹⁹⁹ Information obtained through consultation with stakeholder (Immigrant Council of Ireland, March 2016).

²⁰⁰ According to the stakeholder consulted, he has never seen a case of an EU citizen being refused entry into Ireland. (KOD Lyons Solicitors, March 2016).

refusal of entry to some **TCN is if they are required to have a visa but have neither applied for, nor received, a visa when they seek to enter the State**²⁰².

Residence rights may be refused to a TCN if: they have not given sufficient evidence that they are a family member of an EU citizen, they have not provided the proper documentation, or on a technicality²⁰³. In addition, TCN family members may be refused a residence card if they are unable to prove that they are dependent on the EU citizen²⁰⁴. A residence card can also be refused when an applicant claims to be employed in Ireland when that is not the case²⁰⁵. **This seems to go beyond the requirements for restricting the right of residence as provided for in the Directive** (Article 27).

It should be noted that any decision issued by the Department of Justice regarding entry/residence permits is private (i.e. no public information is available on their reasoning). Any information available is only through a public court judgment²⁰⁶. Therefore it is difficult to provide information on refusals of entry or residence as no such public court judgements have been found regarding this issue.

5.2. Expulsions of EU citizens and their family members

In accordance with the Directive, the 2015 Regulations indicate that a **removal order** may be made in respect of a person who is no longer entitled to be in the State, or who represents a danger for public policy or public security by reason of the fact that his or her personal conduct represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society²⁰⁷.

Ireland does not exclude expulsion as an automatic consequence of recourse to the social assistance system in its legislation²⁰⁸. **In practice**, stakeholders confirm that **no expulsions** are made on the ground of being an unreasonable burden on the social assistance system, nor are there any complaints on this issue²⁰⁹. It also appears that Ireland does not expel EU citizens and/or their family members from Ireland on purely economic grounds²¹⁰. However, Article 27(1) of the Directive (i.e. 'these grounds shall not be invoked to serve economic ends') is not mentioned in the 2015 Regulations.

The moment a person is served with a custodial sentence it triggers a proposal to issue a removal order²¹¹. Many of the causes for such expulsions are therefore due to a person's conduct (i.e. **criminal conduct**)²¹². A number of cases (of which some decisions are under

²⁰¹ The stakeholder mentioned one case of a client who was a non-EU citizen, whose spouse was an EU citizen, who was refused entry and returned (the information in this case is confidential and the reasons for refusal of entry could not be disclosed). (KOD Lyons Solicitors, March 2016).

²⁰² Information obtained through consultation with stakeholder (Immigrant Council of Ireland, March 2016).

²⁰³ Ibid.

²⁰⁴ Information obtained through consultation with stakeholder (Your Europe Advice Service, March 2016).

²⁰⁵ Ibid.

²⁰⁶ Information obtained through consultation with stakeholder (Immigrant Council of Ireland, March 2016).

²⁰⁷ Regulation 21 of S.I. No. 548 of 2015.

²⁰⁸ Article 14(3) of Directive 2004/38/EC; European Commission, Report on the application 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, COM(2008) 840 final p. 7; U. Neergaard, C. Jacqueson, N. Holst-Christensen, Union Citizenship: development, impact and challenges, XXVI FIDE Congress in Copenhagen 20014, Congress Publications vol. 2, DJØF Publishing, Denmark, 2014, p. 650.

²⁰⁹ Information obtained through consultation with stakeholder (Immigrant Council of Ireland, Your Europe Advice Service and KOD Lyons Solicitors, March 2016).

²¹⁰ Information obtained through consultation with stakeholder (KOD Lyons Solicitors, March 2016); Information obtained through consultation with stakeholder (Your Europe Advice Service, March 2016).

²¹¹ Information obtained through consultation with stakeholder (KOD Lyons Solicitors, March 2016).

²¹² Ibid.

review²¹³, while others have been quashed²¹⁴) concern removal and exclusion orders which have been made against persons on the ground that, following their criminal conviction, their remaining in the State is contrary to public policy.

