

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

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I. General context (responsible bodies) and quality of transposition

The main governmental body responsible for transposition of the Directive was the Ministry of Interior. In its everyday work the Ministry develops and guides two domains: internal security and regional fields. In the field of internal security the Ministry of the Interior and the institutions in its governing area have a mission to assure the internal security of the state and to protect the public order, to guard and protect the state border and assure the border regime. The Ministry of the Interior and the institutions in its governing area also have a task to regulate citizenship and migration affairs.

The main governmental body responsible for implementation of the Directive is the Citizenship and Migration Board. The Citizenship and Migration Board is a government agency acting within the administrative area of the Ministry of Internal Affairs and its main tasks include: the determination of persons living in Estonia either as Estonian citizens or aliens and the issue of identity documents to residents of Estonia; receipt and processing of applications for acquiring and restoring Estonian citizenship, as well as for exempting from Estonian citizenship, and preparing the respective materials for the Government of the Republic to make decisions on these applications; receipt and processing of applications for residence and work permits of aliens who wish to settle or are living in Estonia, and making decisions on whether to grant or refuse to grant residence and work permits; processing of asylum applications and making decisions on whether to grant asylum or refuse to grant it; confirming visa invitations and extending the allowed period of stay in Estonia; processing of misdemeanours committed by aliens illegally staying or working in Estonia, issuing of precepts to leave Estonia or to apply for a residence permit in Estonia, organising the expulsion of aliens from Estonia; making decisions on the requests of foreign countries for the readmission of Estonian citizens and aliens whose habitual residence is in Estonia; maintaining of the relevant state registers and databases.

The Citizenship and Migration Board issues also the identity documents, such as identity cards; Estonian citizen's passports; alien's passports; temporary travel documents and refugee's travel documents.

Despite Estonia has attempted to transpose the Directive, the quality of the transposition should be estimated as relatively poor. Many of the provisions of the Directive are not transposed at all and many provisions are incorrectly transposed.

Probably the most far-reaching errors of transposition are related to articles 2.2 (c) and 2.2.(d). Article 2.2.(c) prescribes that family members of EU citizen are the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner. Estonian law stipulates a narrower definition and covers only children and not other descendants. Whilst Article 2.2(d) prescribes that family members of EU citizens are the dependent direct relatives in the ascending line and those of the spouse or partner, Estonian law covers only parents and not other direct relatives in the ascending line. These two cases should be considered as manifest errors of transposition.

II. List of transposing legislation:

- Euroopa Liidu Kodaniku seadus (Citizen of European Union Act) – 17.05.2006 – ELKS
- Riigipiiriseadus (State Borders Act) – 30.06.1994 (as amended) – RPS
- Väljasõidukohustuse ja sissesõidukeelu seadus (Expulsion and Prohibition on Entry Act) - 21.10.1998 (as amended) – VSS
- Isikut tõendava dokumendi seadus (Identity Document Act) – 15.02.1999 (as amended) – ITDS

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- Government of the Republic regulation - The procedure for application, grant and extension of temporary right of residence of family members of citizens of the European Union, and the procedure for application for registration of permanent right of residence and termination of right of residence of citizens of the European Union and their family members – 20.07.2006 – ETAP
- Halduskohtumenetluse seadustic (Code of administrative court procedure) – 25.02.99 (as amended) – HKS
- Haldusmenetluse seadus (Administrative procedure act) – 06.06.2001 (as amended) – HMS
- Rahvastikuregistri seadus (Population Register Act) – 31.05.2000 (as amended) - RRS
- Riigilõivuseadus (State fees Act) – 07.12.2006 (as amended) – RLS
- Ravikindlustuse seadus (Health Insurance Act) – 19.06.2002 (as amended) - RKS
- Õppetoetuste ja õppelaenu seadus (Study Allowances and Study Loans Act)– 07.08.2003 (as amended) – ÕTLS
- Looduskaitse seadus (Nature Protection Act) – 21.04.2004 (as amended) – LKS
- Eriolukorra seadus (Emergency Situation Act) – 10.01.1996 (as amended) - ES

III. Abbreviations

- Art. – article
- para. – paragrahv
- Sec. - section

Analysed legislation in conformity? (click as appropriate)

YES
or/and Stricter

NO
Incomplete or/and Incorrect

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Chapter I						
GENERAL PROVISIONS						
Art. 2.1	Definitions For the purposes of this Directive: 1) "Union citizen" means any person having the nationality of a Member State;	ELKS art 1, para. 2	Käesolevat seadust kohaldatakse Euroopa Liidu ja Euroopa Majanduspiirkonna liikmesriigi kodaniku, kes ei ole Eesti kodanik, ja Õveitsi Konföderatsiooni kodaniku (edaspidi <i>Euroopa Liidu kodanik</i>) ning nende perekonnaliikmete suhtes.	This Act applies to the citizens of the European Union and the citizens of the European Economic Area who are not Estonian citizens, and to the citizens of the Swiss Confederation (hereinafter citizens of the European Union) and to their family members.	Y	Effective transposition Citizens of EEA and Swiss confederation are equated with EU citizen.
Art. 2.2 (a)	2) "Family member" means: (a) the spouse;	ELKS art 3, para.1, sec. 1	Euroopa Liidu kodaniku perekonnaliikmeks (edaspidi perekonnaliige) käesoleva seaduse tähenduses loetakse isikut, kes ei ole Euroopa Liidu ega Eesti kodanik ja kes on: Euroopa Liidu kodaniku abikaasa	For the purposes of this Act, a family member of a citizen of the European Union (hereinafter family member) is a person who is not a citizen of the European Union or a citizen of Estonia and who is: Spouse of the citizen of the European Union	Y	Literal transposition Family members are only third country family members basically because under Estonian law there are no conditions for residence of EU citizens, they have a right of residence and entry just for being EU citizens and therefore, the Estonian law applies regardless of whether they are family members or not.
Art. 2.2 (b)	(b) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State;				n/a	Estonian law does not recognise registered partnerships This does not create a conformity problem in light of Directive's words 'if the legislation of the host MS treats registered partnerships as equivalent to marriage Estonia does not have registered partnerships or do not considered them as equivalent to marriage.
Art. 2.2 (c)	(c) the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined in point (b);	ELKS art. 3, para 1, sec. 2	Euroopa Liidu kodaniku või abikaasa alla 21-aastane laps või ülalpeetav täisealine laps	child under 21 years of age or a dependent adult child of the citizen of the European Union or of his or her spouse	N, Incorrect	Incorrect transposition Estonian provision covers only child and not other descendants or dependants. There is no case law interpreting the concept of children

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						expansively.
Art. 2.2 (d)	(d) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b);	ELKS art. 3, para 1, sec. 3	Euroopa Liidu kodaniku või abikaasa ülalpeetav vanem	dependent parent of the citizen of the European Union or of his or her spouse	N, Incorrect	Incorrect transposition Estonian provision covers only parent and not other direct relatives in the ascending line. There is no case law interpreting the concept of parent expansively
Art. 2.3	3) "Host Member State" means the Member State to which a Union citizen moves in order to exercise his/her right of free movement and residence.	ELKS art. 1, para 1	Käesolev seadus reguleerib Euroopa Liidu kodaniku ja tema perekonnaliikme Eestis viibimise ja elamise aluseid.	This Act regulates the bases for the stay and residence in Estonia of citizens of the European Union and their family members.	Y	Effective transposition The definition has not been transposed as such, but art. 1 para 1 of ELKS stipulates that this Act regulates the bases for the stay and residence in Estonia (as EU Member state)
Art. 3.1	Beneficiaries This Directive shall apply to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members as defined in point 2 of Article 2 who accompany or join them.				NT	The provision has not been transposed. Furthermore, Estonian citizens (and their family members) who have exercised their rights of free movement are not covered by ELKS. In practice EU citizens and their family members and Estonian citizen and their family members are treated in line with the Directive. However, this does not eliminate the transposition problem.
Art. 3..2 (a)	Without prejudice to any right to free movement and residence the persons concerned may have in their own right, the host Member State shall, in accordance with its national legislation, facilitate entry and residence for the following persons: (a) any other family members, irrespective of their nationality, not falling under the definition in point 2 of Article 2 who, in the country from which	ELKS art. 3, para 1, sec. 4	§ 3. Euroopa Liidu kodaniku perekonnaliige (1) Euroopa Liidu kodaniku perekonnaliikmeks (edaspidi <i>perekonnaliige</i>) käesoleva seaduse tähenduses loetakse isikut, kes ei ole Euroopa Liidu ega Eesti kodanik ja kes on: ...	3. Family member of citizen of European Union (1) For the purposes of this Act, a family member of a citizen of the European Union (hereinafter family member) is a person who is not a citizen of the European Union or a citizen of Estonia and who is: ...	N, Incorrect	Incorrect transposition Firstly, as for family members, Estonian law is more generous than the Directive; these family members have the same rights as family members under article 2.2. Furthermore, while the Directive provides, "...where serious health grounds strictly require the personal

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	they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen;		käesoleva lõike punktides 1–3 nimetatata isik, kes on Euroopa Liidu kodaniku ülalpeetav või leibkonnaliige lähteriigis või kes ei ole tervises seisundi või puude tõttu püsivalt suuteline iseseisvalt toime tulema ja on vajalik, et Euroopa Liidu kodanik teda isiklikult hooldab.	a person not specified in clauses 1)–3) of this section who, in the country from which they have come, is a dependant of the citizen of the European Union or is a member of his or her household, or who is permanently unable to cope independently due to health reasons or disability and it is necessary that the citizen of the European Union personally cares for him or her.		care of the family member by the Union citizen”, the Estonian provision refers merely to health reasons, without requiring these reasons to be serious. However, Estonian law states ‘permanently unable’ where this is not required by the Directive. Accordingly Estonian law is stricter and not in concordance with EU law. ELKS article 3 covers only third country nationals who are not citizens of EU and respectively Estonia. Under Estonian law there are no conditions for residence of EU citizens, they have a right of residence and entry just for being EU citizens and therefore, the Estonian law applies regardless of whether they are family members or not.
Art. 3.2. (b)	(b) the partner with whom the Union citizen has a durable relationship, duly attested.				NT	The provision has not been transposed
	The host Member State shall undertake an extensive examination of the personal circumstances and shall justify any denial of entry or residence to these people.	HMS art. 3, and 6	§ 3. Õiguste kaitse (1) Haldusmenetluses võib piirata isiku põhiõigusi ja -vabadusi ning tema muid subjektiivseid õigusi ainult seaduse alusel. (2) Halduse õigusakt ja toiming peab olema kohane, vajalik ning proportsionaalne seatud eesmärgi suhtes. § 6. Uurimis põhimõte Haldusorgan on kohustatud välja	§ 3 Protection of rights (1) In administrative procedure, the fundamental rights and freedoms or other subjective rights of a person may be restricted only pursuant to law. (2) Administrative acts and measures shall be appropriate, necessary and proportionate to the stated objectives. § 6 Principle of investigation During proceedings in a matter,	NT	The provision has not been transposed into ELKS. But it is clear that the host MS is Estonia General principles of administrative law stipulated in Administrative Procedure Act – such as principle of protection of rights, and principle of investigation - cover only partly the requirements of the Directive. Accordingly there is a gap in transposition

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			selgitama menetletavas asjas olulise tähendusega asjaolud ja vajaduse korral koguma selleks tõendeid oma algatusel.	an administrative authority is required to establish the facts relevant to the matter and, if necessary, collect evidence on its own initiative for such purpose.		
Chapter II RIGHT OF EXIT AND ENTRY						
Art. 4.1	Right of Exit Without prejudice to the provisions on travel documents applicable to national border controls, all Union citizens with a valid identity card or passport and their family members who are not nationals of a Member State and who hold a valid passport shall have the right to leave the territory of a Member State to travel to another Member State.				NT	Not transposed Estonian law is controversial and uncertain. RPS article 11(1) para 4 sets up document requirements for arrival in Estonia and not for leaving as per Article 5 of the Directive. Surprisingly RPS does not regulate document requirements for leaving at all. In practice the same documents are required for exit as for entry. But least from the formal point of view this could be considered as a gap.
Art. 4.2	No exit visa or equivalent formality may be imposed on the persons to whom paragraph 1 applies.				Y	Effective transposition Not transposed as such, but Estonian law does not restrict this right, and does not impose visa requirement
Art. 4.3	Member States shall, acting in accordance with their laws, issue to their own nationals, and renew, an identity card or passport stating their nationality.	ITDS art. 2, Para 1	Isikut tõendav dokument (1) Isikut tõendav dokument (edaspidi <i>dokument</i>) on riigiasutuse poolt väljaantud dokument, kuhu on kantud kasutaja nimi ja sünniaeg või isikukood ning foto või näokujutis ja allkiri või allkirjakujutis, kui seadus või selle alusel kehtestatud	Identity document (1) An identity document (hereinafter document) is a document issued by a state agency in which the name, date of birth or personal identification code, and a photograph or facial image and the signature or image of signature of the holder are	Y	Effective transposition The Directive also refers to renewal, but specific provisions concerning conditions of renewal are missing from ITDS. However, in practice identity cards and passports are periodically

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			<p>õigusakt ei sätesta teisiti. (2) Käesoleva seaduse alusel väljaantavad dokumendid on:</p> <ol style="list-style-type: none"> 1) isikutunnistus; 2) Eesti kodaniku pass; 3) diplomaatiline pass; 4) meremehe teenistusraamat; 5) välismaalase pass; 6) ajutine reisidokument; 7) pagulase reisidokument; 8) meresõidutunnistus; 9) tagasipöördumistunnistus. 10) tagasipöördumise luba. 	<p>entered, unless otherwise provided by law or legislation established on the basis thereof. (2) The following documents are issued pursuant to this Act:</p> <ol style="list-style-type: none"> 1) identity cards; 2) Estonian passports; 3) diplomatic passports; 4) seafarer's discharge books; 5) alien's passports; 6) temporary travel documents; 7) travel documents for refugees; 8) certificates of record of service on Estonian ships; 9) certificates of return; 10) permits of return. 		<p>renewed. Identity cards are automatically renewed after every five years. Possession of Identity card is obligatory for everybody who is Estonian citizen or EU citizen or his or her family member and who has right of residence in Estonia.</p> <p>Identity cards are issued upon registration of one's dwelling place in the Population Register</p> <p>But as ITDS does not contain specific provisions about renewal there still may be conformity problem from the legal certainty point of view</p> <p>The requirements to passports are regulated under EU law for example Regulation No 2252/2004 – which are directly applicable in Estonia. So no transposition problem arises.</p>
Art.4.4	The passport shall be valid at least for all Member States and for countries through which the holder must pass when travelling between Member States. Where the law of a Member State does not provide for identity cards to be issued, the period of validity of any passport on being issued or renewed shall be not less than five years.	ITDS art 24, para. 1	Eesti kodaniku pass antakse välja kehtivusajaga kuni viis aastat.	Estonian passports shall be issued with a period of validity of up to five years.	Y	<p>Effective transposition</p> <p>The clause – “Up to five years” - is not in conformity with the Directive, and at least theoretically allows to issue this document with a period of validity less than five years but this requirement is for cases where no ID is issued. Since ID are issued no problem with the requirement..</p>
Art. 5.1	Right on Entry 1. Without prejudice to the provisions on travel documents applicable to national border controls, Member States shall grant Union citizens leave to enter their territory with a valid identity card or passport and shall grant family members who are not nationals of a Member State	ELKS art 7 para. 1 RPS art 11(1) paras 4 and 5	<p>Euroopa Liidu kodanikul on õigus Eestis viibida kehtiva reisidokumendi või isikutunnistuse alusel.</p> <p>...</p> <p>(4) Eestisse saabuval Euroopa Liidu liikmesriigi, Euroopa Majanduspiirkonna liikmesriigi</p>	<p>A citizen of the European Union has the right to stay in Estonia on the basis of a valid travel document or identity document.</p> <p>...</p> <p>(4) A citizen of a Member State of the European Union or the European Economic Area</p>	Y, More favourabl e	<p>Effective and more favourable transposition</p> <p>From family members valid travel document is required. This is a more favourable provision.</p> <p>This Estonian provision should be interpreted in this way that stay</p>

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	leave to enter their territory with a valid passport.		<p>või Šveitsi Konföderatsiooni kodanikul peab olema kehtiv reisidokument või isikutunnistus, mille on välja andnud Euroopa Liidu liikmesriigi, Euroopa Majanduspiirkonna liikmesriigi või Šveitsi Konföderatsiooni pädev asutus. (14.04.2004 jõust.01.05.2004 - RT I 2004, 28, 189)</p> <p>(5) Euroopa Liidu liikmesriigi, Euroopa Majanduspiirkonna liikmesriigi või Šveitsi Konföderatsiooni kodaniku perekonnaliikmel, kes ei ole Euroopa Liidu liikmesriigi, Euroopa Majanduspiirkonna liikmesriigi või Šveitsi Konföderatsiooni kodanik, peab Eestisse saabudes olema kehtiv ja Välisministeeriumi poolt tunnustatud reisidokument või isikutunnistus ning välismaalaste seaduses (RT I 1993, 44, 637; 1999, 50, 548; 54, 582; 71, 686; 88, 808; 101, 900; 2000, 25, 148; 33, 197; 40, 254; 2001, 16, 68; RT III 2001, 7, 75; RT I 2001, 58, 352; 2002, 56, 351; 63, 387; 90, 521; 102, 599; 2003, 4, 20; 88, 594; 2004, 2, 2; 19, 134) sätestatud seaduslik alus Eestis viibimiseks.</p>	<p>Agreement or a citizen of the Swiss Confederation arriving in Estonia shall hold a valid travel document or identity card issued by a competent authority of the Member State of the European Union, the European Economic Area Agreement or the Swiss Confederation. (14.04.2004 entered into force 01.05.2004 - RT I 2004, 28, 189)</p> <p>(5) Upon arrival in Estonia, a family member of a citizen of a Member State of the European Union or the European Economic Area Agreement or a family member of a citizen of the Swiss Confederation who is not a citizen of a Member State of the European Union or the European Economic Area Agreement or a citizen of the Swiss Confederation shall hold a valid travel document or identity card recognised by the Ministry of Foreign Affairs and shall have a legal basis for staying in the Republic of Estonia as provided for in the Aliens Act</p>		obviously presupposes entry.
	No entry visa or equivalent formality may be imposed on Union citizens.	RPS art. 11(1) , para 4	(4) Eestisse saabuval Euroopa Liidu liikmesriigi, Euroopa Majanduspiirkonna liikmesriigi või Šveitsi Konföderatsiooni kodanikul peab olema kehtiv reisidokument või isikutunnistus, mille on välja andnud Euroopa	(4)A citizen of a Member State of the European Union or the European Economic Area Agreement or a citizen of the Swiss Confederation arriving in Estonia shall hold a valid travel document or identity card issued	Y	Effective transposition Not transposed as such, but State Borders Act (art. 11(1), para 4 does not impose any visa requirement as far as Union citizens are concerned

