# Union citizenship: free movement and residence for citizens and their families within the Member States' territory

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This report proposes a set of guidelines in order to improve the transposition and 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.

To recall, on 10 December 2008, the Commission adopted its report on the application of Directive 2004 /38/EC which presented a comprehensive overview of how the Directive is transposed into national law and how it is applied in everyday life.

The report concluded that the overall transposition of the Directive was rather disappointing, particularly as regards Chapter VI (which provides for the right of Member States to restrict the right of EU citizens and their family members on grounds of public policy or public security) and Article 35 (which authorises Member States to adopt measures to prevent abuse and fraud, such as marriages of convenience).

The Commission announced in the report its intention to offer **information and assistance** to both Member States and EU citizens by issuing guidelines in the first half of 2009 on the issues identified as problematic in transposition or application. This intention was welcomed by the Council and by the European Parliament. The guidelines state the views of the Commission and are without prejudice to the case-law of the Court of Justice and its development.

This Communication aims to provide guidance to Member States on how to apply 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 correctly, with the objective of bringing a **real improvement** for all EU citizens and of making the EU an area of security, freedom and justice.

The report also identified **frequent problems relating to the right of entry and residence of third country family members of EU citizens**, and to requirements to submit with the applications for residence additional documents not foreseen in the Directive. The Commission announced in the report that it will step up its efforts to ensure that the Directive is correctly transposed and implemented. In order to achieve this objective, the Commission will continue to inform citizens about their rights under the Directive, in particular by distributing a **simplified guide for EU citizens and by making the best use of the Internet**. Moreover, the Commission will meet Member States bilaterally to discuss issues of implementation and application and will use fully its powers under the Treaty.

The free movement of citizens constitutes one of the fundamental freedoms of the internal market and is at the heart of the European project. Directive 2004/38/EC codified and reviewed the existing Community instruments in order to simplify and strengthen the right of free movement and residence for Union citizens and their family members. As a general remark, the Commission recalls that the Directive must be **interpreted and applied in accordance with fundamental rights,** in particular the right to respect for private and family life, the principle of non-discrimination, the rights of the child and the right to an effective remedy as guaranteed in the European Convention of Human Rights (ECHR) and as reflected in the EU Charter of Fundamental Rights.

The freedom of movement of persons is one of the foundations of the EU. Consequently derogations from that principle must be interpreted strictly. However, the right of free movement within the EU is not unlimited and carries with it obligations on the part of its beneficiaries, which implies to obey the laws of their host country.