However, in the recent 2016 case *Balc v Minister for Justice*²¹⁵, the Minister for Justice and Equality made a removal order which imposed an exclusion period of five years against the applicant for reasons of being a serious risk to public policy, as the applicant had served a prison sentence for sexual assault²¹⁶. This decision was deemed lawful by the court²¹⁷.

Nine people were removed or deported from the State for their involvement in marriages of convenience²¹⁸.

No other reasons for expulsions have been found through the research conducted.

As noted in Section 1.2 above, Article 30 of the Directive (notification of decisions restricting a person's free movement and residence rights) was effectively transposed by the 2015 Regulations²¹⁹. However, **Article 31 of the Directive concerning procedural safeguards has not been sufficiently transposed in the 2015 Regulations**. While Article 31(1) was sufficiently transposed²²⁰, there remain some **minor gaps in transposition of Articles 31(2), 31(3) and 31(4) of the Directive**, as described in Section 1.2 above.

²¹³ *Kovalenko v Minister for Justice* [2014] IEHC 624: the applicant was a Latvian citizen who was convicted of rape and sentenced to seven years imprisonment in the State. Subsequent to his release in 2011 he was informed of a proposal to issue a removal order against him on the basis that it would be contrary to public policy to permit him to remain in the State. In May 2013 the Minister made a removal order against the applicant and also made an order excluding him from the State for 10 years. The applicant subsequently applied for a review of this decision. It was submitted that the Minister ought not to have made a removal order on the basis of a single conviction. The applicant was unsuccessful in his application for a review, and in June 2013 the removal and exclusion orders were affirmed. The applicant subsequently instituted judicial review proceedings seeking to quash the review decision. Judge McDermott rejected the applicant's complaints in relation to the substantive basis for the Minister's decision, such as the purported failure to have regard to the fact that the applicant's conviction related to a single incident. Judge McDermott thus made orders quashing the decision of the respondent to affirm the removal order and exclusion order made against the applicant, noting that, as a result, the review remained to be concluded.

Similarly, in *P.R. v Minister for Justice* [2015] IEHC 201 P.R. was sentenced to imprisonment in respect of six counts of sexual assault. INIS issued a removal order against him which contained an exclusion order for a ten year period. The reason given was that P.R. had come to the attention of the Gardaí and appeared before the courts in respect of a number of sexual offences and the Minister had formed the opinion that his conduct was such that it would be contrary to public policy to permit him to remain in the State. The court has granted the applicant leave to apply for judicial review of the decision.

²¹⁴ In *DS v Minister for Justice* [2015] IEHC 643, the applicant (who was convicted and sentenced to imprisonment for rape, and who completed his sentence in 2013) sought leave to apply for judicial review quashing the Minister's decision that he should leave the state and imposing a fiveyear period of exclusion on D.S. from the date of his removal from the State. The reason for the proposal was D.S.'s conviction and sentence for the Section 4 offence and the Minister's opinion that his conduct was such that 'it would be contrary to public policy to permit him to remain in the State'. The court was satisfied that the decision ought to be quashed due to the fundamentally flawed procedure adopted in the review process.

²¹⁵ *Balc v Minister for Justice* [2016] IEHC 47.

²¹⁶ *Ibid* at para 44-45.

²¹⁷ *Ibid* at para 130-131.

²¹⁸ Bardon, S., 'Marriage Registrars fail to comply with rules on sham unions', 24 September 2015, Press Release, available at: <http://www.irishtimes.com/news/politics/marriage-registrars-fail-to-comply-with-rules-on-sham-unions-1.2365149>.

²¹⁹ Regulations 21(1) and 21(2) of S.I. No. 548 of 2015.

²²⁰ Regulation 25 of S.I. No. 548 of 2015.