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			Liidu liikmesriigi, Euroopa Majanduspiirkonna liikmesriigi või Šveitsi Konföderatsiooni pädev asutus.	by a competent authority of the Member State of the European Union, the European Economic Area Agreement or the Swiss Confederation.		
Art. 5.2	2. Family members who are not nationals of a Member State shall only be required to have an entry visa in accordance with Regulation (EC) No 539/2001 or, where appropriate, with national law. For the purposes of this Directive, possession of the valid residence card referred to in Article 10 shall exempt such family members from the visa requirement.	ELKS art 10, para. 2	Eestisse sisenemiseks peab perekonnaliikmel olema kehtiv reisidokument ja viisa. Viisat ei pea olema perekonnaliikmel: 1) kellel on Euroopa Liidu liikmesriigi, Euroopa Majanduspiirkonna liikmesriigi või Šveitsi Konföderatsiooni pädeva asutuse antud elamiskaart	For entry in Estonia, a family member must have a valid travel document and a visa. Visa is not required from a family member if: 1) the family member has a residence card issued by a Member State of the European Union, Member State of the European Economic Area or the Swiss Confederation	Y	Effective transposition For family members, visa is not required only if they have residence card issued by a Member State of the European Union, Member State of the European Economic Area or the Swiss Confederation, in other cases there is a visa requirement. The website (http://www.vm.ee/est/kat_132/915.html) of the Ministry of foreign affairs reproduces the European Council Regulation No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement Consequently Estonian Law is in conformity with the Directive
	Member States shall grant such persons every facility to obtain the necessary visas. Such visas shall be issued free of charge as soon as possible and on the basis of an accelerated procedure.				NT	The provision has not been transposed
Art. 5.3	3. The host Member State shall not place an entry or exit stamp in the passport of family members who are not nationals of a Member State provided that they present the residence card provided for in Article 10.	RPS art. 11, para. 8	Käesoleva paragrahvi lõikes 7 nimetatud templijäljendit ei kanta Euroopa Liidu liikmesriigi, Euroopa Majanduspiirkonna liikmesriigi või Šveitsi Konföderatsiooni kodaniku reisidokumendi. Euroopa Liidu liikmesriigi, Euroopa	Entry or exit stamp, specified in paragraph 7, shall not be placed in the travel document of the citizens of the European Union and the citizens of the European Economic Area who are not Estonian citizens, and to the citizens of the Swiss	Y	Effective transposition

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			<p>Majanduspiirkonna liikmesriigi või Šveitsi Konföderatsiooni kodanikuga kaasas olevate või nendega ühinevate pereliikmete reisdokumentidesse ei kanta sisenemis- ega väljumistemplit juhul, kui nad esitavad Euroopa Liidu liikmesriigi, Euroopa Majanduspiirkonna liikmesriigi või Šveitsi Konföderatsiooni pädeva asutuse antud elamisloa või -kaardi.</p>	<p>Confederation. Entry or exit stamp shall not placed in the travel document of the family member of the citizens of the European Union, European Economic Area and of the citizens of the Swiss Confederation in case if they present residence card issue by the competent authority of EU Member State, State of the European Economic Area or Swiss Confederation</p>		
Art. 5.4	<p>4. Where a Union citizen, or a family member who is not a national of a Member State, does not have the necessary travel documents or, if required, the necessary visas, the Member State concerned shall, before turning them back, give such persons every reasonable opportunity to obtain the necessary documents or have them brought to them within a reasonable period of time or to corroborate or prove by other means that they are covered by the right of free movement and residence.</p>				NT	<p>Not transposed</p> <p>The provision has not been transposed into Estonian law. To my knowledge there are also no national legally binding circulars covering this provision.</p> <p>However, according to the information received from competent authorities Estonian Border Guard implements in practice in these situation recommendation of the European Commission (06/11/2006*K (2006) 5186 Final) so called (Schengen Manual), which para 3.1.2. prescribes that Member States shall, before turning persons back, give such persons every reasonable opportunity to obtain the necessary documents or have them brought to them within a reasonable period of time or to corroborate or prove by other means that they are covered by the right of free movement and residence.</p>

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Art.5.5	5. The Member State may require the person concerned to report his/ her presence within its territory within a reasonable and non-discriminatory period of time. Failure to comply with this requirement may make the person concerned liable to proportionate and non-discriminatory sanctions.					Estonia has not made use of this possibility. Reporting requirement is not imposed in Estonia
Chapter III						
RIGHT OF RESIDENCE						
Art. 6.1	Right of residence for more than three months 1. Union citizens shall have the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport.	ELKS art. 7, paras. 1 and 2	(1) Euroopa Liidu kodanikul on õigus Eestis viibida kehtiva reisidokumendi või isikutunnistuse alusel. (2) Euroopa Liidu kodanik peab hiljemalt kolme kuu möödumisel Eestisse sisenemise päevast arvates oma elukoha registreerima rahvastikuregistri seaduses sätestatud korras.	(1) A citizen of the European Union has the right to stay in Estonia on the basis of a valid travel document or identity document. (2) Not later than after three months after the date of entry in Estonia, a citizen of the European Union must register his or her place of residence pursuant to the procedure provided by the Population Register Act.	Y, (Not for jobseekers)	Effective transposition, except for jobseekers Not transposed as such, but transposition is indirect, as ELKS requires that only after three months a citizen of the European Union must register his or her residence pursuant to the procedure provided by the Population Register Act. No other requirement as regards first three months can be found in Estonian law. However, as the requirement, that jobseekers who according to the Directive should only have the obligation to register after 6 months, is missing from Estonian law, there is still a mayor conformity problem.
Art. 6.2	2. The provisions of paragraph 1 shall also apply to family members in possession of a valid passport who are not nationals of a Member State, accompanying or joining the Union citizen.	ELKS art. 10, paras. 1 and 2	(1) Euroopa Liidu kodanikuga Eestis viibida kehtiva reisidokumendi alusel kuni kolm kuud Eestisse sisenemise päevast arvates (2) Eestis viibimisõiguse alusel viibiv perekonnaliige peab kolme	(1) A family member has the right to stay in Estonia together with a citizen of the European Union on the basis of a valid travel document for a period of up to three months after the date of entry in Estonia. (2) A family member staying in Estonia on the basis of the right	Y	Effective transposition The clause within three months is correctly transposed.

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			kuu jooksul Eestisse sisenemise päevast arvates taotlema tähtajalist elamisõigust või lahkuma Eestist enne nimetatud tähtaja möödumist, kui ta ei ole esitanud taotlust tähtajalise elamisõiguse saamiseks.	to stay shall, within three months after the date of entry in Estonia, apply for temporary right of residence, or leave Estonia before the expiry of such term, unless he or she has applied for temporary right of residence.		
Art.7.1 (a)	Right of residence for more than three months All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they: (a) are workers or self-employed persons in the host Member State; or	ELKS art. 13, paras. 1 and 2	(1) Euroopa Liidu kodanik omandab Eestis tähtajalise elamisõiguse viieks aastaks, kui ta registreerib elukoha Eestis rahvastikuregistri seaduses sätestatud korras. (2) Viie aasta möödudes pikeneb tähtajalise elamisõiguse tähtaeg automaatselt viieks aastaks, kui Euroopa Liidu kodaniku elukoht on jätkuvalt Eestis registreeritud ja Euroopa Liidu kodaniku tähtajaline elamisõigus ei ole lõppenud või seda ei ole lõpetatud	(1) A citizen of the European Union acquires temporary right of residence in Estonia for five years if such citizen registers his or her place of residence pursuant to the procedure provided by the Population Register Act. (2) After five years, the term of temporary right of residence is extended for another five years if the residence of the citizen of the European Union continues to be registered in Estonia and the right of residence of the citizen of the European Union is not extinguished or has not been terminated.	N, Incorrect	Incorrect transposition The Directive says - EU citizens shall have the right of residence - by meeting the requirements. Instead of that Estonian law stipulates that the EU citizen “acquires” right of residence by registering his or her place of residence. Estonian approach is different from that of the Directive
Art.7.1 (b)	(b) have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State; or				Y, More favourable	More favourable treatment Not transposed as such – but no restrictions other than registration is require
Art.7.1 (c)	(c) - are enrolled at a private or public establishment, accredited or financed by the host Member State on the basis of its legislation or administrative practice, for the principal purpose of following a course of study, including vocational training; and				Y, More favourable	More favourable treatment Not transposed as such – but no restrictions other than registration is require

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	- have comprehensive sickness insurance cover in the host Member State and assure the relevant national authority, by means of a declaration or by such equivalent means as they may choose, that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence; or				Y, More favourable	More favourable treatment Not transposed as such – but no restrictions other than registration is require
Art.7.1 (d)	(d) are family members accompanying or joining a Union citizen who satisfies the conditions referred to in points (a), (b) or (c).				Y, More favourable	More favourable treatment Not transposed as such – but no restrictions other than registration is require
Art. 7.2	2. The right of residence provided for in paragraph 1 shall extend to family members who are not nationals of a Member State, accompanying or joining the Union citizen in the host Member State, provided that such Union citizen satisfies the conditions referred to in paragraph 1(a), (b) or (c).				Y, More favourable	More favourable treatment Not transposed as such – but no restrictions other registration is require The Estonian law only differentiates third country family members.
Art. 7.3 (a)	3. For the purposes of paragraph 1(a), a Union citizen who is no longer a worker or self-employed person shall retain the status of worker or self-employed person in the following circumstances: (a) he/she is temporarily unable to work as the result of an illness or accident;				Y, More favourable	More favourable treatment Not transposed as such – but no restrictions other registration is required. Since there are no conditions regarding the right of residence, the fact that the person retains the status of worker is not an issue under Estonian law.
Art. 7.3 (b)	(b) he/she is in duly recorded involuntary unemployment after having been employed for more than one year and has registered as a jobseeker with the relevant employment office;				Y, More favourable	More favourable treatment Not transposed as such – but no restrictions other the registration is require Since there are no conditions regarding the right of residence, the fact that the person retains the status

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						of worker is not an issue under Estonian law.
Art. 7.3 (c)	(c) he/she is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first twelve months and has registered as a job-seeker with the relevant employment office. In this case, the status of worker shall be retained for no less than six months;				Y, More favourable	More favourable treatment Not transposed as such – but no restrictions other than registration is required. Since there are no conditions regarding the right of residence, the fact that the person retains the status of worker is not an issue under Estonian law.
Art.7.3 (d)	(d) he/she embarks on vocational training. Unless he/she is involuntarily unemployed, the retention of the status of worker shall require the training to be related to the previous employment.				Y, More favourable	More favourable treatment Not transposed as such – but no restrictions other than registration is required. Since there are no conditions regarding the right of residence, the fact that the person retains the status of worker is not an issue under Estonian law.
Art. 7.4	4. By way of derogation from paragraphs 1(d) and 2 above, only the spouse, the registered partner provided for in Article 2(2)(b) and dependent children shall have the right of residence as family members of a Union citizen meeting the conditions under 1(c) above. Article 3(2) shall apply to his/her dependent direct relatives in the ascending lines and those of his/her spouse or registered partner.				Y, More favourable	More favourable treatment Not transposed as such – but no restrictions other than registration is required. Since there are no conditions regarding the right of residence, there are no limitations on the family members of students.
Art. 8.1	Administrative formalities for Union citizens 1. Without prejudice to Article 5(5), for periods of residence longer than three months, the host Member State may require Union citizens to register with the relevant authorities.	ELKS art. 7, para 2	Euroopa Liidu kodanik peab hiljemalt kolme kuu möödumisel Eestisse sisenemise päevast arvates oma elukoha registreerima rahvastikuregistri seaduses sätestatud korras	Within three months after the date of entry in Estonia, a citizen of the European Union must register his or her place of residence pursuant to the procedure provided by the Population Register Act.	Y, (Not for jobseekers)	Effective transposition, except for jobseekers Jobseekers can not be required to register before 6 months of residence. This case-law has not been reflected in the Estonian legislation.
Art. 8.2	2. The deadline for registration may not be less than three months from the date of arrival. A registration certificate shall be	ELKS art. 7, para 2	Euroopa Liidu kodanik peab hiljemalt kolme kuu möödumisel Eestisse sisenemise päevast	Within three months after the date of entry in Estonia, a citizen of the European Union must	N, Incorrect	Incorrect transposition The requirement that a registration

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	issued immediately, stating the name and address of the person registering and the date of the registration. Failure to comply with the registration requirement may render the person concerned liable to proportionate and non-discriminatory sanctions.	ELKS art. 13, para. 3	<p>arvates oma elukoha registreerima rahvastikuregistri seaduses sätestatud korras</p> <p>Elukoha registreerimisel väljastatakse Euroopa Liidu kodanikule tema soovil vastav tõend.</p>	<p>register his or her place of residence pursuant to the procedure provided by the Population Register Act.</p> <p>Upon registration of place of residence, a corresponding certificate shall be issued to the citizen of the European Union if he or she so desires.</p>		<p>certificate shall be issued immediately has not been transposed into Estonian law, but in practice the certificate is issued immediately upon registration.</p> <p>Accordingly Estonian practice seems to be correct, but from legal certainty point of view there is still a conformity problem</p> <p>It should also be noted that, as far as upon registration of residence of EU citizen, a corresponding certificate shall be issued to the citizen of the European Union if he or she so desires, the possession of this card is not required and accordingly there is no legal basis for imposition of sanctions in this case.</p>
Art. 8.3	3. For the registration certificate to be issued, Member States may only require that — Union citizens to whom point (a) of Article 7(1) applies present a valid identity card or passport, a confirmation of engagement from the employer or a certificate of employment, or proof that they are self-employed persons,	RRS art. 22	<p>Rahvastikuregistrisse kantakse andmed riigi või kohaliku omavalitsuse asutuste poolt väljaantud järgmiste dokumentide kohta:</p> <ol style="list-style-type: none"> 1) isikutunnistus; 2) Eesti kodaniku pass; 4) diplomaatiline pass; 5) kaitseväeteenistuse tunnistus; 6) meremehe teenistusraamat; 7) meresõidutunnistus; 8) välismaalase pass; 8¹) ajutine reisidokument; 	<p>Data on the following documents issued by state agencies or local government agencies shall be entered in the population register:</p> <ol style="list-style-type: none"> 1) identity cards; 2) Estonian passports; 4) diplomatic passports; 5) Defence Forces service certificates; 6) seafarer's service record books; 7) certificates of record of service on Estonian ships; 8) alien's passports; 8¹) temporary travel documents; 	Y, More favourable	<p>More favourable treatment</p> <p>Since there are no conditions for the right of residence, no need to provide proof. Accordingly Estonian law is less demanding than the Directive</p> <p>For the registration one of the documents listed in RRS art. 22 are required.</p>
	— Union citizens to whom point (b) of Article 7(1) applies present a valid identity card or passport and provide				Y, More favourable	<p>More favourable treatment</p> <p>Since there are no conditions for the</p>

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	proof that they satisfy the conditions laid down therein,				e	right of residence, no need to provide proof. Accordingly Estonian law is less demanding than the Directive. For the registration one of the documents listed in RRS Art. 22 is required.
	— Union citizens to whom point (c) of Article 7(1) applies present a valid identity card or passport, provide proof of enrolment at an accredited establishment and of comprehensive sickness insurance cover and the declaration or equivalent means referred to in point (c) of Article 7(1). Member States may not require this declaration to refer to any specific amount of resources.				Y, More favourable	More favourable treatment Since there are no conditions for the right of residence, no need to provide proof. Accordingly Estonian law is less demanding than the Directive. For the registration one of the documents listed in RRS Art. 22 is required.
Art. 8.4	4. Member States may not lay down a fixed amount which they regard as 'sufficient resources', but they must take into account the personal situation of the person concerned. In all cases this amount shall not be higher than the threshold below which nationals of the host Member State become eligible for social assistance, or, where this criterion is not applicable, higher than the minimum social security pension paid by the host Member State.				Y	Effective transposition. Such fixed amount has not been laid down in Estonia. The Directive only prohibits laying down a fixed amount, therefore no conformity problem arises here. In addition, there are no conditions for being resident therefore, there is no need to show sufficient resources. For the registration one of documents listed in RRS Art. 22 is required
Art. 8.5	5. For the registration certificate to be issued to family members of Union citizens, who are themselves Union citizens, Member States may require the following documents to be presented:	RRS art. 22	Rahvastikuregistrisse kantakse andmed riigi või kohaliku omavalitsuse asutuste poolt väljaantud järgmiste dokumentide kohta: 1) isikutunnistus; 2) Eesti kodaniku pass; 4) diplomaatiline pass; 5) kaitseväeteenistuse tunnistus;	Data on the following documents issued by state agencies or local government agencies shall be entered in the population register: 1) identity cards; 2) Estonian passports; 4) diplomatic passports; 5) Defence Forces service certificates;	Y, More favourable	More favourable treatment As family members who are themselves EU citizen are treated in the same way as all other EU citizen, there is no conformity problem. Moreover the whole Estonian system is more favourable as only one of the documents on RRS art 22 is requested

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			6) meremehe teenistusraamat; 7) meresõidutunnistus; 8) välismaalase pass; 8 ¹) ajutine reisidokument;	6) seafarer's service record books; 7) certificates of record of service on Estonian ships; 8) alien's passports; 8 ¹) temporary travel documents;		
	(a) a valid identity card or passport;	RRS art. 22	Rahvastikuregistrisse kantakse andmed riigi või kohaliku omavalitsuse asutuste poolt väljaantud järgmiste dokumentide kohta: 1) isikutunnistus; 2) Eesti kodaniku pass; 4) diplomaatiline pass; 5) kaitseväeteenistuse tunnistus; 6) meremehe teenistusraamat; 7) meresõidutunnistus; 8) välismaalase pass; 8 ¹) ajutine reisidokument;	Data on the following documents issued by state agencies or local government agencies shall be entered in the population register: 1) identity cards; 2) Estonian passports; 4) diplomatic passports; 5) Defence Forces service certificates; 6) seafarer's service record books; 7) certificates of record of service on Estonian ships; 8) alien's passports; 8 ¹) temporary travel documents;	Y, More favourable	More favourable treatment As family members who are themselves EU citizen are treated in the same way as all other EU citizen. there is no conformity problem. Moreover the whole Estonian system is more favourable as only one of the documents on RRS art 22 is requested.
	(b) a document attesting to the existence of a family relationship or of a registered partnership;				Y, More favourable	More favourable treatment Not requested in Estonia
	(c) where appropriate, the registration certificate of the Union citizen whom they are accompanying or joining;				Y, More favourable	More favourable treatment Not requested in Estonia
	(d) in cases falling under points (c) and (d) of Article 2(2), documentary evidence that the conditions laid down therein are met;				Y, More favourable	More favourable treatment Not requested in Estonia
	(e) in cases falling under Article 3(2)(a), a document issued by the relevant authority in the country of origin or country from which they are arriving certifying that they are dependants or				n/a	Not requested in Estonia

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	members of the household of the Union citizen, or proof of the existence of serious health grounds which strictly require the personal care of the family member by the Union citizen;					
	(f) in cases falling under Article 3(2)(b), proof of the existence of a durable relationship with the Union citizen.				n/a	Not requested in Estonia
Art. 9.1	Administrative formalities for family members who are not nationals of a Member State. 1. Member States shall issue a residence card to family members of a Union citizen who are not nationals of a Member State, where the planned period of residence is for more than three months.	ELKS art. 10, para. 4 ELKS art. 25, para. 1	Eestis viibimisõiguse alusel viibiv perekonnaliige peab kolme kuu jooksul Eestisse sisenemise päevast arvates taotlema tähtajalist elamisõigust või lahkuma Eestist enne nimetatud tähtaja möödumist, kui ta ei ole esitanud taotlust tähtajalise elamisõiguse saamiseks. Kodakondsus- ja Migratsiooniamet annab perekonnaliikmele, kes on saanud Eestis tähtajalise elamisõiguse, isikutunnistuse, mis on perekonnaliikme tähtajalist elamisõigust tõendav dokument.	A family member staying in Estonia on the basis of the right to stay shall, within three months after the date of entry in Estonia, apply for temporary right of residence, or leave Estonia before the expiry of such term, unless he or she has applied for temporary right of residence. The Citizenship and Migration Board shall issue an identity card to a family member who has been granted temporary right of residence in Estonia and the identity card shall be the document in proof of the family member's temporary right of residence.	Y	Effective transposition In Estonia, a document attesting the temporary right of residence (residence more than three months) is an identity card not residence card. This does not create conformity problems.
Art. 9.2	2. The deadline for submitting the residence card application may not be less than three months from the date of arrival.	ELKS art. 10, para. 4	Eestis viibimisõiguse alusel viibiv perekonnaliige peab kolme kuu jooksul Eestisse sisenemise päevast arvates taotlema tähtajalist elamisõigust või lahkuma Eestist enne nimetatud tähtaja möödumist, kui ta ei ole esitanud taotlust tähtajalise elamisõiguse saamiseks.	A family member staying in Estonia on the basis of the right to stay shall, within three months after the date of entry in Estonia, apply for temporary right of residence, or leave Estonia before the expiry of such term, unless he or she has applied for temporary right of residence.	Y	Effective transposition The Directive says may not be less than three months so within three months is not incorrect – the national law is merely going for the minimum allowed.
Art. 9.3	3. Failure to comply with the requirement to apply for a residence card may make the person concerned liable to proportionate and non-discriminatory sanctions.	ELKS art. 55	Euroopa Liidu kodaniku perekonnaliikme seadusliku aluseta Eestis viibimise või elamise eest – karistatakse rahaträhviga kuni 300	Stay or residence of a family member of a citizen of European Union in Estonia without a legal basis is punishable by a fine of up to 300 fine units.	Y	Effective transposition. 300 fine units is equal to 18 000 EEK – approximately 1100 EUR

