

CONDITIONS TO BENEFIT FROM THE SPECIAL REGIME STIPULATED UNDER THE DIRECTIVE 2004/38/CE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL DATED 29 APRIL 2004

Certain family members of Spanish citizens and of the nationals of the European Union, Norway, Iceland, Liechtenstein and Switzerland, have the right to move and reside freely within the territory of the Member States and to benefit from all facilities to obtain necessary visas.

All applicants that **jointly** meet the following three conditions will have the right to benefit from the special regime stipulated under the Directive:

1. Having a family relationship with the European citizen covered by the Directive who is:
 - 1.1. National of the Member States of the European Union or of Norway, Iceland, Liechtenstein and Switzerland, as long as he/she resides in a country other than his/her own.
 - 1.2. Spanish national, regardless his/her place of residence.
2. The family relationship with the European citizen covered by the Directive is one of the following hypothesis:
 - 2.1. The spouse, as long as there is neither agreement nor declaration of nullity of the marriage relationship or divorce. It is understood that those who are separated, both legally or de facto, from a European citizen covered by the Directive, are included under the concept of "spouse" and thus have all the rights to benefit from the stipulations of the Directive.
 - 2.2. The officially registered partner.
 - 2.3. The direct descendants who are under the age of 21 or those over 21 years of age but are dependents or disabled, as well as those of the spouse or partner of the European citizen covered by the Directive, as long as there is neither agreement nor declaration of nullity of the marriage relationship or divorce.
 - 2.4. The dependent direct relatives in the ascending line and those of the spouse or partner of the European citizen covered by the Directive, as long as there is neither agreement nor declaration of nullity of the marriage relationship or divorce
 - 2.5. **Extended family:**
 - 2.5.1. **Any other family members**, not falling under the above-mentioned hypothesis who can irrefutably prove, at the moment of the visa application, that they meet one of the following conditions:
 - 2.5.1.1. That they depend on or live with the European citizen covered by the Directive in the country of origin
 - 2.5.1.2. That serious health grounds strictly require the personal care of the family member by the European citizen covered by the Directive.
 - 2.5.2. the *de-facto* partner with whom the European citizen covered by the Directive has a stable relationship duly attested
3. The visa applicant is travelling or meeting/regrouping with the European citizen covered by the Directive at his place of destination.

VISA DOSSIER FOR THE SPECIAL REGIME STIPULATED UNDER THE DIRECTIVE 2004/38/CE

The visas under this special regime shall be processed as priority and free of charge.

In those consular jurisdictions where there exists an external service provider, the visa applicant can choose to apply directly at the Spanish Consular Office or at the offices of the said provider (<https://vietnam.blsspainvisa.com/spanish/index.php>) and in this latter case, the applicant must pay for the corresponding service fee (not the visa fee). They can also voluntarily choose to use additional services offered by the said provider with an extra cost on their account.

From 6 November 2020, the BLS offices in Hanoi and Ho Chi Minh City are temporarily closed until further notice. All visa applications will be lodged solely at the premises of the Embassy of Spain in Hanoi, following the prior booking system through the mailbox emb.hanoi.vis@maec.es.

1. **Copy of the National ID Card or passport of the** European citizen covered by the Directive.

2. **Proof of family relationship** with the European citizen covered by the Directive:

2.1. Spouses

2.1.1. If the applicant is the spouse of a Spanish citizen:

2.1.1.1. **Full copy of the marriage registration the competent Spanish Civil Registry Office.**

2.1.1.2. Moreover, if the applicant has been married or had a registered partner before: **divorce decree** or **certification of cancellation of the respective official partners' registry**

2.1.2. If the applicant's spouse is not Spanish but citizen of another European Union Member State or of Norway, Iceland, Liechtenstein or Switzerland:

2.1.2.1. If the marriage is registered in his/her own home country: (i.e.: marriage with a Norwegian celebrated in Norway):

2.1.2.1.1. **Official marriage certificate issued by that country.**

2.1.2.1.2. Moreover, if the applicant has been married or had a registered partner before: **divorce decree** or **certification of cancellation of the respective official partners' registry**

2.1.2.2. If the marriage is registered before a third country (i.e.: marriage with a Greek citizen celebrated in Morocco):

2.1.2.2.1. **Official marriage certificate issued by that country. Notwithstanding, the Embassy shall verify the veracity of the provided information** by means of requesting additional proofs or an interview whenever deemed necessary.

2.1.2.2.2. Moreover, if the applicant has been married or had a registered partner before: **divorce decree** or **certification of cancellation of the respective official partners' registry**.