6. CONCLUSIONS

It can be concluded that **the majority of Directive 2004/38/EC has been correctly and fully transposed into Irish law. However, some transposition issues still remain**, e.g. the fact that Ireland does not exclude expulsion as an automatic consequence of recourse to the social assistance system.

EU citizens (particularly **frontier workers**), **TCN family members** and **Roma** face **numerous obstacles** in accessing their free movement and residence rights in Ireland. There have been frequent complaints of such people being prevented or having encountered a number of difficulties in entering Ireland, obtaining residence and permanent residence cards, accessing the social security system, accessing employment, accessing vocational training/schools, obtaining Irish driving licences and getting married in Ireland. The causes of such obstacles are varied. Frontier workers face obstacles in accessing welfare benefits and in accessing vocational training/schools due to the HRC imposed in Ireland. Excessive bureaucracy, such as onerous requirements (e.g. extra documentation is often required for visas/residency documents), excessive delays, excessive fees, lack of information, and difficulties in contacting the relevant authorities, seem to be the main causes of such obstacles.

With regard to **discrimination based on nationality**, there have been some recurrent instances of EU citizens and TCN family members experiencing discrimination in accessing employment, using vehicles, accessing education and getting married in Ireland. No reports have been identified of discrimination on grounds of civil status/sexual orientation of EU citizens and TCN family members in exercising their free movement and residence rights in Ireland. **Roma** are reported to face a considerable amount of discrimination in Ireland (e.g. they are frequently charged with the offence of failure to produce identity documents on demand without a reasonable excuse, an offence not applied to Irish nationals, there are widespread deportations of Roma from Ireland, and they also face discrimination in accessing the social protection system in Ireland).

The 2015 Regulations provide **measures to combat abuse** of the right to free movement and residence through **marriages of convenience**, civil marriages of convenience and other **fraudulent means**. Operation Vantage was recently established by the GNIB to investigate illegal immigration, with a particular focus on marriages of convenience.

The main reasons and data for refusals of entry and residence and expulsions from Ireland are **not publicly available**, with only limited information available from stakeholders and case law. TCN family members may be refused a residence card in Ireland for a number of reasons: they have not given evidence that they are a family member of an EU citizen; they have not provided the proper documentation; on a technicality; they are not able to prove that they are dependent on the EU citizen; or they claimed to be employed in Ireland when that was not the case. Many of the expulsions from Ireland related to a **person's conduct** (i.e. criminal convictions).

ANNEX I: TRANSPOSITION OVERVIEW TABLE

Table 1: Transposition overview

Directive's provisions	National provisions	Assessment	Changes since 2008
Article 3(2) Beneficiaries: - Family members - Partners	Regulation 5(1) of S.I. No. 548 of 2015	In line with the Directive	The 2008 Commission assessment report made no reference to Ireland having incorrectly transposed Article 3(2) of the Directive.
Articles 5(1) and 5(2) Right of entry - No entry visa or equivalent formality may be imposed on Union citizens - To facilitate granting third country family members the necessary entry visas	S.I. No. 548 of 2015: Regulations 4(1), 4(2), 4(3)(a), 4(3)(b) and 5(8)(a)	Incomplete transposition The 2015 Regulations have not transposed a part of Article 5(1) of the Directive which stipulates that: 'No entry visa or equivalent formality may be imposed on Union citizens'. The 2015 Regulations do not seem to have effectively transposed the requirement of a visa exemption for family members holding a residence card issued by another Member State. However, this is effectively transposed through Regulation 3 of the Immigration Act 2004 (Visas) Order 2014 (S.I. No. 473/2014 (see next column). The rest of Regulation 4 is in line	The 2008 Commission report made no reference to Ireland having incorrectly transposed Articles 5(1) and 5(2) of the Directive. It only mentioned that, in relation to Article 5(2), Ireland does not provide for the visa exemption for family members holding a residence card issued by another Member State ²²¹ . Regulation 4(3)(a) and 5(8)(a) of the 2015 Regulations indicate that: 'A qualifying/permitted family member who is not a member of a class of non-nationals specified in an order made under section 17 of the

²²¹European Commission, Report on the application 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, COM(2008) 840 final, p 5.