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			trahviühikut.			In Estonian conditions this is proportionate and non – discriminatory, for example 18 000 is also the average in case of violation of traffic rules. However, there are no cases of imposition of such sanctions in practice as yet.
Art.10.1	Issue of residence cards 1. The right of residence of family members of a Union citizen who are not nationals of a Member State shall be evidenced by the issuing of a document called 'Residence card of a family member of a Union citizen' no later than six months from the date on which they submit the application. A certificate of application for the residence card shall be issued immediately.	ELKS art. 25 ETAP art. 27, para 2	Kodakondsus- ja Migratsiooniamet annab perekonnaliikmele, kes on saanud Eestis tähtjalise elamisõiguse, isikutunnistuse, mis on perekonnaliikme tähtjalist elamisõigust tõendav dokument. (2) Isikutunnistus antakse tähtjalise elamisõiguse kehtivusajaks. Taotluse läbivaatamise tähtaja igakordsel pikendamisel ei tohi uus tähtaeg ületada esialgset määruuses sätestatud tähtaega.	(1) The Citizenship and Migration Board shall issue an identity card to a family member who has been granted temporary right of residence in Estonia and the identity card shall be the document in proof of the family member's temporary right of residence. (2) An identity card is issued for the term of the temporary right of residence. When extending the term of issuance of the ID card, the new term should not be longer than the original term	N, Incomplete and Incorrect	Incomplete and incorrect transposition According to ETAP as a rule 3 months term is assigned for issuance of ID to family members. But under ETAP art. 27 para. 2 , this term could be repeatedly prolonged, each time for another 3 months. This could in practice lead to infringement of rights. For example if the term of issuance of ID has been prolonged two times (each time for 3 month) consequently with original 3 months term it will constitute a 9 months period and the requirement of the Directive – no longer later than 6 months –will not be obeyed Accordingly transposition is incorrect In addition the Directive expressly requires the issuance of a Residence card named “residence card of a family member of a Union Citizen” which has not been transposed either. But as instead of residence card, an identity card is issued in Estonia, this may not be a conformity problem
Art.10.2 (a)	2. For the residence card to be issued, Member States shall require presentation	ETAP art. 19	Tähtjalise elamisõiguse ja tähtjalise elamisõiguse	When applying to acquire or to extend temporary right of	N, Incorrect	Incorrect transposition

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	of the following documents: (a) a valid passport;		pikendamise taotlemisel esitatakse järgmised dokumendid: 2) taotleja isikut tõendav dokument; 3) foto; 4) dokument, mis tõendab, et taotleja on perekonnaliige «Euroopa Liidu kodaniku seaduse» § 3 kohaselt; 5) riigilõivu tasumist tõendav dokument,	residence the following document should be presented 2) Identity document 3) photo 4) a document attesting to the existence of a family relationship according to article 3 of the European citizen act 5) document attesting to the payment of the state duty		Passport or other identity document is required. Accordingly presentation of passport is not obligatory. Estonian law is incorrect as it (ETAP art 19 section 4 and 6) requires photo. The reason for requiring photo is the fact that instead of residence card identity card is issued in Estonia. Identity card like passport always has a photo.
Art.10.2 (b)	(b) a document attesting to the existence of a family relationship or of a registered partnership;	ETAP art. 19	Tähtajalise elamisõiguse ja tähtajalise elamisõiguse pikendamise taotlemisel esitatakse järgmised dokumendid: 4) dokument, mis tõendab, et taotleja on perekonnaliige «Euroopa Liidu kodaniku seaduse» § 3 kohaselt; 5	When applying to acquire or to extend temporary right of residence the following document should be presented (...) 4) a document attesting to the existence of a family relationship according to article 3 of the European citizen act	N, Incorrect	Incorrect transposition A document attesting to the existence of a family relationship according to Article 3 of the European citizen act is required. But still overall incorrect transposition since Estonian law is incorrect as it requires photo.
Art.10.2 (c)	(c) the registration certificate or, in the absence of a registration system, any other proof of residence in the host Member State of the Union citizen whom they are accompanying or joining;				n/a (More favourable)	More favourable treatment Not required under Estonian Law
Art.10.2 (d)	(d) in cases falling under points (c) and (d) of Article 2(2), documentary evidence that the conditions laid down therein are met;				n/a	Partnership is not recognised under Estonian law. See Article 3.2(b).
Art.10.2 (e)	(e) in cases falling under Article 3(2)(a), a document issued by the relevant authority in the country of origin or country from which they are arriving certifying that they are dependants or members of the household of the Union citizen, or proof of the existence of serious health grounds which strictly require the personal care of the family	ETAP art. 19, sec. 5	Tähtajalise ellamisõiguse ja tähtajalise elamisõiguse pikendamise taotlemisel esitatakse järgmised dokumendid: ... 5) dokument, mis tõendab, et taotleja on perekonnaliige "Euroopa Liidu Kodaniku seaduse" § 3 kohaselt	When applying to acquire the right to temporary residence or to extend this right the following document shall be presented: ... 5) a document attesting that applicant is family member in the meaning of article 3 of Citizen of the European Union	Y	Effective transposition The requirement that document attesting that applicant is family member in the meaning of art 3 of ELKS should be - "issued by the relevant authority in the country of origin or country from which they are arriving" - has not been transposed in

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	member by the Union citizen;			Act		Estonia. Estonian law merely refers to “document attesting”. This is not a problem because it leaves choice to the citizen.
Art.10.2 (f)	(f) in cases falling under Article 3(2)(b), proof of the existence of a durable relationship with the Union citizen.				n/a	EE has not transposed Article 3(2)(b) so durable relationships are not included in the scope of the transposing legislation. See Article 3.2(b).
Art.11.1	Validity of the residence card 1. The residence card provided for by Article 10(1) shall be valid for five years from the date of issue or for the envisaged period of residence of the Union citizen, if this period is less than five years.	ELKS art. 25	(1) Kodakondsus- ja Migratsiooniamet annab perekonnaliikmele, kes on saanud Eestis tähtajalise elamisõiguse, isikutunnistuse, mis on perekonnaliikme tähtajalist elamisõigust tõendav dokument. (2) Isikutunnistus antakse tähtajalise elamisõiguse kehtivusajaks.	(1) The Citizenship and Migration Board shall issue an identity card to a family member who has been granted temporary right of residence in Estonia and the identity card shall be the document in proof of the family member's temporary right of residence. (2) An identity card is issued for the term of the temporary right of residence.	N, incorrect	Incorrect transposition Instead of a residence card, an identity card is issued in Estonia. This could create problems for persons travelling inside the EU with the ID-card since the Directive does not require other MS to grant entry on the basis of an ID-card issued by the MS of residence. Only the ID-card by the home MS is recognised as a valid travel document under the Directive. Consequently, transposition is incorrect. An identity card is issued to family members for the whole term of temporary right. There is no obligation to apply for the identity card – identity card is issued automatically to all family members, who have been granted temporary right of residence in Estonia. So issuance of identity card could no way be considered as additional burden. As temporary right of residence is valid up to five years the identity card will be not issued for a longer period

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						than five years. But if person obtains right of permanent residence the identity card will be automatically renewed.
Art.11.2	2. The validity of the residence card shall not be affected by temporary absences not exceeding six months a year, or by absences of a longer duration for compulsory military service or by one absence of a maximum of 12 consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.	ELKS art. 5	(1) Püsivaks Eestis elamiseks käesoleva seaduse tähenduses loetakse Euroopa Liidu kodaniku või perekonnaliikme Eestis elamist vähemalt 183 päeva aastas. Nimetatud tähtaega arvestatakse elamisõiguse tekkimisest või elamisõiguse omandamisest arvates. (2) Käesoleva paragrahvi lõikes 1 sätestatud püsiva Eestis elamise perioodi hulka loetakse Eestist ajutist eemalviibimist, mis on seotud: 1) kohustusliku ajateenistuse täitmise või 2) raseduse, sünnituse, raske haiguse, õpingute, tööalase koolituse või lähetusega ja mis ei ületa ühte järjestikust aastat.	(1) For the purposes of this Act, permanent residence in Estonia is deemed to mean that a citizen of the European Union or his or her family member lives in Estonia for at least 183 days during a year. Such period shall be calculated as of the date of creation or date of acquisition of the right of residence. (2) Temporary absence from Estonia shall be included in the period of permanent residence in Estonia provided in subsection (1) of this section if the absence relates to: 1) performance of compulsory military service, or 2) pregnancy, delivery, serious illness, studies, professional training or business trips if the period of absence is not longer than one consecutive year	N, Incomplete	Incomplete transposition Estonia has failed to transpose the provision, the Directive speaks of validity of the card and not of continuity of residence, as Estonian law Accordingly there is a gap in transposition No one have to read ELKS 45 (1) together with ELKS 5 If person meets the requirements for residence, the ID card will be valid.
Art.12.1	Retention of the right of residence by family members in the event of death or departure of the Union citizen 1. Without prejudice to the second subparagraph, the Union citizen's death or departure from the host Member State shall not affect the right of residence of his/her family members who are nationals of a Member State. Before acquiring the right of permanent residence, the persons concerned must meet the conditions laid down in points (a), (b), (c) or (d) of Article 7(1).				Y, More favourable	More favourable treatment Estonian law does not impose conditions for residence (Article 7 of the Directive) for EU citizens. Therefore, this provision has not been transposed into Estonian law

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Art.12.2	2. Without prejudice to the second subparagraph, the Union citizen's death shall not entail loss of the right of residence of his/her family members who are not nationals of a Member State and who have been residing in the host Member State as family members for at least one year before the Union citizen's death.	ELKS art. 36	Euroopa Liidu kodaniku surma korral lõpeb perekonnaliikme tähtajaline elamisõigus Eestis, välja arvatud juhul, kui nimetatud perekonnaliige on Eestis elanud tähtajalise elamisõiguse alusel vähemalt ühe aasta enne Euroopa Liidu kodaniku surma ning: 1) ta töötab või tegutseb füüsilisest isikust ettevõtjana Eestis, 2) tal on enda ja oma perekonnaliikmete ülalpidamiseks piisavalt rahalisi vahendeid ning ta on ravikindlustuse seaduses sätestatud korras kindlustatud isik või 3) ta on käesoleva lõike punktis 1 või 2 nimetatud isiku perekonnaliige.	In the case of the death of a citizen of the European Union, the temporary right of residence of his or her family member extinguishes unless the family member has resided in Estonia on the basis of temporary right of residence for at least a year before the death of the citizen of the European Union, and: [...] 1) he or she is employed or operates in Estonia as a sole proprietor; 2) he or she has sufficient funds to maintain himself or herself and his or her family members, and he or she is a person insured pursuant to the procedure provided by the Health Insurance Act, or 3) he or she is a family member of a person specified in clause 1) or 2) of this section. ["or that they are members of the family, already constituted in the host Member State, of a person satisfying these requirements"]	N, Incorrect	Incorrect transposition Under ELKS "family members" are only third country nationals; therefore this provision only applies to third country family members. The provision has some problems: Estonian law requires residence on the basis of temporary right of residence. The Directive does not impose conditions on legality of residence. The only requirement is to be a family member. Accordingly Estonian law is not in concordance with the Directive
	Before acquiring the right of permanent residence, the right of residence of the persons concerned shall remain subject to the requirement that they are able to show that they are workers or self-employed persons or that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State, or that they are members	ELKS art. 36	Euroopa Liidu kodaniku surma korral lõpeb perekonnaliikme tähtajaline elamisõigus Eestis, välja arvatud juhul, kui nimetatud perekonnaliige on Eestis elanud tähtajalise elamisõiguse alusel vähemalt ühe aasta enne Euroopa Liidu kodaniku surma ning: 1) ta töötab või tegutseb füüsilisest isikust ettevõtjana Eestis,	In the case of the death of a citizen of the European Union, the temporary right of residence of his or her family member extinguishes unless the family member has resided in Estonia on the basis of temporary right of residence for at least a year before the death of the citizen of the European Union, and: 1) he or she is employed or operates in Estonia as a sole proprietor;	Y	Effective transposition Estonia law uses different wording but that can not create a conformity problem. The Directive says - they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence – Estonian law says - he or she has sufficient funds to maintain himself or herself and his or her family

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	of the family, already constituted in the host Member State, of a person satisfying these requirements. 'Sufficient resources' shall be as defined in Article 8(4).	RKS § 21. para 1	<p>2) tal on enda ja oma perekonnaliikmete ülalpidamiseks piisavalt rahalisi vahendeid ning ta on ravikindlustuse seaduses sätestatud korras kindlustatud isik või</p> <p>3) ta on käesoleva lõike punktis 1 või 2 nimetatud isiku perekonnaliige.</p> <p>Kindlustuskaitse tõendamine</p> <p>(1) Ravikindlustuse andmekogusse kantud isik esitab kindlustuskaitse tõendamiseks Eestis isikut tõendava dokumendi. Kindlustuskaitse tõendamiseks teistes Euroopa Liidu liikmesriikides esitab ravikindlustuse andmekogusse kantud isik Euroopa Liidu ravikindlustuskaardi</p>	<p>2) he or she has sufficient funds to maintain himself or herself and his or her family members, and he or she is a person insured pursuant to the procedure provided by the Health Insurance Act, or</p> <p>3) he or she is a family member of a person specified in clause 1) or 2) of this section.</p> <p>Proof of insurance cover</p> <p>(1) A person who is entered in the health insurance database shall present an identity document in order to prove his or her insurance cover in Estonia. In order to prove insurance cover in other member states of the European Union, a person who is entered in the health insurance database shall present the European health insurance card</p>		<p>members, it would seem that the Estonian law is actually more favourable. There is no certain limit in Estonian law regarding how it is calculated that the person has sufficient resources for he/she and family members.</p> <p>Estonian transposition is correct also in this respect that persons covered by this provision can have insurance in other member state that covers medical costs in Estonia</p> <p>See that in this case it is only for death. This paragraph does not apply to departure. So the transposition would be correct.</p>
	Such family members shall retain their right of residence exclusively on a personal basis.				Y, More favourable	<p>Mora favourable treatment</p> <p>The provision has not been transposed as such. However, this creates a more favourable situation in the national context.</p>
Art.12.3	3. The Union citizen's departure from the host Member State or his/her death shall not entail loss of the right of residence of his/her children or of the parent who has actual custody of the children, irrespective of nationality, if the children reside in the host Member State and are enrolled at an educational establishment, for the purpose of studying there, until	ELKS art 36 para. 3	<p>Euroopa Liidu kodaniku surma korral on Euroopa Liidu kodaniku lapsel, kes elab Eestis ja on kantud õppimise eesmärgil õppeasutuse nimekirja, ning vanemal, kes teda kasvatab, Eestis tähtajaline elamisõigus kuni õpingute lõppemiseni.</p>	<p>Upon the death of a citizen of the European Union, a child of the citizen of the European Union residing in Estonia who is enrolled in an educational institution for study, and the parent caring for such child shall have temporary right of residence in Estonia until the</p>	N, Incomplete	<p>Incomplete transposition</p> <p>Estonian law refers to death but not to departure.</p>

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	the completion of their studies.			child concludes his or her studies		
Art.13.1	<p>Retention of the right of residence by family members in the event of divorce, annulment of marriage or termination of registered partnership</p> <p>1. Without prejudice to the second subparagraph, divorce, annulment of the Union citizen's marriage or termination of his/her registered partnership, as referred to in point 2(b) of Article 2 shall not affect the right of residence of his/her family members who are nationals of a Member State.</p>	<p>ELKS art 38</p> <p>ELKS art. 3</p>	<p>Perekonnaliikme tähtajaline elamisõigus abielulahutuse või abielu kehtetuks tunnistamise korral</p> <p>Euroopa Liidu kodaniku perekonnaliikmeks (edaspidi <i>perekonnaliige</i>) käesoleva seaduse tähenduses loetakse isikut, kes ei ole Euroopa Liidu ega Eesti kodanik ja kes on:</p> <p>1) Euroopa Liidu kodaniku abikaasa (edaspidi <i>abikaasa</i>),</p> <p>2) Euroopa Liidu kodaniku või abikaasa alla 21-aastane laps või ülalpeetav täisealine laps (edaspidi <i>ülalpeetav laps</i>),</p> <p>3) Euroopa Liidu kodaniku või abikaasa ülalpeetav vanem või</p> <p>4) käesoleva lõike punktides 1–3 nimetatata isik, kes on Euroopa Liidu kodaniku ülalpeetav või leibkonnaliige lähteriigis või kes ei ole tervise seisundi või puude tõttu püsivalt suuteline iseseisvalt toime tulema ja on vajalik, et Euroopa Liidu kodanik teda isiklikult hooldab.</p>	<p>Temporary right of residence of family members in the case of divorce or annulment of marriage</p> <p>For the purposes of this Act, a family member of a citizen of the European Union (hereinafter family member) is a person who is not a citizen of the European Union or a citizen of Estonia and who is:</p> <p>1) a spouse of the citizen of the European Union (hereinafter spouse),</p> <p>2) a child under 21 years of age or a dependent adult child of the citizen of the European Union or of his or her spouse (dependent child);</p> <p>3) a dependent parent of the citizen of the European Union or of his or her spouse, or</p> <p>4) a person not specified in clauses 1)–3) of this section who, in the country of origin of the citizen of the European Union, is a dependant of the citizen of the European Union or is a member of his or her household, or who is permanently unable to cope independently due to health reasons or disability and it is necessary that the citizen of the European Union personally cares for him or her.</p>	<p>Y, More favourable</p>	<p>Effective and more favourable transposition</p> <p>Estonian law does not impose conditions for residence for EU citizens. Therefore, this provision does not apply to EU citizens but only to third country family members.</p> <p>Directive speaks about „ family members who are nationals of a Member State.” - Relevant Estonian provision (ELKS at. 38) regulates temporary right of residence of family members in the case of divorce or annulment of marriage and according to art. 3 of ELKS family member is “a person who is not a citizen of the European Union or a citizen of Estonia” Accordingly Estonian relevant law only covers third country family members</p>
	Before acquiring the right of permanent residence, the persons concerned must meet the conditions laid down in points				<p>Y, More favourable</p>	<p>More favourable treatment</p> <p>Estonian law does not impose these</p>