2.2. Officially registered partners:

2.2.1. **Certification issued by a public partners' register office** of a State covered by the Directive, as long as this registration is not cancelled, which has to be duly proved.

2.2.2. Moreover, if the applicant has been married or had a registered partner before: **divorce decree** or **certification of cancellation of the respective official partners' registry**

2.3. Direct descendants:

2.3.1. Applicant's birth certificate.

2.3.2. In the case of **minors of age**: written letter of consent of the parent not accompanying the applicant, authorizing him/her to travel, without territorial or temporal restrictions, both for the purpose of a short stay or of residence in any other place with the other parent.

2.3.3. Furthermore, if the applicant is **over 21 years of age**: **documents proving a financial dependence or dependence due to serious illness or disability** on a European citizen covered by the Directive.

2.3.3.1. **Financial dependence**: documents proving that, during at least the last one year, the European citizen covered by the Directive or his/her spouse/partner has transferred money or born expenses of the applicant in a quantity that can lead to the assumption of an effective financial dependence. This economic dependence should be **structural**, meaning that only constant aids are accepted, leaving out of consideration for sporadic and non-frequent economic allowances. At the same time, this economic dependence has to be current at the moment of the visa application.

The mere commitment by the European citizen covered by the Directive or of this spouse/partner on taking care of the family member does not show a real situation of economic dependence and is thus not sufficient.

The habitual means of proof of the economic dependence could be money remittances or bank transfers. A family member can be deemed as economic dependent on the European citizen covered by the Directive if he/she can prove that during at least the last year, this citizen has transferred funds or has paid for the expenses of this family member in the amount which represents at least 51% of the annual GDP per capita of Vietnam (*for an easy reference, the GDP per capita of Vietnam during the year 2019 was 2.776\$*).

In all cases, money remittances are not enough to prove the situation of economic dependence, as these remittances can be for various other reasons and not necessarily for the subsistence or they are made simply to be able to falsely prove the situation of economic dependence. **Therefore, in all cases the socio-economic situation and personal circumstances of the visa applicant shall be taken into account to determine whether there is an economic dependence** (*proofs of incomes, working situation, rents or properties, existence of other family members in the country of residence and their socio-economic situations, existence of a regular relationship with the European citizen covered by the Directive, date from which this family member becomes economically dependent on the European citizen covered by the Directive and justification of the circumstances attributing to such dependence from that date on and how this family member had been able to meet his/her basic needs till that date, etc.*)

2.3.3.2. **Dependence due to serious reasons of health or disability:**

documents proving that it is strictly necessary that the European citizen covered by the Directive take **personal care** of the applicant due to serious reasons of health or disability of the latter.

2.3.4. Whenever the applicant is the descendant of the spouse/partner of the European citizen covered by the Directive, it is necessary to **additionally include** the following documents:

2.3.4.1. Documents proving their marriage or partnership (see points 2.1 y 2.2)

2.3.4.2. Proof of neither being currently divorced nor separated from each other, nor being married to nor living with a third person.

2.3.4.3. Letter of the European citizen covered by the Directive requesting the EU-family member visa for the direct descendant of his/her spouse.

2.4. Direct ascendants:

2.4.1. **Birth certificate** of the descending European citizen covered by the Directive or of his/her spouse/partner, respectively.

2.4.2. If the applicant is the ascendant of the spouse/partner of the European citizen covered by the Directive, it is necessary to **additionally prove** their marriage or partnership (see points 2.1 and 2.2), **as well as** the proof of neither being currently divorced nor separated from each other, nor being married to nor living with a third person.

2.4.3. **In all cases**, it is **also** necessary to present documents proving the **financial or physical dependence** of the European citizen covered by the Directive:

2.4.3.1. **Financial dependence:** documents proving that, during at least the last one year, the European citizen covered by the Directive or

his/her spouse/partner has transferred money or born expenses of the applicant in a quantity that can lead to the assumption of an effective financial dependence. This economic dependence should be **structural**, meaning that only constant aids are accepted, leaving out of consideration for sporadic and non-frequent economic allowances. At the same time, this economic dependence has to be current at the moment of the visa application.

The mere commitment by the European citizen covered by the Directive or of this spouse/partner on taking care of the family member does not show a real situation of economic dependence and is thus not sufficient.