Directive's provisions	National provisions	Assessment	Changes since 2008
		with Articles 5(1) and 5(2) of the Directive	Immigration Act 2004 (No.1 of 2004) as not requiring an Irish visa shall be in possession of a valid Irish visa as a condition of being granted permission to enter the State'. No other mention of visa exemptions for family members holding a residence card issued by another Member State is made in the 2015 Regulations. However, Regulation 3 of the Immigration Act 2004 (Visas) Order 2014 (S.I. No. 473/2014) provides a visa exemption for family members holding a residence card issued by another Member State ²²² . Therefore, this exemption has been effectively transposed in Irish legislation.
Article 6 Right of residence up to three months without any conditions or any formalities other than an ID	Regulation 6(1) of S.I. No. 548 of 2015	Incorrect transposition Regulation 6(1)(b) adds as a condition not to become an unreasonable burden on the social welfare system of the State. This is contrary to the Directive. The rest of Regulation 6(1) is in line with Article 6 of the Directive	The 2008 Commission assessment report made no reference to Ireland having incorrectly transposed Article 6 of the Directive.

²²² Immigration Act 2004 (Visas) Order 2014, S.I. No. 473/2014, available at: <http://www.irishstatutebook.ie/eli/2014/si/473/made/en/print>.

Directive's provisions	National provisions	Assessment	Changes since 2008
Articles 7(1) and 7(2) Right of residence more than three months for EU citizens and their family members based on employment, sufficient resources or student status	S.I. No. 548 of 2015: Regulations 6 (3)(a) and 6(3)(b)	In line with the Directive	The 2008 Commission assessment report made no reference to Ireland incorrectly transposing Articles 7(1) and 7(2) of the Directive. However, the report stated that Article 7(3) had not been correctly transposed in Ireland and that, concerning family members of students, Ireland had not made use of the option of Article 7(4) to restrict the scope only to the spouse and dependent children ²²³ . Article 7(3) and 7(4) have subsequently been correctly and effectively transposed by Regulations 6(3)(c), 6(4) and 6(5) of the 2015 Regulations.
Article 14 Retention of residence rights as long as they do not become an unreasonable burden on the social assistance system	Regulation 11(1) of S.I. No. 548 of 2015	Incomplete transposition The 2015 Regulations do not include a provision stipulating that Ireland does not exclude expulsion as an automatic consequence of recourse to the social assistance system.	According to the 2008 Commission report, Ireland does not exclude expulsion as an automatic consequence of recourse to the social assistance system ²²⁴ . Nor do the 2015 Regulations include such a provision (i.e. no change

²²³ European Commission, Report on the application 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, COM(2008) 840 final, p. 6.

²²⁴ European Commission, Report on the application 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, COM(2008) 840 final, p. 7.

Directive's provisions	National provisions	Assessment	Changes since 2008
			has been made).
Article 16 Right of permanent residence	Regulation 12 of S.I. No. 548 of 2015	In line with the Directive	The 2008 Commission assessment report made no reference to Ireland incorrectly transposing Article 16 of the Directive.
Article 24(1) Equal treatment	Regulation 17 of S.I. No. 548 of 2015	In line with the Directive Regulation 17 goes into detail about the rights to which a resident is entitled to in the same way as an Irish national (e.g. the right of travel in, to or from the State, to carry on any business trade or profession, access to education and training, to receive medical care and services).	The 2008 Commission assessment report made no reference to Ireland incorrectly transposing Article 24(1) of the Directive.
Article 27 Restriction on the freedom of movement and residence of Union citizens and their family members, on grounds of public policy, public security or public health	Regulations 18(1), 18(4), 19(1), 20(1), 23(1), 26(1), 26(2) and 26(3) of S.I. No. 548 of 2015	Incomplete transposition While the transposition is mostly in line with the Directive, there are however some important gaps in transposition. The following are not mentioned in the 2015 Regulations: Article 27(1): 'These grounds shall not be invoked to serve economic ends'.	The 2008 Commission report mentioned that Article 27 (material safeguards) had not been correctly transposed in Ireland ²²⁵ . The 2015 Regulations have transposed Article 27 of the Directive in Regulation 18.