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	(a), (b), (c) or (d) of Article 7(1).				e	requirements
Art.13.2 (a)	2. Without prejudice to the second subparagraph, divorce, annulment of marriage or termination of the registered partnership referred to in point 2(b) of Article 2 shall not entail loss of the right of residence of a Union citizen's family members who are not nationals of a Member State where: (a) prior to initiation of the divorce or annulment proceedings or termination of the registered partnership referred to in point 2(b) of Article 2, the marriage or registered partnership has lasted at least three years, including one year in the host Member State; or	ELKS art. 38, para. 1, sec. 1	Abielulahutuse või abielu kehtetuks tunnistamise korral lõpeb abikaasa tähtajaline elamisõigus Eestis, välja arvatud juhul, kui: 1) enne abielulahutuse või abielu kehtetuks tunnistamise menetluse algatamist on abielu kestnud vähemalt kolm aastat, sealhulgas üks aasta ühiselt Eestis tähtajalise elamisõiguse kasutamise ajal,	In the case of a divorce or annulment of marriage, the spouse's temporary right of residence in Estonia extinguishes, except in the case where: 1) the marriage has lasted for at least three years before the initiation of the divorce or annulment proceedings, including one year of living together in Estonia during the time the spouses were using the temporary right of residence right;	N, Incorrect	Incorrect transposition Partnership is not recognised in Estonia, but this recognition is optional for Member State Estonian law refers to - one year of living together but the Directive implies one year of marriage But in this sense transposition should be still considered correct - as a result of subsequent reference to spouses. In addition, the Estonian law limits the retention of the right of residence to spouses, whereas the Directive applies to "family members" in general. There is still a transposition problem as Estonian law requires residence of the spouse on the basis of temporary right of residence. The Directive does not impose conditions on legality of residence
Art.13.2 (b)	(b) by agreement between the spouses or the partners referred to in point 2(b) of Article 2 or by court order, the spouse or partner who is not a national of a Member State has custody of the Union citizen's children; or	ELKS art. 38, para 1, sec. 2	Abielulahutuse või abielu kehtetuks tunnistamise korral lõpeb abikaasa tähtajaline elamisõigus Eestis, välja arvatud juhul, kui: ... 2) kohtuotsuse või abikaasade kokkuleppe kohaselt on nimetatud abikaasal Euroopa Liidu kodaniku lapse hooldusõigus,	In the case of a divorce or annulment of marriage, the spouse's temporary right of residence in Estonia extinguishes, except in the case where: ... 2) according to a court judgment or agreement between the spouses, the spouse specified above has custody of the child of the citizen of the European Union;	Y	Effective transposition The substance of transposition is correct but see comments on Article 12(1) on the conditions Estonian law imposes.
Art.13.2 (c)	(c) this is warranted by particularly difficult circumstances, such as having	ELKS art. 38, para 1, sec. 4	4) tähtajalise elamisõiguse kasutamise võimaldamist	4) Extraordinary circumstances justify the use of	Y	Effective transposition

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	been a victim of domestic violence while the marriage or registered partnership was subsisting; or		õigustavad erilised asjaolud, näiteks nimetatud abikaasa langemine koduvägivalla ohvriks abielu ajal.	temporary right of residence, for example the fact that the spouse specified above has been a victim of domestic violence in the course of the marriage.		The substance of transposition is correct but see comments on Article 12(1) on the conditions Estonian law imposes. Estonian law uses different wording - particularly difficult circumstances is transposed as extraordinary circumstances. But this will not create a conformity problem as scope of Estonian term “extraordinary circumstances” is no doubt broader than that of the Directive’s “particularly difficult”.
Art.13.2 (d)	d) by agreement between the spouses or partners referred to in point 2 (b) of Article 2 or by court order, the spouse or partner who is not a national of a Member State has the right of access to a minor child, provided that the court has ruled that such access must be in the host Member State, and for as long as is required.	ELKS art. 38, para 1, sec. 3	3) kohtuotsuse või abikaasade kokkuleppe kohaselt on nimetatud abikaasal õigus alaealise lapsega suhelda tingimusel, et kohtuotsuse kohaselt peab suhtlemine toimuma Eestis või	3) according to a court judgment or agreement between the spouses, the spouse specified above has the right to access the child with the condition that such access must take place in Estonia, or	Y	Effective transposition The substance of transposition is correct but see comments on Article 12(1) on the conditions Estonian law imposes. In addition, the Directive provides that “...the court has ruled that such access must be ... for as long as is required...”) The last clause “... for as long as is required” is missing from Estonian law but that should be implicit in the court order
	Before acquiring the right of permanent residence, the right of residence of the persons concerned shall remain subject to the requirement that they are able to show that they are workers or self-employed persons or that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State, or that they are members	ELKS art. 38, para. 2	Lisaks käesoleva paragrahvi lõikes 1 sätestatud tingimustele peab abikaasa: 1) töötama või tegutsema füüsilisest isikust ettevõtjana Eestis või 2) omama enda ja oma perekonnaliikmete ülalpidamiseks piisavalt rahalisi vahendeid ja olema ravikindlustuse seaduses sätestatud korras kindlustatud isik.	In addition to the requirements provided for in subsection (1) of this section, the spouse shall: 1) be employed or operate in Estonia as a sole proprietor; 2) have sufficient funds to maintain himself or herself and his or her family members, and be a person insured pursuant to the procedure provided by the Health Insurance Act.	N, Incomplete	Incomplete transposition Estonia law uses different wording but that can not create a conformity problem. The Directive says - they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence – Estonian law says - he or she has sufficient funds to maintain himself or herself and his or her family

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	of the family, already constituted in the host Member State, of a person satisfying these requirements. 'Sufficient resources' shall be as defined in Article 8(4).	RKS § 21. para 1	Kindlustuskaitse tõendamine (1) Ravikindlustuse andmekogusse kantud isik esitab kindlustuskaitse tõendamiseks Eestis isikut tõendava dokumendi. Kindlustuskaitse tõendamiseks teistes Euroopa Liidu liikmesriikides esitab ravikindlustuse andmekogusse kantud isik Euroopa Liidu ravikindlustuskaardi	Proof of insurance cover (1) A person who is entered in the health insurance database shall present an identity document in order to prove his or her insurance cover in Estonia. In order to prove insurance cover in other member states of the European Union, a person who is entered in the health insurance database shall present the European health insurance card		members, it would seem that the Estonian law is from this point of view actually more favourable. Estonian transposition is correct also in this respect that persons covered by this provision can have insurance in other member state that covers medical costs in Estonia However there is still a conformity problem – as the Directive also says - or that they are members of the family, already constituted in the host Member State. This clause has not been transposed in Estonia, accordingly scope of Estonian law is narrower than that of the Directive.
	Such family members shall retain their right of residence exclusively on personal basis.				Y, More favourable	More favourable treatment The provision has not been transposed. However, this creates a more favourable situation in the national context.
Art.14.1	Retention of the right of residence Union citizens and their family members shall have the right of residence provided for in Article 6, as long as they do not become an unreasonable burden on the social assistance system of the host Member State.				Y	The provision has not been transposed, but this does not create any problems of conformity since residence is unconditional.
Art.14.2	2. Union citizens and their family Members shall have the right of residence provided for in Articles 7, 12 and 13 as long as they meet the conditions set out therein.				Y	The provision has not been transposed. See above.
	In specific cases where there is a reasonable doubt as to whether a Union citizen or his/her family members satisfies the conditions set out in Articles	ELKS art 54	Kontrolli teostamine (1) Perekonnaliige peab tõendama tähtajalise elamisõiguse ja selle pikendamise aluseks	Exercise of control (1) A family member shall provide proof of his or her conformity to the prerequisite	N, Incomplete	Incomplete transposition Estonian law does not specify the method and format of provision of

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	7, 12 and 13, Member States may verify if these conditions are fulfilled. This verification shall not be carried out systematically.		olevale eeldusele ja tingimustele vastavust. (2) Kodakondsus- ja migratsiooniametnik võib põhjendatud kahtluse korral kontrollida, kas Euroopa Liidu kodanik ja perekonnaliige täidavad selles seaduses sätestatud kohustusi ja tingimusi ega ole kuritarvitanud selles seaduses ettenähtud õigusi või kasutanud pettust.	and conditions which are the basis for the temporary right of residence or extension thereof. (2) In the case of justified doubt, a citizenship and migration official has the right to verify whether or not a citizen of the European Union or his or her family member performs the obligations and fulfils the conditions provided by this Act, abuses the rights prescribed by this Act or uses deception.		such proof. There is only this declaratory provision. In addition, Estonian law does not contain the requirement that this verification shall not be carried out systematically. Mind that the only condition to be checked in Estonia will be whether the person is an EU citizen or family member.
Art.14.3	3. An expulsion measure shall not be the automatic consequence of a Union citizen's or his or her family member's recourse to the social assistance system of the host Member State.				Y	The provision has not been transposed. See above.
Art.14.4 (a)	4. By way of derogation from paragraphs 1 and 2 and without prejudice to the provisions of Chapter VI, an expulsion measure may in no case be adopted against Union citizens or their family members if: (a) the Union citizens are workers or self-employed persons, or				Y	The provision has not been transposed. See above.
Art.14.4 (b)	(b) the Union citizens entered the territory of the host Member State in order to seek employment. In this case, the Union citizens and their family members may not be expelled for as long as the Union citizens can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged.				Y	The provision has not been transposed. See above.
Art.15.1	Procedural safeguards The procedures provided for by Articles 30 and 31 shall apply by analogy to all decisions restricting free movement of Union citizens and their family members				NT	Art. 31.4 has not been transposed and art. 31.2 has been incorrectly transposed- See comments on those provisions.

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	on grounds other than public policy, public security or public health.					
Art.15.2	2. Expiry of the identity card or passport on the basis of which the person concerned entered the host Member State and was issued with a registration certificate or residence card shall not constitute a ground for expulsion from the host Member State.				NT	The provision has not been transposed
Art.15.3	3. The host Member State may not impose a ban on entry in the context of an expulsion decision to which paragraph 1 applies.				NT	The provision has not been transposed
Chapter IV						
RIGHT OF PERMANENT RESIDENCE						
<i>Section I. Eligibility</i>						
Art.16.1	General rule for Union citizens and their family members 1. Union citizens who have resided legally for a continuous period of five years in the host Member State shall have the right of permanent residence there. This right shall not be subject to the conditions provided for in Chapter III.	ELKS art 40, para 1	Euroopa Liidu kodaniku alaline elamisõigus (1) Euroopa Liidu kodanikul, kes on tähtajalise elamisõiguse alusel Eestis püsivalt elanud viis aastat järjest, on õigus alalisele elamisõigusele.	Permanent right of residence of citizen of European Union (1) A citizen of the European Union who has permanently resided in Estonia for a period of five consecutive years based on temporary right of residence is entitled to permanent right of residence.	Y	Effective transposition, despite that the statement that this right is not subject to the equivalent of Ch. III is not transposed. The fact that it is required that the residence is based on the temporary right of residence may create problems since the only conditions in the Directive are that the residence is legal.
Art.16.2	2. Paragraph 1 shall apply also to family members who are not nationals of a Member State and have legally resided with the Union citizen in the host Member State for a continuous period of five years.	ELKS art. 45, para. 1	Perekonnaliikme alaline elamisõigus (1) Perekonnaliikmel, kes on tähtajalise elamisõiguse alusel Eestis püsivalt elanud viis aastat järjest, on õigus alalisele elamisõigusele.	Permanent right of residence of family member (1) A family member who has permanently resided in Estonia for a period of five consecutive years based on temporary right of residence is entitled to permanent right of residence.	Y	Effective transposition The Directive requires residence with the Union citizen. The Estonian law only requires residence but “based on temporary right of residence”. Article 45 should be read together with Article 5 of ELKS which stipulates the concept of permanent residence and allows absence for certain periods. So term permanent

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						does not mean continuous
Art.16.3	3. Continuity of residence shall not be affected by temporary absences not exceeding a total of six months a year, or by absences of a longer duration for compulsory military service, or by one absence of a maximum of 12 consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.	ELKS art. 5	<p>Püsiv elamine Eestis</p> <p>(1) Püsivaks Eestis elamiseks käesoleva seaduse tähenduses loetakse Euroopa Liidu kodaniku või perekonnaliikme Eestis elamist vähemalt 183 päeva aastas. Nimetatud tähtaega arvestatakse elamisõiguse tekkimisest või elamisõiguse omandamisest arvates.</p> <p>(2) Käesoleva paragrahvi lõikes 1 sätestatud püsiva Eestis elamise perioodi hulka loetakse Eestist ajutist eemalviibimist, mis on seotud:</p> <p>1) kohustusliku ajateenistuse täitmisega või</p> <p>2) raseduse, sünnituse, raske haiguse, õpingute, tööalase koolituse või lähetusega ja mis ei ületa ühte järjestikust aastat.</p>	<p>Permanent residence in Estonia</p> <p>(1) For the purposes of this Act, permanent residence in Estonia is deemed to mean that a citizen of the European Union or his or her family member lives in Estonia for at least 183 days during a year. Such period shall be calculated as of the date of creation or date of acquisition of the right of residence.</p> <p>(2) Temporary absence from Estonia shall be included in the period of permanent residence in Estonia provided in subsection (1) of this section if the absence relates to:</p> <p>1) performance of compulsory military service, or</p> <p>2) pregnancy, delivery, serious illness, studies, professional training or business trips if the period of absence is not longer than one consecutive year.</p>	Y	<p>Effective transposition</p> <p>Estonian provision - at least 183 days presence a year- is in conformity with Directive's 6 months absence</p> <p>These terms have different meaning as required 5 years period will not be interrupted if you leave the country occasionally but still live there at least 183 days a year</p>
Art.16.4	4. Once acquired, the right of permanent residence shall be lost only through absence from the host Member State for a period exceeding two consecutive years.	ELKS art. 43	<p>1) Euroopa Liidu kodaniku alaline elamisõigus Eestis lõpetatakse:</p> <p>1) Euroopa Liidu kodaniku sooviavalduse alusel,</p> <p>2) kui ta on viibinud Eestist eemal vähemalt kaks aastat järjest või</p> <p>3) kui on põhjendatud alust arvata, et ta ohustab avalikku korda, riigi julgeolekut või teiste isikute tervist.</p>	<p>(1) The permanent right of residence of a citizen of the European Union is terminated:</p> <p>1) at the request of the citizen of the European Union,</p> <p>2) if the person has been absent from Estonia at least for a consecutive period of two years, or</p> <p>3) if there is good reason to believe that the person poses a threat to public order, national security or the health of other persons.</p>	Y	<p>Effective transposition</p> <p>Transposition is correct and in concordance with the Directive. For ELKS Article 43(3) see transposition of Article 28</p>

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Art.17.1 (a)	<p>Exemptions for persons no longer working in the host Member State and their family members</p> <p>1. By way of derogation from Article 16, the right of permanent residence in the host Member State shall be enjoyed before completion of a continuous period of five years of residence by:</p> <p>(a) workers or self-employed persons who, at the time they stop working, have reached the age laid down by the law of that Member State for entitlement to an old age pension or workers who cease paid employment to take early retirement, provided that they have been working in that Member State for at least the preceding twelve months and have resided there continuously for more than three years.</p>	ELKS art 40, para. 2, sec. 1	<p>Euroopa Liidu kodaniku alaline elamisõigus</p> <p>(2) Enne käesoleva paragrahvi lõikes 1 nimetatud tähtaega on Euroopa Liidu kodanikul õigus alalisele elamisõigusele, kui ta:</p> <p>1) on töötamise või füüsilisest isikust ettevõtjana tegutsemise lõpetamise päevaks jõudnud vanaduspensioniiikka ja Eestis töötanud või tegutsenud füüsilisest isikust ettevõtjana vähemalt viimased kaksteist kuud ning tähtajalise elamisõiguse alusel Eestis püsivalt elanud vähemalt viimased kolm aastat järjest,</p>	<p>Permanent right of residence of citizen of European Union</p> <p>(2) A citizen of the European Union is entitled to permanent right of residence before the term specified in subsection (1) of this section, if he or she:</p> <p>1) has, by the date of termination of his or her employment or operation as a sole proprietor, attained the age of retirement and has been employed or has operated as a sole proprietor in Estonia for at least the last twelve months and has stayed in Estonia on the basis of temporary right of residence at least for the last three consecutive years,</p>	N, Incomplete	<p>Incomplete transposition</p> <p>Sole proprietor is full equivalent to Directives Self-employed person</p> <p>It is possible to have an early retirement in Estonia but there is no link to this provision of the Directive. "attained the age of residence" could not include the case of early retirement</p>
	If the law of the host Member State does not grant the right to an old age pension to certain categories of self-employed persons, the age condition shall be deemed to have been met once the person concerned has reached the age of 60;				n/a	No need to transpose as Directive says "If the law of the host Member State does not ..."The provision has not been transposed. There are no relevant provisions in Estonian law
Art.17.1 (b)	<p>(b) workers or self-employed persons who have resided continuously in the host Member State for more than two years and stop working there as a result of permanent incapacity to work.</p> <p>If such incapacity is the result of an accident at work or an occupational disease entitling the person concerned to a benefit payable in full or in part by an institution in the host Member State, no condition shall be imposed as to length of residence;</p>	ELKS art 40, para. 2, sec. 2 and 3	<p>Euroopa Liidu kodaniku alaline elamisõigus</p> <p>...</p> <p>(2) Enne käesoleva paragrahvi lõikes 1 nimetatud tähtaega on Euroopa Liidu kodanikul õigus alalisele elamisõigusele, kui ta:</p> <p>...</p> <p>2) on tähtajalise elamisõiguse alusel Eestis püsivalt elanud vähemalt viimased kaks aastat järjest ning lõpetanud töötamise või füüsilisest isikust ettevõtjana tegutsemise püsiva töövõimetuse</p>	<p>Permanent right of residence of citizen of European Union</p> <p>...</p> <p>(2) A citizen of the European Union is entitled to permanent right of residence before the term specified in subsection (1) of this section, if he or she:</p> <p>...</p> <p>2) has permanently stayed in Estonia on the basis of temporary right of residence at least for the last two consecutive years and has terminated employment or operation as a</p>	N, Incorrect	<p>Incorrect transposition</p> <p>Estonian law requires temporary right of residence while Directive speaks simply about residence</p> <p>ELKS does not speak about benefit payable in full or in part, but this cannot lead to incorrect transposition as a work injury or occupational disease always creates right to such benefit under Estonian law</p>

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			tõttu, 3) elab Eestis tähtajalise elamisõiguse alusel ja on lõpetanud töötamise töövigastuse või kutsehaiguse tagajärjel tekkinud püsiva töövõimetuse tõttu või	sole proprietor due to permanent incapacity for work, 3) resides in Estonia on the basis of temporary right of residence and has terminated employment due to permanent incapacity for work arising from a work injury or occupational disease, or		
Art.17.1 (c)	(c) workers or self-employed persons who, after three years of continuous employment and residence in the host Member State, work in an employed or self-employed capacity in another Member State, while retaining their place of residence in the host Member State, to which they return, as a rule, each day or at least once a week.	ELKS art 40, para . 2, sec. 4	Euroopa Liidu kodaniku alaline elamisõigus (2) Enne käesoleva paragrahvi lõikes 1 nimetatud tähtaega on Euroopa Liidu kodanikul õigus alalisele elamisõigusele, kui ta: 4) elab Eestis tähtajalise elamisõiguse alusel ja on Eestis töötanud või tegutsenud füüsilisest isikust ettevõtjana vähemalt kolm aastat järjest ja on asunud tööle teise Euroopa Liidu liikmesriiki, kuid elab Eestis ja pöördub Eestisse tagasi vähemalt kord nädalas.	Permanent right of residence of citizen of European Union (2) A citizen of the European Union is entitled to permanent right of residence before the term specified in subsection (1) of this section, if he or she: 4) resides in Estonia on the basis of temporary right of residence and has been employed or has operated as a sole proprietor in Estonia at least for three consecutive years and has commenced employment in another member state of the European Union but resides in Estonia and returns to Estonia at least once a week.	N, Incorrect	Incorrect transposition Estonian law requires temporary right of residence while Directive speaks simply about residence
	For the purposes of entitlement to the rights referred to in points (a) and (b), periods of employment spent in the Member State in which the person concerned is working shall be regarded as having been spent in the host Member State.				NT	The provision has not been transposed
	Periods of involuntary unemployment duly recorded by the relevant employment office, periods not worked for reasons not of the person's own making and absences from work or	ELKS art. 40, para. 5	Euroopa Liidu kodaniku alaline elamisõigus ... (2) Enne käesoleva paragrahvi lõikes 1 nimetatud tähtaega on	Permanent right of residence of citizen of European Union ... (2) A citizen of the European Union is entitled to	NT	Not transposed The clause that absences from work or cessation of work due to illness or accident shall be regarded as periods

