



BELGIUM - CHECKLIST FOR DIRECTIVE 2004/38/EC



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

It is essential that your file contain the following:

The original documents, plus two (2) photocopies of these documents.

The originals will be returned to you.

Documents to be provided by all visa applicants must be in English, Dutch, French or German	YES	NO
☐ Application form duly completed and signed. - Irrespective of age, each individual requires a separate application form (hand written or typed and printed) - The application form should be fully filled in, signed (two times) and dated by the applicant. - The current KUWAIT address, local contact number and email address should be provided. - For children under 18 years, the application form signed by a person with parental authority or by a legal guardian.		
☐ One recent passport size photograph One passport photo not older than 6 months with the requested specifications		
☐ Original passport with KUWAIT residence permit - All valid passport for at least one year. - The passport must have been issued within the last 10 years, must be in a good shape and have at least 2 empty pages. - The applicant needs to provide a photocopy of the identity page of the passport and the KUWAIT residence permit.		
☐ Language Preference Form - The applicant has the opportunity to choose one of the Belgian three national languages in which the application will be treated. - If you choose to complete the application in English, please choose “no preference” Language preference form		
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 The right to move and reside freely within the territory of the Member States A citizen of the European Union has the right to move and reside freely within the territory of the Member States (MS). His family members enjoy the same right, irrespective of their nationality. Only the obligation to hold an entry visa may be imposed by the MS on family members who are nationals of third countries.		

The conditions for the exercise of, and the limitations upon, the right to move and reside freely within the Union are laid down by directive 2004/38/EC. This directive provides inter alia that the MS grant family members subject to the visa obligation 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".

Nationals of the **European Economic Area** (European Union + Norway, Iceland and Lichtenstein) and members of their families are likewise beneficiaries of these provisions.

Family members

(Law of 15.12.1980, Articles 40bis and 40ter)

A. The following are considered to be members of the family of a citizen of the Union:

a) The spouse or the alien with whom he is linked by a registered partnership considered to be equivalent to a marriage in Belgium, who is accompanying or joining him.

b) The partner with whom he is linked by a registered partnership in accordance with a law and who is accompanying or joining him, if the partners meet the following conditions:

- > they prove that they are in a permanent, stable relationship
- > they are coming to live together
- > they are aged over 21
- > they are single and are not in a permanent, stable partnership relationship with another person
- > they are not any of the persons referred to in Articles 161 to 163 of the civil code
- > neither one of them has been the subject of a decision on the basis of Article 167 of the civil code, provided that the decision has been converted into res judicata.

c) His descendants and the descendants of his spouse or partner referred to in points 1 and 2, aged under 21 or who are dependent on them, who are accompanying them or joining them, provided that the citizen of the Union, his spouse or partner has custody of them and, in the case of shared custody, on condition that the other person with custody has given their agreement.

NB: Where the citizen of the Union/EEA supplying the right to a family reunion is a student (Article 40, § 4, 3°), only his children or those of his partner (1° and 2°) who are dependent may accompany or join him.

d) His ascendants and the ascendants of his spouse or partner referred to in points 1 and 2, who are dependent on them, who are accompanying them or joining them.

NB: The ascendants of a student (Article 40, § 4, 3°) cannot accompany or join him.

B. The following are considered to be members of the family of a Belgian:

a) His spouse or the alien with whom he is linked by a registered partnership considered to be equivalent to a marriage in Belgium, who is accompanying or joining him. The spouse and partner must be aged over 21.

b) The partner with whom he is linked by a registered partnership in accordance with a law and who is accompanying or joining him, if the partners meet the following conditions:

> they prove that they are in a permanent, stable relationship
> they are coming to live together
> they are aged over 21
> they are single and are not in a permanent, stable partnership relationship with another person
> they are not any of the persons referred to in Articles 161 to 163 of the civil code > neither one of them has been the subject of a decision on the basis of Article 167 of the civil code, provided that the decision has been converted into res judicata.

c) His descendants and the descendants of his spouse or partner referred to in points 1 and 2, aged under 21 or who are dependent on them, who are accompanying them or joining them, provided that the citizen of the Union, his spouse or partner has custody of them and, in the case of shared custody, on condition that the other person with custody has given their agreement.

d) The father and mother of a Belgian who is a minor, who establish their identity and who are accompanying or joining him.