²²⁵ European Commission, Report on the application 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, COM(2008) 840 final, p. 8.

Directive's provisions	National provisions	Assessment	Changes since 2008
		<p>Article 27(2): 'Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted'.</p> <p>Article 27(3): 'Such enquiries shall not be made as a matter of routine'.</p> <p>Article 27(4): 'public health' is not mentioned as a ground</p>	
Article 28 Protection against expulsion	Regulations 20(5), 20(6) and 21(3) of S.I. No. 548 of 2015	In line with the Directive	The 2008 Commission report stated that Ireland had not correctly transposed Article 28 (material safeguards) ²²⁶ . The 2015 Regulations have since transposed Article 28 of the Directive effectively through Regulation 20(5), 20(6) and 21(3).
Article 35 Abuse of rights	Regulation 27 of S.I. No. 548 of 2015	In line with the Directive	The 2008 Commission report made no reference to Ireland incorrectly transposing Article 35 of the Directive.

²²⁶ European Commission, Report on the application 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, COM(2008) 840 final, p. 8

ANNEX II: DATA ON REFUSALS AND EXPULSIONS

Table 2: Data on refusal of entry, refusal of residence and expulsions

Data	2012	2013	2014	2015 if available	Reasons
Refusal of entry	2,204 non-EEA nationals' visa applications refused: 87 TCN family members ²²⁷ no EU national or TCN family member has been refused leave to land in Ireland ²²⁸	1,890 non-EEA nationals' visa applications refused: 55 TCN family members ²²⁹ no EU national or TCN family member has been refused leave to land in Ireland ²³⁰	Visa applications refused: 109 TCN family members ²³¹ no EU national or TCN family member has been refused leave to land in Ireland ²³²	Visa applications refused: 486 TCN family members ²³³ no EU national or TCN family member has been refused leave to land in Ireland ²³⁴	
Refusal of residence	N/A	N/A	N/A	N/A	Reasons for refusing applications for EU1 residence cards: EU citizen not exercising rights (Article

²²⁷ Information obtained through freedom of information request to the Department of Justice and Equality, April 2016.

²²⁸ Ibid.

²²⁹ 'Parliamentary Question: Immigration Controls (Refusals at Port of Entry Data)', 28 January 2014, NASC website, available at: <http://www.nascireland.org/parliamentary-questions/pq-immigration-controls-refusal-port-entry-data/>; Information obtained through freedom of information request to the Department of Justice and Equality, April 2016.

²³⁰ Information obtained through freedom of information request to the Department of Justice and Equality, April 2016.

²³¹ 'Parliamentary Question: Immigration Controls (Refusals at Port of Entry Data)', 28 January 2014, NASC website, available at: <http://www.nascireland.org/parliamentary-questions/pq-immigration-controls-refusal-port-entry-data/>; Information obtained through freedom of information request to the Department of Justice and Equality, April 2016.

²³² Information obtained through freedom of information request to the Department of Justice and Equality, April 2016.

²³³ 'Parliamentary Question: Immigration Controls (Refusals at Port of Entry Data)', 28 January 2014, NASC website, available at: <http://www.nascireland.org/parliamentary-questions/pq-immigration-controls-refusal-port-entry-data/>; Information obtained through freedom of information request to the Department of Justice and Equality, April 2016.

²³⁴ Information obtained through freedom of information request to the Department of Justice and Equality, April 2016.