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	cessation of work due to illness or accident shall be regarded as periods of employment.		Euroopa Liidu kodanikul õigus alalisele elamisõigusele, kui ta: ... (5) Käesoleva paragrahvi lõikes 2 nimetatud töötamise aja hulka arvestatakse Euroopa Liidu kodanikust mitteolenevatel põhjustel töötuks olemise aega.	permanent right of residence before the term specified in subsection (1) of this section, if he or she: ... (5) The time during which a citizen of the European Union, due to reasons independent of him or her, is unemployed, shall be included in the period of employment specified in subsection (2) of this section.		of employment is not transposed. On the other side Estonian law is more favourable and does not require that involuntary unemployment should be duly recorded by the relevant employment office
Art.17.2	2. The conditions as to length of residence and employment laid down in point (a) of paragraph 1 and the condition as to length of residence laid down in point (b) of paragraph 1 shall not apply if the worker's or the self-employed person's spouse or partner as referred to in point 2(b) of Article 2 is a national of the host Member State or has lost the nationality of that Member State by marriage to that worker or self-employed person.	ELKS art. 40, para. 6	Käesoleva paragrahvi lõike 2 punktis 1 sätestatud elamise ja töötamise perioodi ning käesoleva paragrahvi lõike 2 punktis 2 sätestatud elamise perioodi nõuet ei kohaldata, kui Euroopa Liidu kodanik on abielus Eesti kodanikuga.	The requirement for the period of residence and employment provided in clause (2) 1) of this section and the requirement for the period of residence provided in clause (2) 2) of this section do not apply if the citizen of the European Union is married to an Estonian citizen.	Y	Effective transposition No provision made in Estonian law to cases where Estonian nationality is lost by marriage to that worker or self-employed person. But this is not a transposition mistake as Estonia citizen cannot lose his/her nationality upon marriage.
Art.17.3	3. Irrespective of nationality, the family members of a worker or a self-employed person who are residing with him in the territory of the host Member State shall have the right of permanent residence in that Member State, if the worker or self-employed person has acquired himself the right of permanent residence in that Member State on the basis of paragraph 1.	ELKS art. 45, para 2 ELKS art. 40 , para 2	Eestis tähtajalise elamisõigusega perekonnaliikmel on õigus alalisele elamisõigusele samal ajal Euroopa Liidu kodanikuga, kui Euroopa Liidu kodanikul tekib õigus alalisele elamisõigusele käesoleva seaduse § 40 lõike 2 alusel. Enne käesoleva paragrahvi lõikes 1 nimetatud tähtaega on Euroopa Liidu kodanikul õigus alalisele elamisõigusele, kui ta: 1) on töötamise või füüsilisest isikust ettevõtjana tegutsemise	A family member with temporary right of residence in Estonia is entitled to permanent right of residence simultaneously with the citizen of the European Union if the permanent right of residence of the citizen of the European Union arises based on subsection 40 (2) A citizen of the European Union is entitled to permanent right of residence before the term specified in subsection (1) of this section, if he or she: 1) has, by the date of	Y	Effective transposition

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			<p>lõpetamise päevaks jõudnud vanaduspensioniiikka ja Eestis töötanud või tegutsenud füüsilisest isikust ettevõtjana vähemalt viimased kaksteist kuud ning tähtajalise elamisõiguse alusel Eestis püsivalt elanud vähemalt viimased kolm aastat järjest,</p> <p>2) on tähtajalise elamisõiguse alusel Eestis püsivalt elanud vähemalt viimased kaks aastat järjest ning lõpetanud töötamise või füüsilisest isikust ettevõtjana tegutsemise püsiva töövõimetuse tõttu,</p> <p>3) elab Eestis tähtajalise elamisõiguse alusel ja on lõpetanud töötamise töövõime puudumise või kutsehaiguse tagajärjel tekkinud püsiva töövõimetuse tõttu või</p> <p>4) elab Eestis tähtajalise elamisõiguse alusel ja on Eestis töötanud või tegutsenud füüsilisest isikust ettevõtjana vähemalt kolm aastat järjest ja on asunud tööle teise Euroopa Liidu liikmesriiki, kuid elab Eestis ja pöördub Eestisse tagasi vähemalt kord nädalas.</p>	<p>termination of his or her employment or operation as a sole proprietor, attained the age of retirement and has been employed or has operated as a sole proprietor in Estonia for at least the last twelve months and has stayed in Estonia on the basis of temporary right of residence at least for the last three consecutive years,</p> <p>2) has permanently stayed in Estonia on the basis of temporary right of residence at least for the last two consecutive years and has terminated employment or operation as a sole proprietor due to permanent incapacity for work,</p> <p>3) resides in Estonia on the basis of temporary right of residence and has terminated employment due to permanent incapacity for work arising from a work injury or occupational disease, or</p> <p>4) resides in Estonia on the basis of temporary right of residence and has been employed or has operated as a sole proprietor in Estonia at least for three consecutive years and has commenced employment in another member state of the European Union but resides in Estonia and returns to Estonia at least once a week.</p>		
Art.17.4 (a)	4. If, however, the worker or self-employed person dies while still working but before acquiring permanent residence	ELKS art. 45, para, 3 sec. 1	Perekonnaliikme alaline elamisõigus ...	Permanent right of residence of family member ...	N, Incorrect	Incorrect transposition The requirements 'dies while still

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	status in the host Member State on the basis of paragraph 1, his family members who are residing with him in the host Member State shall acquire the right of permanent residence there, on condition that: (a) the worker or self-employed person had, at the time of death, resided continuously on the territory of that Member State for two years; or		(3) Eestis tähtajalise elamisõigusega perekonnaliikmel on õigus alalisele elamisõigusele Eestis elamisõigusega Euroopa Liidu kodaniku surma korral, kui: 1) Euroopa Liidu kodanik töötas või tegutses füüsilisest isikust ettevõtjana Eestis ning oli surma hetkel elanud elamisõiguse alusel Eestis püsivalt vähemalt kaks aastat või	(3) A family member with temporary right of residence in Estonia is entitled to permanent right of residence in the case of the death of the citizen of the European Union with right of residence in Estonia, if: 1) the citizen of the European Union was employed or operated as a sole proprietor in Estonia, and at the time of death, had permanently resided in Estonia at least for two years, or		working' and 'who are residing with him' are not transposed. Estonian law is more favourable than Directive. Estonian law requires residence based on the temporary right of residence which is not required by the Directive.
Art.17.4 (b)	(b) the death resulted from an accident at work or an occupational disease; or	ELKS art. 45, para. 3 sec. 2	Perekonnaliikme alaline elamisõigus ... (3) Eestis tähtajalise elamisõigusega perekonnaliikmel on õigus alalisele elamisõigusele Eestis elamisõigusega Euroopa Liidu kodaniku surma korral, kui: ... 2) Euroopa Liidu kodanik töötas või tegutses füüsilisest isikust ettevõtjana Eestis ning tema surma põhjustas tööõnnetus või kutsehaigus.	Permanent right of residence of family member ... (3) A family member with temporary right of residence in Estonia is entitled to permanent right of residence in the case of the death of the citizen of the European Union with right of residence in Estonia, if: ... 2) the citizen of the European Union was employed or operated as a sole proprietor in Estonia, and his or her death was caused by an accident at work or occupational disease.	Y, More favourable	Effective and more favourable transposition The requirements 'dies while still working' and 'who are residing with him' are not transposed. Estonian law is more favourable
Art.17.4 (c)	(c) the surviving spouse lost the nationality of that Member State following marriage to the worker or self-employed person.				n/a	The provision has not been transposed but there is not need since Estonian nationals cannot lose the nationality upon marriage.
Art.18	Acquisition of the right of permanent residence by certain family members who are not nationals of a Member State.	ELKS art. 45, para. 1	Perekonnaliikme alaline elamisõigus (1) Perekonnaliikmel, kes on tähtajalise elamisõiguse alusel Eestis püsivalt elanud viis aastat	Permanent right of residence of family member (1) A family member who has permanently resided in Estonia for a period of five	N, Incorrect	Incorrect transposition Incorrect transposition, as Estonian law transposing articles 12(2) and 12(3) is not in concordance with the

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	Without prejudice to Article 17, the family members of a Union citizen to whom Articles 12(2) and 13(2) apply, who satisfy the conditions laid down therein, shall acquire the right of permanent residence after residing legally for a period of five consecutive years in the host Member State.		järjest, on õigus alalisele elamisõigusele.	consecutive years based on temporary right of residence is entitled to permanent right of residence.		Directive. In addition, the condition of residence based on temporary right of residence is additional to the Directive which only requires legal residence.
<p>Chapter IV RIGHT OF PERMANENT RESIDENCE <i>Section I. Administrative formalities</i></p>						
Art.19.1	<p>Document certifying permanent residence for Union citizens</p> <p>1. Upon application Member States shall issue Union citizens entitled to permanent residence, after having verified duration of residence, with a document certifying permanent residence.</p>	ELKS art 41, paras 1, 2, 3.	<p>Elamisõigust tõendav dokument</p> <p>(1) Euroopa Liidu kodanik peab registreerima oma alalise elamisõiguse Kodakondsus- ja Migratsiooniametis.</p> <p>(2) Euroopa Liidu kodanik peab vormikohase alalise elamisõiguse registreerimise taotluse esitama Kodakondsus- ja Migratsiooniametile.</p> <p>(3) Kodakondsus- ja Migratsiooniamet kontrollib Euroopa Liidu kodanikul alalise elamisõiguse olemasolu ning annab selle olemasolu korral Euroopa Liidu kodanikule isikutunnistuse, mis on tema alalist elamisõigust tõendav dokument</p>	<p>Registration of permanent right of residence of citizen of European Union and document certifying permanent right of residence</p> <p>(1) A citizen of the European Union shall register his or her permanent right of residence with the Citizenship and Migration Board</p> <p>(2) A citizen of the European Union shall submit a standard format application for registration of his or her permanent right of residence to the Citizenship and Migration Board.</p> <p>(3) The Citizenship and Migration Board shall verify the existence of the permanent right of residence of the citizen of the European Union and if such right exists, shall issue an identity card to the citizen of the European Union which shall be the document certifying his or her permanent right of residence.</p>	Y	<p>Effective transposition.</p> <p>Identity card is issued to all Estonian permanent residents irrespective of citizenship</p> <p>This board is not only for foreigners Estonian citizen also receive their identity documents from Citizen and Migration Board.</p>
Art.19.2	2. The document certifying permanent residence shall be issued as soon as possible.				NT	The provision has not been transposed

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Art.20.1	<p>Permanent residence card for family members who are not nationals of a Member State</p> <p>1. Member States shall issue family members who are not nationals of a Member State entitled to permanent residence with a permanent residence card within six months of the submission of the application. The permanent residence card shall be renewable automatically every 10 years.</p>	<p>ETAP art. 26, para. 1</p> <p>and ETAP art. 27, para. 2</p>	<p>Kodakondsus- ja Migratsiooniamet vaatab taotluse läbi ja otsustab perekonnaliikme tähtajalise elamisõiguse andmise või andmisest keeldumise kolme kuu jooksul taotluse esitamise päevast arvates.</p> <p>Taotluse läbivaatamise tähtaja igakordsel pikendamisel ei tohi uus tähtaeg ületada esialgset määrruses sätestatud tähtaega.</p>	<p>The Citizenship and Migration Board takes decision to grant or to refuse to grant the right of permanent residence within three months</p> <p>When extending the term of issuance of the card, each time the new term should not be longer than the original term</p>	<p>N, Incorrect</p>	<p>Incorrect transposition</p> <p>According to ETAP art. 27 para. 2 as a rule 3 months term is assigned but this could be prolonged repeatedly, each time for another 3 months. This can create a conformity problem as the period may, at least in theory, exceed six months period</p> <p>The requirement that the permanent residence card shall be renewable automatically every 10 years, has not been transposed, but in Estonia to all persons concerned the identity card is automatically (after registration in Population Register) issued and periodically renewed after every 5 years</p>
Art.20.2	<p>2. The application for a permanent residence card shall be submitted before the residence card expires.</p> <p>Failure to comply with the requirement to apply for a permanent residence card may render the person concerned liable to proportionate and non-discriminatory sanctions.</p>	<p>ELKS art. 46, para .2</p> <p>ELKS art. 55</p>	<p>Perekonnaliikme alalise elamisõiguse registreerimine ja alalist elamisõigust tõendav dokument</p> <p>... (2) Perekonnaliige peab vormikohase alalise elamisõiguse registreerimise taotluse esitama Kodakondsus- ja Migratsiooniametile vähemalt üks kuu enne isikutunnistuse kehtivusaja lõppemist.</p> <p>Euroopa Liidu kodaniku perekonnaliikme seadusliku aluseta Eestis viibimise või elamise eest – karistatakse rahatrahviga kuni 300 trahviühikut.</p>	<p>Registration of permanent right of residence of family member and document certifying permanent right of residence</p> <p>... (2) A family member shall submit a standard format application for registration of his or her permanent right of residence to the Citizenship and Migration Board at least one month before the expiry of the term of validity of the identity card.</p> <p>Stay or residence of a family member of a citizen of European Union in Estonia without a legal basis is punishable by a fine of up to 300 fine units.</p>	<p>N, Incorrect</p>	<p>Incorrect transposition</p> <p>300 fine units is equal to 18 000 EEK – approximately 1100 EUR.</p> <p>In Estonian conditions this is proportionate, for example 18 000 is also average in case of violation of traffic rules.</p> <p>However, there are no comparable fines for Estonian nationals in Estonian law. Possession of Identity card is obligatory for everybody who is an Estonian citizen, but non-compliance is not punishable. This practice creates a discriminatory situation and thus transposition is incorrect.</p> <p>In addition, the text of the Estonian legislation is slightly ambiguous</p>

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						where it says that the "Citizenship and Migration Board shall verify the existence of the permanent right of residence of the family member and <i>if such right exists</i> , shall issue an identity card". It is clear that what is meant is in accordance with the Directive. However, the wording could have been chosen more carefully.
Art.20.3	3. Interruption in residence not exceeding two consecutive years shall not affect the validity of the permanent residence card.				NT	The provision has not been transposed Art 43 of ELKS concerns EU citizen Similar provision for family members is ELKS art. 48 But they do not seem relevant in case of validity of a card
Art. 21	<p>Continuity of residence</p> <p>For the purposes of this Directive, continuity of residence may be attested by any means of proof in use in the host Member State.</p> <p>Continuity of residence is broken by any expulsion decision duly enforced against the person concerned.</p>	ELKS art. 54, paras 1, 2	<p>Kontrolli teostamine</p> <p>(1) Prekonnaliige peab tõendama tähtajalise elamisõiguse ja selle pikendamise aluseks olevale eeldusele ja tingimustele vastavust.</p> <p>(2) Kodakondsus- ja migratsiooniametnik võib põhjendatud kahtluse korral kontrollida, kas Euroopa Liidu kodanik ja perekonnaliige täidavad selles seaduses sätestatud kohustusi ja tingimusi ega ole kuritarvitanud selles seaduses ettenähtud õigusi või kasutanud pettust.</p>	<p>Exercise of control</p> <p>(1) A family member shall provide proof of his or her conformity to the prerequisite and conditions which are the basis for the temporary right of residence or extension thereof.</p> <p>(2) In the case of justified doubt, a migration official has the right to verify whether or not a citizen of the European Union or his or her family member performs the obligations and fulfils the conditions provided by this Act, abuses the rights prescribed by this Act or uses deception.</p>	NT	<p>Not transposed</p> <p>Provision that continuity of residence is broken by any expulsion decision duly enforced against the person concerned, has not been transposed. It seems to be more favourable –.</p> <p>The provision quoted (ELKS art. 54, para 1) are about family members. Article 21 is a general provision. There is no similar provision concerning EU citizen in Estonia.</p> <p>There are no legal requirements on how provision of proof or verification will be commenced. There is a too wide room for discretion under Estonian law, that can potentially cause serious infringement of persons rights.</p>

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Chapter V						
PROVISIONS COMMON TO THE RIGHT OF RESIDENCE AND THE RIGHT OF PERMANENT RESIDENCE						
Art. 22	Territorial scope The right of residence and the right of permanent residence shall cover the whole territory of the host Member State.	ELKS art. 1, para. 1	Käesolev seadus reguleerib Euroopa Liidu kodaniku ja tema perekonnaliikme Eestis viibimise ja elamise aluseid.	This Act regulates the bases for the stay and residence in Estonia of citizens of the European Union and their family members.	Y	Effective transposition ELKS is applied within the whole territory of Estonia
	Member States may impose territorial restrictions on the right of residence and the right of permanent residence only where the same restrictions apply to their own nationals.	LKS art. 29, para. 2	Loodusreservaadis on keelatud igasugune inimtegevus, sealhulgas inimeste viibimine	In strict nature reserve human activities and human presence is forbidden	Y	Effective transposition The requirement that in strict nature reserve human activities and human presence is forbidden is common for all persons irrespective of their nationality- There are no bans of residing in certain places based on criminal law in Estonian legislation
Art.23	Related rights Irrespective of nationality, the family members of a Union citizen who have the right of residence or the right of permanent residence in a Member State shall be entitled to take up employment or selfemployment there.	ELKS art. 2, para. 4	Eestis viibimise, elamise ja töötamise seaduslikud alused ... (4) Eestis töötamiseks ja füüsilisest isikust ettevõtjana tegutsemiseks peab perekonnaliikmel olema elamisõigus.	Legal bases for stay, residence and employment in Estonia (4) A family member must have the right of residence in order to be employed or operate as a sole proprietor in Estonia.	Y	Effective transposition Wording similar to that of the Directive would be more appropriate to have a clear statement that once the right of residence exists there is an automatic entitlement to work. There are no working restrictions at all for permanent residents. Estonian society and especially economic (including labour) policy is ultimately liberal and open.
Art.24.1	Equal treatment 1. Subject to such specific provisions as are expressly provided for in the Treaty and secondary law, all Union citizens residing on the basis of this Directive in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State within the	ELKS art. 68, 70, 74, 75, 76, 77, 81, 82	§ 68. Puuetega inimeste sotsiaaltoetuste seaduse muutmise (1) Puuetega inimeste sotsiaaltoetusi määratakse ja makstakse Eesti alalisele elanikule või tähtajalise elamisloa või tähtajalise elamisõiguse alusel Eestis elavale isikule lisakulutusi põhjustava keskmise, raske või	§ 68. Amendment of Social Benefits for Disabled Persons Act (1) Social benefits for disabled persons shall be granted and paid pursuant to the provisions of this Act to permanent residents of Estonia or persons residing in Estonia on	N, Incorrect	Incorrect transposition ELKS has not introduced a provision stating a general principle of equal treatment. Instead, the ELKS amends a variety of relevant acts and persons who have the right of temporary or permanent residence are equated with Estonian citizen. This applies also to