The particular provisions in directive 2004/38/EC

You may apply for direct access at the consulate. Be sure, however, to comply with the system set up to receive applicants (appointments, opening times, etc.).

There is no visa fee to pay (it is free). However, if the consulate is collaborating with an external service partner and you choose to lodge your application with that partner, you will have to pay service fees.

You do not fill in boxes 19, 20, 31, 32 and 33 on the **visa application form**.

You will receive a decision within 15 days from the lodging of your visa application.

Unless there are public order considerations or cases of abuse or fraud, you will receive a SCHENGEN visa (C visa).

The burden of proof

You must prove that you are a beneficiary of directive 2004/38/EC. When you lodge your visa application, you must therefore produce documents establishing:

- a)** your identity,
- b)** that you are accompanying or joining a citizen of the Union who is himself a beneficiary of the directive,
- c)** that you are a family member within the meaning of Article 40bis or 40ter of the law of 15 December 1980 on entry, stay, settlement and removal of foreign nationals.

In other words:

- a)** a valid national passport or a travel document serving as a passport,
- b)** proof of the tie of kinship, marriage or partnership considered to be equivalent to a marriage in Belgium or registered in accordance with a law. Foreign documents require a legalization (2) and legalized translation (2). They must not be older than 6 months.
- c)** as appropriate, proof that you are a descendant or an ascendant dependent upon a citizen of the

Union, his spouse or his partner. Foreign documents require a legalization (2) and legalized translation (2). They must not be older than 6 months. d) proof that you are accompanying or joining a citizen of the Union who is himself a beneficiary of the directive and thus, proof that the citizen of the Union is already residing in Belgium (residence permit for nationals of the EEA, application for an attestation of registration/annex 19, attestation of registration/annex 8, E card, document attesting to the permanence of his stay/annex 8bis or E+ card) or confirmation that he intends to travel there or stay there for more than 3 months (declaration of presence/annex 3ter, work contract, lease contract, registration in an organized, recognized or subsidized educational establishment, concrete plan shown during an interview, etc.) and a copy of his identity card or valid national passport. If you are accompanying or joining a Belgian, proof that he is returning to Belgium after having stayed regularly for more than 3 months in another Member State. <u>The Community code on visas</u> If you cannot establish that you are a beneficiary of directive 2004/38/EC, your visa application will be rejected, or if you wish, processed in line with the general provisions in the Community code on visas. <u>The national regulations (D visa)</u> You remain free to apply for a national long-stay visa (D visa) pursuant to Articles 40bis or 40ter of the law of 15 December 1980 on entry, stay, settlement and removal of foreign nationals if your intention is to stay for more than 3 months in Belgium as part of a family reunification. <u>Reference texts</u> • Law of 15 December 1980 on entry, stay, settlement and removal of foreign nationals • DIRECTIVE 2004/38/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States	
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Please note:

1. Applicants, who cannot enclose all documents from the list, should consider adding alternatives or making an explanation about the reason for not handing them in. The Consulate may request additional documents during the examination of an application which are not mentioned in the above list. The applicant is hereby informed that submitting the above-mentioned documents does not guarantee automatic issuance of a visa.
2. The documents drawn up abroad in a language other than English, Dutch, French or German are to be translated in accordance with the original by a **sworn translator**. The translation must be legalized as a separate document in line with the procedure laid down in the country of origin, and then by the competent Belgian consulate or Embassy (1). http://diplomatie.belgium.be/en/services/legalisation_of_documents
Documents issued by local authorities of the KUWAIT must be legalized by Ministry Foreign Affairs of the KUWAIT and afterwards by the Belgian Consulate. Translations by our [recognized translators](#) can be legalized by the Belgian Consulate directly.

Remarks: _____

Applicant's Signature: - _____

VFS Officer's Signature: - _____