					<p>7), failure to submit supporting documents, false information or fraudulent documents, not a family member of a Union citizen ; not an eligible Union citizen (e.g. Irish), not residing in the State, public policy or public security</p> <p>Reasons for not accepting applications for EU1 residence cards:</p> <p>Duplicate application, insufficient evidence of identity, not a family member of a Union citizen, Not an eligible</p>
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					Union citizen (e.g. Irish) ²³⁵
Expulsion	Over 2,600 deported/removed (unspecified): 33 EU nationals were returned to their countries of origin on foot of an EU removal order ²³⁶ . 82 removal orders were made against EU citizens. ²³⁷ 55 individuals (unspecified) were removed from the State in accordance with the 2006 & 2008 Regulations ²³⁸	Deported/removed: approximately 2,300 (unspecified) ²³⁹ 66 individuals (unspecified) were removed from the State in accordance with the 2006 & 2008 Regulations ²⁴⁰	Deported/removed: 2,360. 87 EU nationals were returned to their countries of origin on foot of an EU Removal Order ²⁴¹ . 88 individuals (unspecified) were removed from the State in accordance with the 2006 & 2008 Regulations ²⁴²	69 EU nationals were returned on the basis of an EU removal order ²⁴³ . 71 individuals (unspecified) were removed from the State in accordance with the 2006 & 2008 Regulations ²⁴⁴	N/A ²⁴⁵

²³⁵ Ibid.

²³⁶ Department of Justice, 'Annual Report 2012', available at: <http://www.justice.ie/en/JELR/Department%20of%20Justice%20and%20Equality%20Annual%20Report%202012.pdf/Files/Department%20of%20Justice%20and%20Equality%20Annual%20Report%202012.pdf>.

²³⁷ 'Parliamentary Question: Removal Orders (EU Citizens)', 13 March 2013, NASC website, available at: <http://www.nascireland.org/parliamentary-questions/pq-removal-orders-eu-citizens/>.

²³⁸ Information obtained through freedom of information request to the Department of Justice and Equality, April 2016.

²³⁹ Department of Justice, 'Annual Report 2013', available at: <http://www.justice.ie/en/JELR/Department%20of%20Justice%20&%20Equality%20Annual%20Report%202013.pdf/Files/Department%20of%20Justice%20&%20Equality%20Annual%20Report%202013.pdf>.

²⁴⁰ Information obtained through freedom of information request to the Department of Justice and Equality, April 2016.

²⁴¹ Department of Justice, 'Annual Report 2014', available at: <http://www.justice.ie/en/JELR/Department%20of%20Justice%20and%20Equality%20Annual%20Report%202014.pdf/Files/Department%20of%20Justice%20and%20Equality%20Annual%20Report%202014.pdf>

²⁴² Information obtained through freedom of information request to the Department of Justice and Equality, April 2016.

²⁴³ Department of Justice and Equality, 'Irish Naturalisation and Immigration Service in Ireland: Annual Review 2015', available at: <http://www.justice.ie/en/JELR/INIS%20-%20Immigration%20in%20Ireland%20Annual%20Review%202015.pdf/Files/INIS%20-%20Immigration%20in%20Ireland%20Annual%20Review%202015.pdf>, p.9.

²⁴⁴ Information obtained through freedom of information request to the Department of Justice and Equality, April 2016.

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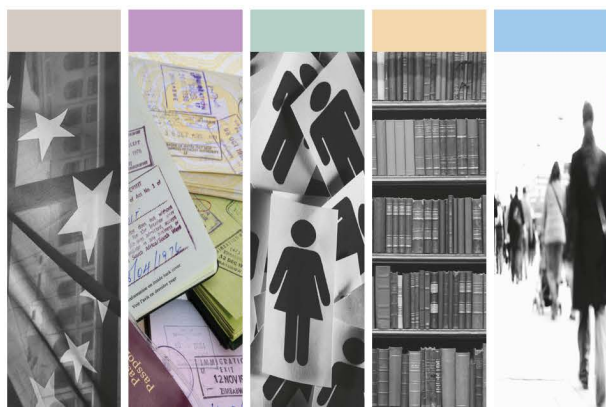
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