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	scope of the Treaty. The benefit of this right shall be extended to family members who are not nationals of a Member State and who have the right of residence or permanent residence.		<p>sügava puude korral vastavalt käesoleva seaduse sätetele.»</p> <p>·</p> <p>§ 70. Ravikindlustuse seaduse muutmine Ravikindlustuse seaduse § 5 lõige 1 muudetakse ja sõnastatakse järgmiselt: «(1) Kindlustatud isik käesoleva seaduse tähenduses on Eesti alaline elanik, tähtajalise elamisloa või elamisõiguse alusel Eestis elav isik, kelle eest sotsiaalmaksu maksja on kohustatud maksma sotsiaalmaksu või kes iseenda eest maksab sotsiaalmaksu sotsiaalmaksuseaduses sätestatud korras, suuruses ja tähtaegadel, samuti nende isikutega käesoleva seaduse alusel või § 22 lõikes 1 nimetatud lepingu alusel võrdsustatud isik.»</p> <p>§ 74. Riiklike peretoetuste seaduse muutmine Riiklike peretoetuste seaduses tehakse järgmised muudatused: 1) paragrahvi 2 lõike 1 punkt 2 muudetakse ja sõnastatakse järgmiselt: «2) Eestis elavale välismaalasele, kellel on tähtajaline elamisluba või kes viibib Eestis välismaalaste</p>	<p>the basis of a temporary residence permit or temporary right of residence with moderate, severe or profound disabilities which cause additional expense."</p> <p>§ 70. Amendments to Health Insurance Act Subsection 5 (1) of the Health Insurance Act (shall be amended and worded as follows: «(1) For the purposes of this Act, an insured person is a permanent resident of Estonia or a person living in Estonia on the basis of a temporary residence permit or right of residence, for whom a payer of social tax is required to pay social tax or who pays social tax for himself or herself pursuant to the procedure, in the amounts and within the terms provided for in the Social Tax Act, or a person considered equal to such persons on the basis of this Act or on the basis of a contract specified in subsection 22 (1) of this Act."</p> <p>§ 74. Amendments to State Family Benefits Act The State Family Benefits Act is amended as follows: 1) clause 2 (1) 2) is amended and worded as follows: «2) aliens residing in Estonia who hold a temporary residence permit or who stays in Estonia on the grounds specified in subsection 5¹ (2) of the Aliens</p>		<p>EU Citizens and third country nationals. It is not possible to verify whether this approach exhausts all possible benefits that could be obtained in Estonia, but in principle the amended acts seem quite complete. However, a general principle would have been better.</p> <p>In Estonia only those non-nationals who have the right of temporary or permanent residence are equated with Estonian citizen, while Article 24 (1) of the Directive refers to EU citizens residing "on the basis of this Directive". Accordingly those EU citizens who have not yet acquired the right of temporary residence (during first three months of stay) are not covered by the clause of equal treatment. This transposition problem in practice primarily relates to Health Insurance and Family Benefit</p>

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			<p>seaduse § 5¹ lõikes 2 sätestatud alusel»;»;</p> <p>2) paragrahvi 2 lõiget 1 täiendatakse punktiga 3 järgmises sõnastuses:</p> <p>«3) tähtajalise elamisõiguse alusel Eestis elavale välismaalasele.»;</p> <p>3) paragrahvi 11 lõiget 1 täiendatakse pärast sõnu «tähtajalise elamisloaga» sõnadega «või tähtajalise elamisõiguse alusel».</p> <p>§ 75 Riikliku matusetootuse seaduse muutmise Riikliku matusetootuse seaduses tehakse järgmised muudatused:</p> <p>1) paragrahvi 2 lõige 1 muudetakse ja sõnastatakse järgmiselt:</p> <p>«(1) Riiklik matusetootus (edaspidi <i>matusetootus</i>) on Eesti territooriumil matuse korraldamiseks ettenähtud ühekordne toetus, mida makstakse Eestis registreeritud surma korral ja Eesti alalise elaniku või tähtajalise elamisloa või tähtajalise elamisõiguse alusel Eestis elava välismaalase või välismaalaste seaduse § 5¹ lõikes 2 nimetatud isiku või Euroopa Liidu kodaniku seaduse § 30 lõikes 3 nimetatud isiku väljaspool Eestit registreeritud surma korral.»;</p>	<p>Act.";</p> <p>2) clause 3) is added to subsection 2 (1) worded as follows:</p> <p>«3) aliens residing in Estonia on the basis of temporary right of residence;»;</p> <p>3) In subsection 11 (1), the words “or on the basis of temporary right of residence” shall be inserted after the words “temporary residence permit”.</p> <p>§ 75. Amendment of State Funeral Benefits Act</p> <p>The State Funeral Benefits Act is amended as follows:</p> <p>1) subsection 2 (1) is amended and worded as follows:</p> <p>«(1) State funeral benefit (hereinafter funeral benefit) is a single benefit prescribed to cover the expenses of a funeral in the territory of Estonia which is paid upon a death registered in Estonia and upon the death, which is registered outside of Estonia, of a permanent resident of Estonia or an alien residing in Estonia on the basis of a temporary residence permit or temporary right of residence, or of a person specified in subsection 5¹ (2) of the Aliens Act, or of a person specified in subsection 30 (3) of the Citizen of European Union Act.”;</p>		

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			<p>§ 76 Riikliku pensionikindlustuse seaduse muutmise</p> <p>Riikliku pensionikindlustuse seaduses) tehakse järgmised muudatused:</p> <p>1) paragrahvi 4 lõike 1 punkt 2 muudetakse ja sõnastatakse järgmiselt:</p> <p>«2) tähtajalise elamisloa või elamisõiguse alusel Eestis elavale välismaalasele.»;</p> <p>2) paragrahvi 22 lõike 1 punktid 1–3 muudetakse ja sõnastatakse järgmiselt:</p> <p>«1) 63-aastaseks saanud isikul, kellel ei ole õigust vanaduspensionile ja kes on elanud Eestis alalise elanikuna või tähtajalise elamisloa või tähtajalise elamisõiguse alusel vähemalt viis aastat vahetult enne pensioni taotlemist;</p> <p>2) püsivalt töövõime kaotuse protsent on vähemalt 40, kellel puudub töövõime määramiseks nõutav pensionistaap ja kes on elanud Eestis alalise elanikuna või tähtajalise elamisloa või tähtajalise elamisõiguse alusel vähemalt ühe aasta vahetult enne pensioni taotlemist;</p> <p>3) käesoleva seaduse §-s 20 nimetatud isikutel, kellel seoses toitjal nõutava pensionistaapi puudumisega ei ole õigust toitjakaotuspensionile, kui toitja oli elanud Eestis alalise elanikuna või tähtajalise elamisloa või tähtajalise elamisõiguse alusel</p>	<p>§ 76. Amendment of State Pension Insurance Act</p> <p>The State Pension Insurance Act is amended as follows:</p> <p>1) clause 4 (1) 2) is amended and worded as follows: «2) aliens residing in Estonia on the basis of temporary residence permits or temporary right of residence.»;</p> <p>2) clauses 22 (1) 1)–3) are amended and worded as follows: «1) persons who have attained 63 years of age and who do not have the right to receive old-age pension and who have been permanent residents of Estonia or have resided in Estonia on the basis of a temporary residence permit or temporary right of residence for at least five years immediately before making a pension claim;</p> <p>2) persons who are declared permanently incapacitated for work, the percentage of whose loss of capacity for work is at least 40 per cent, who have not earned a pension qualifying period required for the grant of a pension for incapacity for work and who have been permanent residents of Estonia or have resided in Estonia on the basis of a temporary residence permit or temporary right of residence for at least one year immediately before making a pension claim;</p> <p>3) persons specified in § 20 of this Act who, in connection with the insufficient pension</p>		

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			<p>vähemalt üks aasta enne surma;».</p> <p>§ 77. Sotsiaalhoolekande seaduse muutmine Sotsiaalhoolekande seaduse § 4 lõike 1 punkt 2 muudetakse ja sõnastatakse järgmiselt: «2) Eestis elamisloa või elamisõiguse alusel elaval välismaalasel;».</p> <p>§ 81. Tööturuteenuste ja -toetuste seaduse muutmine Tööturuteenuste ja -toetuste seaduse (RT I 2005, 54, 430; 2006, 2, 3) § 3 punkt 2 muudetakse ja sõnastatakse järgmiselt: «2) tähtajalise elamisloa või tähtajalise elamisõiguse alusel Eestis elaval välismaalasel».</p> <p>§ 82. Vanemahüvitise seaduse muutmine Vanemahüvitise seaduse § 2 lõige 1 muudetakse ja sõnastatakse järgmiselt: «(1) Hüvitisele on õigus Eesti</p>	<p>qualifying period of their provider, do not have the right to receive a survivor's pension, if the provider was a permanent resident of Estonia or had resided in Estonia on the basis of a temporary residence permit or temporary right of residence for at least one year before his or her death;".</p> <p>§ 77. Amendment of Social Welfare Act Clause 4 (1) 2) of the Social Welfare Act is amended and worded as follows: «2) aliens residing in Estonia on the basis of residence permits or right of residence.".</p> <p>§ 81. Amendment of Labour Market Services and Support Act Clause 3 2) of the Labour Market Services and Support Act (RT I 2005, 54, 430; 2006, 2, 3) is amended and worded as follows: «2) aliens residing in Estonia on the basis of temporary residence permits or temporary right of residence.".</p> <p>§ 82. Amendment of Parental Benefit Act Subsection 2 (1) of the Parental Benefit Act is amended and worded as follows: «(1) Permanent residents of</p>		

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		ÕTLS art. 5, para. 1	<p>alalise elanikul ja Eestis tähtajalise elamisloa või tähtajalise elamisõiguse alusel elaval välismaalasel (edaspidi <i>Eesti elanik</i>). Eesti elanikul, kelle elukoht on mitmes riigis, on õigus hüvitisele, kui ta on resident tulumaksuseaduse § 6 lõike 1 tähenduses või kui ta elab Eestis püsivalt välismaalaste seaduse või Euroopa Liidu kodaniku seaduse tähenduses.»</p> <p>Õppetootuse taotlemine</p> <p>1) Õpilasel ja üliõpilasel (välja arvatud doktorandil) on õigus taotleda põhitoetust, kui ta:</p> <p>1) on Eesti kodanik või viibib Eestis pikaajalise elaniku või tähtajalise elamisloa või alalise või tähtajalise elamisõiguse alusel;</p>	<p>Estonia and aliens residing in Estonia on the basis of a temporary residence permit or temporary right of residence (hereinafter residents of Estonia) have the right to receive the benefit. A resident of Estonia who has residence in several states has the right to receive the benefit if he or she is a resident within the meaning of subsection 6 (1) of the Income Tax Act or if he or she permanently resides in Estonia within the meaning of the Aliens Act or the Citizen of European Union Act."</p> <p>Applying for study allowance (1) A pupil or student (except a Doctoral candidate) has the right to apply for a basic allowance if he or she: 1) is an Estonian citizen or is staying in Estonia on the basis of a permanent or temporary residence permit;</p>		
Art.24.2	2. By way of derogation from paragraph 1, the host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence or, where appropriate, the longer period provided for in Article 14(4)(b), nor shall it be obliged, prior to acquisition of the right of permanent residence, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain				Y, More favourable	<p>More favourable treatment</p> <p>Estonia has chosen not to include a statement to this effect in the transposing legislation. However, as seen in the amendments to the specific acts shown above, Estonia uses the option and only persons who have the right of temporary or permanent residence are equated with Estonian citizen.</p>

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	such status and members of their families.					
Art.25.1	<p>General provisions concerning residence documents</p> <p>1. Possession of a registration certificate as referred to in Article 8, of a document certifying permanent residence, of a certificate attesting submission of an application for a family member residence card, of a residence card or of a permanent residence card, may under no circumstances be made a precondition for the exercise of a right or the completion of an administrative formality, as entitlement to rights may be attested by any other means of proof.</p>				NT	This provision has not been transposed
Art.25.2	2. All documents mentioned in paragraph 1 shall be issued free of charge or for a charge not exceeding that imposed on nationals for the issuing of similar documents.	RLS art. 37, 225 and 226	<p>§ 37. Euroopa Liidu kodaniku seaduse alusel tehtava toimingute tasumisest vabastamine ja riigilõivumäära vähendamine</p> <p>Kodakondsus- ja Migratsiooniametil ning konsulaarametnikul on isiku majanduslikust olukorrast lähtuvalt õigus vabastada isik käesoleva seaduse §-s 225 sätestatud riigilõivu tasumisest või vähendada tasutava riigilõivu määra.</p> <p>§ 225. Tähtajalise elamisõiguse taotluse, tähtajalise elamisõiguse pikendamise taotluse ja alalise elamisõiguse registreerimise taotluse läbivaatamine</p> <p>Tähtajalise elamisõiguse taotluse, tähtajalise elamisõiguse pikendamise taotluse või alalise</p>	<p>§ 37. Exemption from payment of state fees and reduction of state fee rate for acts performed based on Citizen of European Union Act</p> <p>The Citizenship and Migration Board and consular officers have the right to exempt a person from payment of the state fees provided for in § 225 of this Act or to reduce the state fee rate payable by a person based on the economic situation of the person.</p> <p>§ 225. Review of application for right of residence for specified term, application for extension of right of residence for specified term and application for registration of right of residence for specified term</p> <p>A state fee of 150 kroons shall</p>	Y	<p>Effective transposition</p> <p>The fee is equal 150 kroons - it equals approximately to 10 EUR – this charge is not exceeding the charge that is imposed on nationals as well for the issuing of similar documents</p>

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			<p>elamisõiguse registreerimise taotluse läbivaatamise eest tasutakse riigilõivu 150 krooni.</p> <p>§ 226. Isikut tõendava dokumendi väljaandmise taotluse läbivaatamine (1) Isikutunnistuse väljaandmise taotluse läbivaatamise eest tasutakse riigilõivu 150 krooni.</p>	<p>be paid for the review of an application for the right of residence for specified term, application for extension of the right of residence for specified term or application for registration of the right of residence for specified term.</p> <p>§ 226. Review of applications for issue of identity documents (1) A state fee of 150 kroons shall be paid for the review of an application for the issue of an identity card.</p>		
Art.26	<p>Checks</p> <p>Member States may carry out checks on compliance with any requirement deriving from their national legislation for non-nationals always to carry their registration certificate or residence card, provided that the same requirement applies to their own nationals as regards their identity card. In the event of failure to comply with this requirement, Member States may impose the same sanctions as those imposed on their own nationals for failure to carry their identity card.</p>				n/a	Estonian law does not have any requirements applying to its own nationals in relation to carrying of identity cards
Chapter VI						
RESTRICTIONS ON THE RIGHT OF ENTRY AND THE RIGHT OF RESIDENCE ON GROUNDS OF PUBLIC POLICY, PUBLIC SECURITY OR PUBLIC HEALTH						
Art.27.1	<p>General principles</p> <p>1. Subject to the provisions of this Chapter, Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public</p>	ELKS art. 8, para 1	<p>Euroopa Liidu kodaniku viibimisõiguse piiramine (1) Euroopa Liidu kodaniku viibimisõigust Eestis võib piirata, kui on põhjendatud alust arvata, et ta ohustab avalikku korda, riigi julgeolekut või teiste isikute tervist.</p>	<p>Restriction of right of stay of citizen of European Union (1) The right of stay in Estonia of a citizen of the European Union may be restricted if there is good reason to believe that the person poses a danger to public order, national</p>	<p>N, Incorrect and Incomplete</p>	<p>Incorrect and incomplete transposition</p> <p>The requirement that these ground shall not be invoked to serve economic end is not transposed</p> <p>There are no provisions which help to</p>

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	health. These grounds shall not be invoked to serve economic ends.	ELKS art. 9, para 1	Kodakondsus- ja Migratsiooniamet teeb Eestis viibivale Euroopa Liidu kodanikule, kelle viibimisõigust piiratakse, ettekirjutuse Eestis lahkumiseks (edaspidi <i>lahkumisettekirjutus</i>) väljasõidukohustuse ja sissesõidukeelu seaduses sätestatud korras.	security or the health of other persons. The Citizenship and Migration Board shall issue, pursuant to the procedure provided by the Obligation to Leave and Prohibition on Entry Act, a precept to leave Estonia to a citizen of the European Union staying in Estonia whose right of stay is restricted (hereinafter precept to leave).		define what the good reasons to believe that the person poses a danger to public order, national security in the context of expulsion are, Article 29 of VSS regulates the bases for application of prohibition on ENTRY but not for application of expulsion. No EU citizen or his or her family members have ever been expelled from Estonia.
		ELKS art. 11 para 1	Perekonnaliikme viibimisõiguse piiramine (1) Perekonnaliikme viibimisõigust Eestis võib piirata, kui on põhjendatud alust arvata, et ta ohustab avalikku korda, riigi julgeolekut või teiste isikute tervist.	Restriction of right to stay of family member (1) The right of stay in Estonia of a family member may be restricted if there is good reason to believe that the person poses a danger to public order, national security or the health of other persons.		Accordingly there is neither administrative/court practice nor legislation that could help define what are the “good reasons to believe that a person poses a danger to public order or national security” in Estonian jurisdiction
		ELKS art. 12 para 1, sec. 1	Lahkumisettekirjutuse tegemine perekonnaliikme viibimisõiguse piiramise ja seadusliku aluseta Eestis viibimise korral (1) Kodakondsus- ja Migratsiooniamet teeb väljasõidukohustuse ja sissesõidukeelu seaduses sätestatud korras lahkumisettekirjutuse Eestis viibivale perekonnaliikmele: 1) kelle viibimisõigust piiratakse või	Issue of precept to leave upon restriction of right of stay or upon stay of family member in Estonia without legal basis (1) The Citizenship and Migration Board shall issue, pursuant to the procedure provided by the Obligation to Leave and Prohibition on Entry Act, a precept to leave to a family member staying in Estonia: 1) whose right of stay is restricted,		
		ELKS art. 16, para.1	Euroopa Liidu kodaniku	The temporary right of residence		

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		ELKS art. 17, para. 1	tähtajaline elamisõigus Eestis lõpetatakse, kui on põhjendatud alust arvata, et ta ohustab avalikku korda, riigi julgeolekut või teiste isikute tervist.	of a citizen of the European Union is terminated if there is good reason to believe that such person poses a danger to public order, national security or the health of other persons.		
		ELKS art. 34, para. 1, sec. 2	Kodakondsus- ja Migratsiooniamet teeb Euroopa Liidu kodanikule, kelle tähtajaline elamisõigus lõpetatakse, lahkumisettekirjutuse väljasõidukohustuse ja sissesõidukeelu seaduses sätestatud korras.	The Citizenship and Migration Board shall issue, pursuant to the procedure provided in the Obligation to Leave and Prohibition on Entry Act, a precept to leave to a citizen of the European Union whose right of residence is terminated.		
		ELKS art. 43, para. 1, sec. 3	Perekonnaliikme tähtajaline elamisõigus Eestis lõpetatakse: ... 2) kui on põhjendatud alust arvata, et perekonnaliige ohustab avalikku korda, riigi julgeolekut või teiste isikute tervist või	The temporary right of residence in Estonia of a family member shall be terminated: ... 2) if there is good reason to believe that the family member poses a threat to public order, national security or the health of other persons		
		ELKS art. 44, para. 1	Euroopa Liidu kodaniku alaline elamisõigus Eestis lõpetatakse: ... 3) kui on põhjendatud alust arvata, et ta ohustab avalikku korda, riigi julgeolekut või teiste isikute tervist.	The permanent right of residence of a citizen of the European Union is terminated: ... 3) if there is good reason to believe that the person poses a threat to public order, national security or the health of other persons.		
		ELKS art. 44, para. 1	Kodakondsus- ja Migratsiooniamet teeb Euroopa Liidu kodanikule, kelle alaline elamisõigus lõpetatakse käesoleva seaduse § 43 lõike 1 punkti 3	The Citizenship and Migration Board shall issue, pursuant to the procedure provided in the Obligation to Leave and Prohibition on Entry Act, a		

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		ELKS art. 48, para 1, sec. 3	alusel, lahkumisettekirjutuse väljasõidukohustuse ja sissesõidukeelu seaduses sätestatud korras.	precept to leave to a citizen of the European Union whose permanent right of residence is terminated on the basis of clause 43 (1) 3) of this Act.		
		ELKS art. 49, para. 2	Perekonnaliikme alaline elamisõigus Eestis lõpetatakse: ... 3) kui on põhjendatud alust arvata, et perekonnaliige ohustab avalikku korda, riigi julgeolekut või teiste isikute tervist või	The permanent right of residence in Estonia of a family member is terminated: ... 3) if there is good reason to believe that the family member poses a threat to public order, national security or the health of other persons		
			Kodakondsus- ja Migratsiooniamet teeb perekonnaliikmele, kelle alaline elamisõigus lõpetatakse, lahkumisettekirjutuse väljasõidukohustuse ja sissesõidukeelu seaduses sätestatud korras.	The Citizenship and Migration Board shall issue, pursuant to the procedure provided in the Obligation to Leave and Prohibition on Entry Act, a precept to leave to a family member whose permanent right of residence is terminated.		
Art.27.2	2. Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.				NT	The provision has not been transposed
	The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.				NT	The provision has not been transposed

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Art.27.3	3. In order to ascertain whether the person concerned represents a danger for public policy or public security, when issuing the registration certificate or, in the absence of a registration system, not later than three months from the date of arrival of the person concerned on its territory or from the date of reporting his/her presence within the territory, as provided for in Article 5(5), or when issuing the residence card, the host Member State may, should it consider this essential, request the Member State of origin and, if need be, other Member States to provide information concerning any previous police record the person concerned may have. Such enquiries shall not be made as a matter of routine. The Member State consulted shall give its reply within two months.				NT	The provision has not been transposed
Art.27.4	4. The Member State which issued the passport or identity card shall allow the holder of the document who has been expelled on grounds of public policy, public security, or public health from another Member State to re-enter its territory without any formality even if the document is no longer valid or the nationality of the holder is in dispute.				NT	The provision has not been transposed.
Art.28	Protection against expulsion 1. Before taking an expulsion decision on grounds of public policy or public security, the host Member State shall take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host Member State and the extent of his/her links with the country of origin.	VSS art. 15, para. 4	Väljasaatmise otsustamine ... (4) Kodakondsus- ja Migratsiooniamet töötleb väljasaatmise täideviimise tagamiseks välismaalase kohta, kelle suhtes kohaldatakse väljasaatmist (edaspidi <i>väljasaadetav</i>), järgmisi andmeid: 1) isikuandmed; 2) Eestisse saabumise asjaolud;	Expulsion order ... (4) The Citizenship and Migration Board shall process the following data concerning an alien who is subjected to expulsion (hereinafter person to be expelled) with the aim of ensuring enforcement of the expulsion: 1) personal data; 2) circumstances of entry	N, Incomplete	Incomplete transposition The Directive requires Member States to take account of considerations 'such as' – it is a non-exhaustive list. The Estonian law contains an exhaustive list and leaves no room for the consideration of other factors that may be relevant. Furthermore, all provisions in Article 28(1) of the Directive must be

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			3) sotsiaalsed ja perekondlikud sidemed Eestis ning välisriigis; 4) väljasaatmise aluseks olevad asjaolud; 5) elatusvahendite olemasolu.	into Estonia; 3) social and family ties in Estonia and foreign states; 4) circumstances which are the basis for expulsion; 5) the existence of means of subsistence.		explicitly transposed to provide guidance for the Estonian authorities.
	2. The host Member State may not take an expulsion decision against Union citizens or their family members, irrespective of nationality, who have the right of permanent residence on its territory, except on serious grounds of public policy or public security.				NT	The provision has not been transposed
	3. An expulsion decision may not be taken against Union citizens, except if the decision is based on imperative grounds of public security, as defined by Member States, if they: (a) have resided in the host Member State for the previous 10 years; or	VSS art. 29(1), para.1 and 2	(1) Euroopa Liidu, Euroopa Majanduspiirkonna liikmesriigi ja Šveitsi Konföderatsiooni kodaniku ning nende perekonnaliikmete suhtes võidakse sissesõidukeeldu kohaldada, kui on põhjendatult alust arvata, et nimetatud isiku Eestis viibimine võib ohustada Eesti Vabariigi julgeolekut, avalikku korda või teiste isikute tervist, olles nakatunud Maailma Tervishoiuorganisatsiooni määratletud haigusesse. (2) Käesoleva paragrahvi lõikes 1 nimetatud isiku suhtes ei või kohaldada sissesõidukeeldu põhjusel, et ta ohustab avalikku korda, kui nimetatud isik on elamisõiguse alusel Eestis püsivalt elanud viimased kümme aastat järjest või kui ta on alaealine ja sissesõidukeeldu kohaldamine ei ole alaealise huvides põhjendatud.	Prohibition on entry may be applied to a citizen of the European Union, a Member State of the European Economic Union or the Swiss Confederation or to his or her family member if there is reason to believe that the stay of such person in Estonia could pose a threat to the security or the Republic of Estonia, public order or the health of other persons by having contracted a disease specified by the World Health Organisation. (1) Prohibition on entry shall not be applied to a person specified in subsection (1) of this section due to the reason that he or she poses a threat to public order if the person has permanently resided in Estonia on the basis of the right of residence for the ten past years, or if the person is a	NT	Not transposed This concept is not used in the context of expulsion but is used in the context of prohibition on entry. This provision seems to be applied to aliens who want to enter and to previous residents who have been expelled Also the Estonian law says on the basis of the right of residence which is not required by the Directive.

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		ES art. 5	<p>kuulutatud seoses loodusõnnetuse või katastroofiga, võib käesoleva seaduse §-des 18, 19 ja 20 sätestatud korras:</p> <p>1) piirata füüsiliste isikute õigust vabalt liikuda eriolukorra piirkonnas;</p> <p>§ 5. Nakkushaiguse levik</p> <p>Nakkushaiguse leviku all mõistetakse käesolevas seaduses:</p> <p>1) taudina, kaasa arvatud loomataudina, levivat eluohtlikku nakkushaigust, mille tagajärg on massiline haigestumine ja mille puhul on vaja rakendada ulatuslikke tõrjeabinõusid; (16.06.1999 jõust.01.01.2000 - RT I 1999, 57, 598)</p> <p>2) rahvusvaheliselt kontrollitava, taudina levida võiva eriti ohtliku nakkushaiguse Eestisse toomist, mille leviku tõkestamiseks on vaja kohe rakendada ulatuslikke tõrjeabinõusid massilise haigestumise vältimiseks.</p>	<p>(1) During an emergency situation which is declared regarding a natural disaster or catastrophe, it is permitted, pursuant to the procedure provided for in §§ 18, 19 and 20 of this Act, to:</p> <p>1) restrict the rights of natural persons to move freely in the emergency area;</p> <p>§ 5. Spread of infectious disease</p> <p>In this Act, the spread of an infectious disease is defined as:</p> <p>1) a life-threatening infectious disease spreading as an epidemic, including as an infectious animal disease, the consequence of which is a widespread outbreak of illness and against which it is necessary to carry out extensive mitigation; (16.06.1999 entered into force 01.01.2000 - RT I 1999, 57, 598)</p> <p>2) the carrying into Estonia of an extremely dangerous infectious disease subject to international notification which is capable of spreading as an epidemic, and in order to prevent the spread of which and to avoid a widespread outbreak of illness it is necessary to carry out immediate and extensive mitigation.</p>		
Art.29.2	2. Diseases occurring after a three-month period from the date of arrival shall not constitute grounds for expulsion from the territory.				NT	The provision has not been transposed
Art.29.3	3. Where there are serious indications that it is necessary, Member States may, within three months of the date of arrival,				NT	Not transposed.

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	require persons entitled to the right of residence to undergo, free of charge, a medical examination to certify that they are not suffering from any of the conditions referred to in paragraph 1. Such medical examinations may not be required as a matter of routine.					
Art.30.1	<p>Notification of decisions</p> <p>1. The persons concerned shall be notified in writing of any decision taken under Article 27(1), in such a way that they are able to comprehend its content and the implications for them.</p>	HMS art. 56	<p>Haldusakti põhjendamine</p> <p>(1) Kirjalik haldusakt ja soodustava haldusakti andmisest keeldumine peab olema kirjalikult põhjendatud. Haldusakti põhjendus esitatakse haldusaktis või menetlusosalisele kättesaadavas dokumendis, millele on haldusaktis viidatud.</p> <p>(2) Haldusakti põhjenduses tuleb märkida haldusakti andmise faktiline ja õiguslik alus.</p> <p>(3) Kaalutusõiguse alusel antud haldusakti põhjenduses tuleb märkida kaalutlused, millest haldusorgan on haldusakti andmisel lähtunud.</p> <p>(4) Haldusakti andmise faktilist alust ei pea põhjenduses näitama, kui haldusakti adressaadi taotlus rahuldati ja kolmanda isiku õigusi ega vabadusi ei piirata.</p>	<p>Reasoning of administrative act</p> <p>(1) Written reasoning shall be provided for the issue of a written administrative act and refusal to issue an alleviating administrative act. The reasoning for the issue of an administrative act shall be included in the administrative act or in a document accessible by participants in proceedings and the administrative act shall contain a reference to the document.</p> <p>(2) The reasoning for the issue of an administrative act shall set out the factual and legal basis for the issue.</p> <p>(3) The reasoning for the issue of an administrative act issued on the basis of the right of discretion shall set out the considerations from which the administrative authority has proceeded upon issue of the administrative act.</p> <p>(4) A reasoning need not set out the factual basis for issue of an administrative act if the application of the addressee of the administrative act is satisfied and the rights and freedoms of third persons are not restricted.</p>	Y	<p>Effective transposition.</p> <p>The provision has not been transposed as such, but the obligation to reason all administrative decisions is a general principle of Estonian Administrative law - The requirements for reasoning are stipulated in Administrative Procedure Act</p> <p>According to general principles of Administrative Law the reasoning should always be comprehensible to the person concerned. The reasoning should set out the factual and legal basis for the issue of the administrative act and set out the considerations from which the administrative authority has proceeded upon issue of the administrative act. I am sure that this principle should guarantee that persons understands what and why has been decided.</p> <p>But the problem may be the translation. Usually in practice the translation and interpretation services are provided but this is not required by law</p>

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Art.30.2	2. The persons concerned shall be informed, precisely and in full, of the public policy, public security or public health grounds on which the decision taken in their case is based, unless this is contrary to the interests of State security.	VSS art. 11, para . 5	(5) Ettekirjutus vormistatakse kirjalikult, selles märgitakse ettekirjutuse tegemise aeg ja koht, ettekirjutuse teinud ametniku ametinimetus, ees- ja perekonnanimi, välismaalase ees- ja perekonnanimi, sünniaeg ja -koht, isikut tõendava või reisidokumendi väljaandmise kuupäev ja koht, kodakondsus- või asukohariik, elukoht, ettekirjutusega välismaalasele pandud kohustus, hoiatus ettekirjutuse täitmata jätmise tagajärgede kohta, kohaldatavad järelevalvemeetmed, ettekirjutuse tegemise aluseks olevad faktilised asjaolud ja kohaldatavad õigusnormid, samuti viide ettekirjutuse vaidlustamise võimaluste, koha, tähtaja ja korra kohta. Ettekirjutusele kirjutab alla ettekirjutuse teinud ametnik.	(5) A precept shall be prepared in writing and shall set out the time and place of issue of the precept, the official title, given name and surname of the official who issues the precept, the given name, surname and date and place of birth of the alien, the date and place of issue of his or her identity document or travel document, his or her country of nationality or country of habitual residence, his or her place of residence, the obligation imposed on the alien by the precept, a warning regarding the consequences of failure to comply with the precept, surveillance measures to be applied, the factual circumstances which are the basis for the issue of the precept, and applied legislative or regulatory provisions and a reference to the possibilities and place of and terms and procedure for the contestation of the precept. The official who issues the precept shall sign the precept.	Y	Effective transposition Estonian law does at least in theory ensure that the person will be informed, precisely and in full, of the public policy, public security or public health grounds on which the decision taken in their case is based, unless this is contrary to the interests of State security? See comments to the article above about obligation to reason about all facts and grounds of administrative decisions (acts) Estonian law does not include the last part “unless this is contrary to the interests of State security”, it is more favourable. The decision will always have to mention the ground; the obligation to reason is very strict and overwhelmingly important in Estonian law
Art.30.3	3. The notification shall specify the court or administrative authority with which the person concerned may lodge an appeal, the time limit for the appeal and, where applicable, the time allowed for the person to leave the territory of the Member State. Save in duly substantiated cases of urgency, the time allowed to leave the territory shall be not less than one month from the date of notification.	VSS art. 11, para. 5	(5) Ettekirjutus vormistatakse kirjalikult, selles märgitakse ettekirjutuse tegemise aeg ja koht, ettekirjutuse teinud ametniku ametinimetus, ees- ja perekonnanimi, välismaalase ees- ja perekonnanimi, sünniaeg ja -koht, isikut tõendava või reisidokumendi väljaandmise kuupäev ja koht, kodakondsus- või asukohariik, elukoht,	(5) A precept shall be prepared in writing and shall set out the time and place of issue of the precept, the official title, given name and surname of the official who issues the precept, the given name, surname and date and place of birth of the alien, the date and place of issue of his or her identity document or travel document, his or her	N, Incorrect	Incorrect transposition Estonian law is too general and vague. While the Directive says - specify the court or administrative authority with which the person concerned may lodge an appeal, the time limit for the appeal and – Estonian law states simply - reference to the possibilities and place of and terms and procedure for

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		ELKS art 9	<p>ettekirjutusega välismaalasele pandud kohustus, hoiatus ettekirjutuse täitmata jätmise tagajärgede kohta, kohaldatavad järelevalvemeetmed, ettekirjutuse tegemise aluseks olevad faktilised asjaolud ja kohaldatavad õigusnormid, samuti viide ettekirjutuse vaidlustamise võimaluste, koha, tähtaja ja korra kohta. Ettekirjutusele kirjutab alla ettekirjutuse teinud ametnik.</p> <p>Lahkumisettekirjutuse tegemine Euroopa Liidu kodaniku viibimisõiguse piiramise korral</p> <p>(1) Kodakondsus- ja Migratsiooniamet teeb Eestis viibivale Euroopa Liidu kodanikule, kelle viibimisõigust piiratakse, ettekirjutuse Eestist lahkumiseks (edaspidi lahkumisettekirjutus) väljasõidukohustuse ja sissesõidukeelu seaduses sätestatud korras.</p> <p>(2) Käesoleva paragrahvi lõikes 1 nimetatud lahkumisettekirjutus kuulub sundtäitmisele 30. päevast ettekirjutuse tegemise päevast</p>	<p>country of nationality or country of habitual residence, his or her place of residence, the obligation imposed on the alien by the precept, a warning regarding the consequences of failure to comply with the precept, surveillance measures to be applied, the factual circumstances which are the basis for the issue of the precept, and applied legislative or regulatory provisions and a reference to the possibilities and place of and terms and procedure for the contestation of the precept. The official who issues the precept shall sign the precept.</p> <p>Issue of precept to leave upon restriction of right of stay of citizen of European Union</p> <p>(1) The Citizenship and Migration Board shall issue, pursuant to the procedure provided by the Obligation to Leave and Prohibition on Entry Act, a precept to leave Estonia to a citizen of the European Union staying in Estonia whose right of stay is restricted (hereinafter precept to leave).</p> <p>(2) A precept to leave specified in subsection (1) of this section shall be subject to compulsory execution after the thirtieth day as of the date of issue of the precept.</p> <p>(3) If the right to stay is</p>		<p>the contestation of the precept.</p> <p>While Estonian law says - If the right to stay is restricted due to a threat to national security, the precept to leave shall be subject to compulsory execution immediately.- the Directive states that this can happen only in cases of emergency. So under Estonian law there is an equivalent between “cases of emergency” and “threat to the national security”. However these concepts cannot be considered as equivalent terms.</p>

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			<p>arvates. (3) Kui viibimisõigust piiratakse ohu korral riigi julgeolekule, kuulub lahkumisetekirjutus viivitamata sundtäitmisele.</p>	<p>restricted due to a threat to national security, the precept to leave shall be subject to compulsory execution immediately. (!)</p>		
Art.31.1	<p>Procedural safeguards</p> <p>1. The persons concerned shall have access to judicial and, where appropriate, administrative redress procedures in the host Member State to appeal against or seek review of any decision taken against them on the grounds of public policy, public security or public health.</p>	<p>VSS art. 13, para. 3</p> <p>HMS art 71, 72, 73, 75</p>	<p>Ettekirjutuse kehtivus ja vaidlustamine (3) Ettekirjutuse tegemise või ettekirjutuse täitmise tagamiseks tehtud otsuse peale võib halduskohtumenetluse seadustikus sätestatud korras esitada halduskohtule kaebuse 10 päeva jooksul ettekirjutuse või otsuse teatavaks tegemise päevast arvates.»;</p> <p>71. Vaidemenetluse algatamise õigus (1) Isik, kes leiab, et haldusaktiga või haldusmenetluse käigus on rikutud tema õigusi või piiratud tema vabadusi, võib esitada vaide.</p> <p>§72. Vaidemenetluse ese (1) Vaidemenetluse korras võib taotleda: 1) haldusakti kehtetuks tunnistamist; 2) haldusakti osa kehtetuks tunnistamist, kui seadus ei piira haldusakti osalist vaidlustamist; 3) ettekirjutuse tegemist haldusakti andmiseks, asja uueks</p>	<p>Validity and contestation of precept (3) An appeal against a decision to issue a precept or a decision made to ensure compliance with a precept may be filed with an administrative court pursuant to the procedure provided for in the Code of Administrative Court Procedure within ten days as of the date of notification of the precept or decision.</p> <p>§ 71. Right to commence challenge proceedings (1) A person who finds that his or her rights are violated or his or her freedoms are restricted by an administrative act or in the course of administrative proceedings may file a challenge.</p> <p>§ 72. Object of challenge proceedings (1) the following may be applied for by way of challenge proceedings: 1) repeal of an administrative act; 2) repeal of a part of an administrative act unless partial challenge of the administrative</p>	Y	<p>Effective transposition.</p> <p>Appeal to the court is available on any grounds</p> <p>A person can also file a challenge to administrative authority which exercises supervisory control over the administrative authority which issued the challenged administrative act or took the challenged measure. In present case this is Minister of Interior</p> <p>A person can chose to file a challenge or to go directly to the court. Accordingly challenge procedure is not obligatory precondition for court review</p>

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			<p>otsustamiseks või toimingu sooritamiseks.</p> <p>§</p> <p>73. Vaidealluvus (1) Kui seadusega ei ole sätestatud teistsugust vaidealluvust, esitatakse vaie haldusakti andnud või toimingu sooritanud haldusorgani kaudu haldusorganile, kes teostab haldusakti andnud või toimingu sooritanud haldusorgani üle teenistuslikku järelevalvet.</p> <p>§75. Vaie esitamise tähtaeg Vaie haldusaktile või toimingule tuleb esitada 30 päeva jooksul, kui seadus ei sätesta teisiti, arvates päevast, millal isik vaidlustatavast haldusaktist või toimingust teada sai või oleks pidanud teada saama.</p>	<p>act is restricted by law; 3) issue of a precept for the issue of an administrative act, new resolution of a matter or taking a measure.</p> <p>§ 73. Jurisdiction (1) Unless different jurisdiction is provided by law, a challenge shall be filed through the administrative authority which issued the challenged administrative act or took the challenged measure with an administrative authority which exercises supervisory control over the administrative authority which issued the challenged administrative act or took the challenged measure.</p> <p>§ 75. Term for filing of challenge Unless otherwise provided by law, a challenge concerning an administrative act or measure shall be filed within thirty days as of the day when a person becomes or should become aware of the challenged administrative act or measure.</p>		
Art.31.2	2. 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,	VSS art. 16, para. 1	Väljasaatmise vaidlustamine (1) Väljasaatmise võib vaidlustada halduskohtumenetluse seadustikus sätestatud korras. Väljasaatmise vaidlustamine ei lükka kohtumenetluse ajaks väljasaatmist edasi.	Contestation of expulsion (1) Expulsion may be contested pursuant to the procedure provided for in the Code of Administrative Court Procedure. The contestation of expulsion shall not postpone expulsion for the time of judicial	N, Incorrect	Incorrect transposition Estonian law is in direct conflict with this provision of the Directive. The rule is that the appeal does not have any suspensory effects and there are no exceptions in case of request for interim orders.

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	except: — where the expulsion decision is based on a previous judicial decision; or — where the persons concerned have had previous access to judicial review; or — where the expulsion decision is based on imperative grounds of public security under Article 28(3).			proceedings.		
Art.31.3	3. The redress procedures shall allow for an examination of the legality of the decision, as well as of the facts and circumstances on which the proposed measure is based. They shall ensure that the decision is not disproportionate, particularly in view of the requirements laid down in Article 28.	HKMS art. 3, 4, 6, 7, 25	§ 3. Halduskohtu pädevus (1) Halduskohtu pädevusse kuulub: 1) avalik-õiguslike vaidluste lahendamine; 2) seadusega sätestatud juhtudel haldustoiminguks loa andmine; 3) seadusega halduskohtu pädevusse antud muude asjade lahendamine. (2) Halduskohtu pädevusse ei kuulu avalik-õiguslike vaidluste lahendamine, milleks seadus näeb ette teistsuguse menetluskorra. § 4. Haldusaktid ja toimingud (1) Haldusaktiks, mille peale võib halduskohtusse kaevata või protestida, on avalik-õiguslikke haldusülesandeid täitva asutuse, ametniku või muu isiku korraldus, käskkiri, otsus, ettekirjutus või muu õigusakt, mis on antud avalik-õiguslikes suhetes üksikjuhtumi reguleerimiseks. Haldusaktiks käesoleva	§ 3. Jurisdiction of administrative courts (1) The following fall within the competence of administrative courts: 1) adjudication of disputes in public law; 2) grant of permission to take administrative measures in the cases provided by law; 3) adjudication of other matters which are placed within the competence of administrative courts by law. (2) Adjudication of disputes in public law for which a different procedure is prescribed by law does not fall within the competence of administrative courts. § 4. Administrative acts and administrative measures (1) Administrative acts against which an action or protest may be filed with an administrative court are the orders, Directives, resolutions, precepts or other legislation which regulate individual cases in public law relationships, issued by agencies, officials or other persons who	Y	Effective transposition Provision not transposed, however, Estonian administrative courts examine both - procedural and substantial - legality of the contested administrative act. Court can examine not only procedural aspects but also examine facts of the case. The court can control if all relevant fact were taken into account and also how these facts were weighted by the administrative organ and that the limits of discretion were obeyed and principle of proportionality (as stipulated in HMS article 3) was taken into account. If court finds more or less serious infringement committed by the administrative body when deciding about the case, the court can declare administrative act unlawful and nullify it

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			<p>seadustiku mõttes on ka haldusleping. Haldusleping on avalik-õiguslikke suhteid reguleeriv leping.</p> <p>(2) Toiminguks, mille peale võib halduskohtusse kaevata või protestida, on avalik-õiguslikke haldusülesandeid täitva asutuse, ametniku või muu isiku tegevus või tegevusetus või viivitus avalik-õiguslikus suhtes.</p> <p>§ 6. Kaebus ja protest</p> <p>(1) Halduskohus algatab haldusasja kaebuse või protesti alusel.</p> <p>(2) Kaebuse või protestiga võib taotleda:</p> <p>1) haldusakti või selle osa tühistamist;</p> <p>2) peatatud haldusakti täitmist või välja andmata jäetud haldusakti väljaandmist, peatatud või sooritamata toimingu sooritamist.</p> <p>(3) Lisaks käesoleva paragrahvi lõikes 2 sätestatule võib kaebusega taotleda:</p> <p>1) haldusakti või toimingu õigusvastasuse kindlakstegemist;</p> <p>2) avalik-õiguslikus suhtes tekitatud kahju hüvitamist;</p> <p>(19.06.2002 jõust.01.08.2002 - RT I 2002, 62, 376)</p> <p>3) avalik-õigusliku suhte olemasolu või puudumise</p>	<p>perform administrative functions in public law. For the purposes of this Code, public law contracts are also deemed to be administrative acts. A public law contract is a contract which regulates public law relationships.</p> <p>(2) Measures against which an action or protest may be filed with an administrative court are activities, omissions or delays in public law relationships by agencies, officials or other persons who perform administrative functions in public law.</p> <p>§ 6. Action and protest</p> <p>(1) An administrative court shall commence administrative proceedings on the basis of an action or protest.</p> <p>(2) An action or protest may be filed to apply for:</p> <p>1) annulment of an administrative act or a portion thereof;</p> <p>2) execution of a suspended administrative act, for issue of an unissued administrative act, or for a suspended or untaken measure to be taken.</p> <p>(3) In addition to the provisions of subsection (2) of this section, an action may be filed to apply for:</p> <p>1) establishment of the unlawfulness of an administrative act or measure;</p> <p>2) compensation for damage</p>		

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		HMS art 3 and 4	<p>kindlakstegemist.</p> <p>§ 7. Halduskohtusse pöördumise õigus Kaebusega võib halduskohtusse pöörduda isik, kes leiab, et haldusakti või toiminguga on rikutud tema õigusi või piiratud tema vabadusi. Kaebuse avalik-õigusliku suhte olemasolu või selle puudumise või haldusakti või toimingu õigusvastasuse kindlakstegemiseks võib esitada isik, kellel on selleks põhjendatud huvi.</p> <p>§ 25. Kohtulahend</p> <p>Kohtuotsus peab olema seaduslik ja põhjendatud ning rajanema üksnes asjas esitatud ja kogutud tõenditel.</p> <p>§3. Õiguste kaitse (1) Haldusmenetluses võib piirata isiku põhiõigusi ja -vabadusi ning tema muid subjektiivseid õigusi</p>	<p>caused in public law relationships; (19.06.2002 entered into force 01.08.2002 - RT I 2002, 62, 376) 3) the establishment of the existence or absence of a public law relationship.</p> <p>§ 7. Right of recourse to administrative court (1) Only a person who finds that his or her rights have been violated or his or her freedoms have been restricted by an administrative act or measure has the right to file an action with an administrative court. An action for the establishment of the existence or absence of a public law relationship or the unlawfulness of an administrative act or measure may be filed by a person who has legitimate interest in the matter.</p> <p>§ 25. Decision</p> <p>Upon making a judgment, a court shall evaluate the evidence, establish the facts relevant to the adjudication of the matter, decide which Act or administrative act issued on the basis of an Act applies in the matter and whether the action or protest should be allowed.</p> <p>§ 3. Protection of rights (1) In administrative procedure, the fundamental rights and freedoms or other</p>		

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			<p>ainult seaduse alusel. (2) Halduse õigusakt ja toiming peab olema kohane, vajalik ning proportsionaalne seatud eesmärgi suhtes.</p> <p>§4. Kaalutusõigus (1) Kaalutusõigus (diskretsioon) on haldusorganile seadusega antud volitus kaaluda otsustuse tegemist või valida erinevate otsustuste vahel. (2) Kaalutusõigust tuleb teostada kooskõlas volituse piiride, kaalutusõiguse eesmärgi ning õiguse üldpõhimõtetega, arvestades olulisi asjaolusid ning kaaludes põhjendatud huve.</p>	<p>subjective rights of a person may be restricted only pursuant to law. (2) Administrative acts and measures shall be appropriate, necessary and proportionate to the stated objectives.</p> <p>§ 4. Right of discretion (1) The right of discretion (discretion) is an authorisation granted to an administrative authority by law to consider making a resolution or choose between different resolutions. (2) The right of discretion shall be exercised in accordance with the limits of authorisation, the purpose of discretion and the general principles of justice, taking into account relevant facts and considering legitimate interests.</p>		
Art.31.4	4. Member States may exclude the individual concerned from their territory pending the redress procedure, but they may not prevent the individual from submitting his/her defence in person, except when his/ her appearance may cause serious troubles to public policy or public security or when the appeal or judicial review concerns a denial of entry to the territory.				NT	<p>The provision has not been transposed.</p> <p>In this case an appeal can obviously be lodged only from outside the country. But that the expelled person can appear in Estonian court this is not regulated under Estonian law and there is also no court practice about the issue.</p>
Art.32.1	<p>Duration of exclusion orders</p> <p>1. Persons excluded on grounds of public policy or public security may submit an application for lifting of the exclusion order after a reasonable period, depending on the circumstances, and in any event after three years from</p>				NT	The provision has not been transposed

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	enforcement of the final exclusion order which has been validly adopted in accordance with Community law, by putting forward arguments to establish that there has been a material change in the circumstances which justified the decision ordering their exclusion.					
	The Member State concerned shall reach a decision on this application within six months of its submission.				NT	The provision has not been transposed-
Art.32.2	2. The persons referred to in paragraph 1 shall have no right of entry to the territory of the Member State concerned while their application is being considered.				NT	The provision has not been transposed-
Art.33.1	<p>Expulsion as a penalty or legal consequence</p> <p>1. Expulsion orders may not be issued by the host Member State as a penalty or legal consequence of a custodial penalty, unless they conform to the requirements of Articles 27, 28 and 29.</p>				NT	<p>The provision has not been transposed.</p> <p>There are no provisions in Estonian law which help to analyse the conformity in the context of expulsion, but the Obligation to Leave and Prohibition on Entry Act contains article 29 that regulates bases for application of prohibition on ENTRY</p> <p>A prohibition on entry may be applied with regard to an alien if:</p> <p>...</p> <p>7) he or she has been punished for an intentionally committed criminal offence or for another offence in Estonia or a foreign state, and if the criminal record has neither expired nor been expunged or if data concerning the punishment have not been expunged from the punishment register;</p> <p>The competent authorities indicate that in practice these grounds of prohibition of entry are also, at least</p>

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						<p>indirectly, used in the context of expulsion as well. Accordingly in Estonia, at least in theory, expulsion can be a legal consequence of criminal punishment.</p> <p>Moreover as articles 27, 28 and 29 are not transposed or transposed incorrectly there is theoretically a major conformity problem.</p> <p>To this date, no EU citizen or his or her family member has been expelled from Estonia, so there is no practice that allows verification of the implementation.</p>
Art.33.2	2. If an expulsion order, as provided for in paragraph 1, is enforced more than two years after it was issued, the Member State shall check that the individual concerned is currently and genuinely a threat to public policy or public security and shall assess whether there has been any material change in the circumstances since the expulsion order was issued.				NT	The provision has not been transposed
Art.34	<p>Publicity</p> <p>Member States shall disseminate information concerning the rights and obligations of Union citizens and their family members on the subjects covered by this Directive, particularly by means of awareness-raising campaigns conducted through national and local media and other means of communication.</p>				NT	<p>The provision has not been transposed.</p> <p>Special and massive awareness raising campaigns have not been launched in Estonia. There is also no special website on the issue in Estonia</p> <p>However some general information about rights under the Directive and respective application forms are available on the website of the Citizenship and Migration Board. Relevant printed materials are also available in territorial offices of the Citizenship and Migration Board</p>

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Art.35	<p>Abuse of rights</p> <p>Member States may adopt the necessary measures to refuse, terminate or withdraw any right conferred by this Directive in the case of abuse of rights or fraud, such as marriages of convenience. Any such measure shall be proportionate and subject to the procedural safeguards provided for in Articles 30 and 31.</p>	<p>ELKS art. 26, para 1, section 5 and para 3</p>	<p>(1) Kodakondsus- ja Migratsiooniamet keeldub perekonnaliikmele tähtajalise elamisõiguse andmisest, kui:</p> <p>...</p> <p>5) perekonnaliige või Euroopa Liidu kodanik, kelle juurde ta soovib elama asuda, on kuritarvitanud selles seaduses ettenähtud õigusi või kasutanud pettust eesmärgiga võimaldada perekonnaliikmel omandada Eestis tähtajalist elamisõigust.</p> <p>...</p> <p>(3) Käesoleva paragrahvi lõike 1 punktis 5 nimetatud õiguste kuritarvitamise ja pettusena käsitatakse muu hulgas:</p> <p>1) fiktiivse abielu sõlmimist,</p> <p>2) Euroopa Liidu kodaniku poolt Eestis elamisõiguse omandamist eesmärgiga võimaldada perekonnaliikmel omandada elamisõigust Eestis,</p> <p>3) võltsitud dokumentide esitamist või</p> <p>4) valeandmete esitamist.</p>	<p>(1) The Citizenship and Migration Board shall refuse to grant temporary right of residence to a family member if:</p> <p>...</p> <p>5) the family member or the citizen of the European Union with whom the family member wishes to reside has abused the rights prescribed by this Act or used deceit in order to achieve the aim of the family member obtaining temporary right of residence in Estonia.</p> <p>....</p> <p>(3) Among other, the following shall be considered as the abuse of rights, or deceit specified in clause (1) 5) of this section:</p> <p>1) contracting fictitious marriage;</p> <p>2) obtainment by the citizen of the European Union of temporary right of residence in Estonia in order to achieve the aim of the family member obtaining temporary right of residence in Estonia;</p> <p>3) submission of falsified documents;</p> <p>4) submission of false information.</p>	<p>N, Incorrect</p>	<p>Incorrect transposition</p> <p>The abuse of rights has been transposed as regards family members. ELKS article 26 para. 3 also specifies what is considered as abuse of rights. However, as articles 30 and 31 are not fully and adequately transposed there is a major conformity problem</p>
		<p>ELKS art. 31 para 1, section 3</p>	<p>(1) Kodakondsus- ja Migratsiooniamet keeldub perekonnaliikmele tähtajalise elamisõiguse pikendamisest, kui:</p> <p>...</p>	<p>(1) The Citizenship and Migration Board shall refuse to extend the temporary right of residence of a family member if:</p> <p>...</p>		

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		ELKS art. 48, par 4, section 4	<p>3) perekonnaliige või Euroopa Liidu kodanik, kelle juurde elama asumiseks tähtajaline elamisõigus anti, on kuritarvitanud selles seaduses ettenähtud õigusi või kasutanud pettust eesmärgiga võimaldada perekonnaliikmel omandada Eestis tähtajalist elamisõigust.</p> <p>(1) Perekonnaliikme alaline elamisõigus Eestis lõpetatakse: ...</p> <p>4) kui perekonnaliige või Euroopa Liidu kodanik on kuritarvitanud selles seaduses ettenähtud õigusi või kasutanud pettust eesmärgiga võimaldada perekonnaliikmel omandada Eestis elamisõigust.</p>	<p>3) the family member or the citizen of the European Union for the purposes of settling with whom the right of residence was granted has abused the rights prescribed by this Act or used deceit in order to achieve the aim of the family member obtaining temporary right of residence in Estonia.</p> <p>(1) The permanent right of residence in Estonia of a family member is terminated: ...</p> <p>4) if the family member or the citizen of the European Union has abused the rights prescribed by this Act or used deceit in order to achieve the aim of the family member obtaining right of residence in Estonia.</p>		
Art.36	<p>Sanctions</p> <p>Member States shall lay down provisions on the sanctions applicable to breaches of national rules adopted for the implementation of this Directive and shall take the measures required for their application.</p> <p>The sanctions laid down shall be effective and proportionate. Member States shall notify the Commission of these provisions not later than 30 April 2006 and as promptly as possible in the case of any subsequent changes.</p>	ELKS art. 55, 56, 57	<p>Vastutus</p> <p>§ 55. Euroopa Liidu kodaniku perekonnaliikme seadusliku aluseta Eestis viibimine ja elamine</p> <p>Euroopa Liidu kodaniku perekonnaliikme seadusliku aluseta Eestis viibimise või elamise eest – karistatakse rahatrahviga kuni 300 trahviühikut.</p>	<p>Liability</p> <p>§ 55. Stay and residence of family member of citizen of European Union in Estonia without legal basis</p> <p>Stay or residence of a family member of a citizen of European Union in Estonia without a legal basis is punishable by a fine of up to 300 fine units.</p>	Y	<p>Effective transposition</p> <p>The sanctions are imposed under article 55 of ELKS. The bases for sanctions are formulated very broadly to cover all potential violations connected with infringement of conditions of stay and residence by family members. Sanctions obviously cover not only substantial but also procedural (e.g. registration) requirement connected with stay or residence.</p> <p>According to the expert's information, no sanctions have ever been imposed in practice, so there is certain uncertainty how authorities will interpret the law.</p>

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						Sanctions are proportionate – 300 fine units is for example average also in cases of violation of traffic rules
Art.37	<p>More favourable national provisions</p> <p>The provisions of this Directive shall not affect any laws, regulations or administrative provisions laid down by a Member State which would be more favourable to the persons covered by this Directive.</p>					<p>This should not be a transposition issue.</p> <p>But Estonia has used this option – see Comments to articles 3.3.(a), 5.1, 7.1, 7.2, 7.3, 7.4, 8.3, 10.2, 21</p>
Art.38	<p>1. Articles 10 and 11 of Regulation (EEC) No 1612/68 shall be repealed with effect from 30 April 2006.</p> <p>2. Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC shall be repealed with effect from 30 April 2006.</p> <p>3. References made to the repealed provisions and Directives shall be construed as being made to this Directive.</p>					<p>Estonian ELKS with all its transposition problems was passed in the Estonian Parliament 17. may 2006</p>
Art.39	<p>No later than 30 April 2008 the Commission shall submit a report on the application of this Directive to the European Parliament and the Council, together with any necessary proposals, notably on the opportunity to extend the period of time during which Union citizens and their family members may reside in the territory of the host Member State without any conditions. The Member States shall provide the Commission with the information needed to produce the report.</p>					
Art.40	<p>Transposition</p> <p>1. Member States shall bring into force the laws, regulations and administrative</p>				Y	<p>The primary transposition instrument was adopted on 17.05.2006.</p> <p>However, many of the provisions of</p>

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Art	Citation of the Article of the Directive	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (y/n)	Comments/Problems
	provisions necessary to comply with this Directive by 30 April 2006.					the Directive are not transposed at all or are incorrectly transposed
	When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.	ELKS footnote 1	Euroopa Parlamendi ja nõukogu direktiiv 2004/38/EÜ, mis käsitleb Euroopa Liidu kodanike ja nende perekonnaliikmete õigust liikuda ja elada vabalt liikmesriikide territooriumil (ELT L 158, 30.04.2004, lk 77–123).	Directive 2004/38/EC of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ L 158, 30.04.04, pp. 77-123).	N, Incomplete	Incomplete transposition ELKS contains the reference, but from other transposition instrument the reference is missing
	2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive together with a table showing how the provisions of this Directive correspond to the national provisions adopted.				N, Incomplete	Incomplete transposition Estonia has not notified RPS,VSS and ITDS.