The habitual means of proof of the economic dependence could be money remittances or bank transfers. A family member can be deemed as economic dependent on the European citizen covered by the Directive if he/she can prove that during at least the last year, this citizen has transferred funds or has paid for the expenses of this family member in the amount which represents at least 51% of the annual GDP per capita of Vietnam (*for an easy reference, the GDP per capita of Vietnam during the year 2019 was 2.776\$*).

In all cases, money remittances are not enough to prove the situation of economic dependence, as these remittances can be for various other reasons and not necessarily for the subsistence or they are made simply to be able to falsely prove the situation of economic dependence. **Therefore, in all cases the socio-economic situation and personal circumstances of the visa applicant shall be taken into account to determine whether there is an economic dependence** (*proofs of incomes, working situation, rents or properties, existence of other family members in the country of residence and their socio-economic situations, existence of a regular relationship with the European citizen covered by the Directive, date from which this family member becomes economically dependent on the European citizen covered by the Directive and justification of the circumstances attributing to such dependence from that date on and how this family member had been able to meet his/her basic needs till that date, etc.*)

2.4.3.2. **Dependence due to serious reasons of health or disability:** documents proving that it is strictly necessary that the European citizen covered by the Directive take **personal care** of the applicant due to serious reasons of health or disability of the latter.

2.5. Any other family members of the European citizen covered by the Directive, not falling under the above-mentioned hypothesis (**member of the extended family**):

2.5.1. Proof of the **degree of family relationship**

2.5.2. Documents proving **one of the following** hypothesis:

2.5.2.1. Proof that, in his/her country of origin, the applicant is economically dependent on or lived with the European citizen covered by the Directive.

2.5.2.1.1. Economic dependence: documents showing that, during at least the last one year, the European citizen covered by the Directive has transferred money or born expenses of the applicant in a quantity that can lead to the assumption of an **effective financial dependence**.

2.5.2.1.2. Physical dependence: Irrefutable proof that the applicant has been living for at least 24 months continuously with the European citizen covered by the Directive in his/her country of origin.

In the case of grandchildren, it shall not be admissible when one of the parents transfers the custody because this transfer of custody is not valid in Spain and is contrary to the Spanish public order. On the contrary, it would be admissible in the case of grandchildren dependent on grandparents due to the death or privation of parental rights of the parents **and the grandparents are declared the legal tutors of their grandchildren**.

The parents of European Union minors covered by the Directive who are citizens of a third country can apply for this special visa under the Directive 2004/38/CE both for short stays (accompanying these children or regrouping with them for the purposes of tourism or family visit or implementing the parental right of visit if the child resides in Spain), as well as for residence purposes (when the parents form part of the family cohabitation nucleus in such a way that the visa refuse would prevent the child from being able to go to or reside in Spain).

2.5.2.2. Documents proving that it is strictly necessary that the European citizen covered by the Directive take **personal care** of the applicant due to serious reasons of health or disability of the latter. The following two circumstances should be concurrent:

2.5.2.2.1. situation of dependence due to serious illness of the family member

2.5.2.2.2. the fact that the European citizen covered by the Directive or his/her spouse/partner has to take personal care of this family member in such a way that the visa refusal would force the European citizen covered by the Directive or his/her spouse/partner to leave the European territory to take care of the ill family member.

2.5.2.3. Non-registered *de-facto* partner: Documents proving a marital **cohabitation**, which should be of at least one continuous year or of period of times less

than a year but whose total is superior to a year of marital cohabitation. This marital cohabitation can also be less than a year when there are extraordinary circumstances causing the interruption of the cohabitation such as a work transfer, war conflicts, illnesses or other force-majeure reasons or when it can be deduced, out of the whole picture of their circumstances, that both partners hold a stable relationship. Moreover, whenever there are common descendants, it is only necessary to prove a stable period of cohabitation.

There are many ways to prove marital cohabitation of non-married or registered partners: co-holders of bank accounts or of real estates or of mortgages or of rent contracts, etc., as well as interviews, if deemed necessary.

3. **Proof that the applicant is travelling or meeting/regrouping with the European citizen covered by the Directive:**

3.1. In the case that the applicant is travelling with the European citizen covered by the Directive: **air ticket bookings** of both on the same flight.

3.2. In the case that the applicant is travelling to regroup with the European citizen covered by the Directive:

3.2.1. **Air ticket booking of the applicant**

3.2.2. **Declaration before Notary Public of the European citizen covered by the Directive** stating that the applicant is travelling to regroup with/meet him/her in Spain.

IMPORTANT NOTES:

1. Please bear in mind that any certificate or other public document issued by the authorities which are not Spanish shall need to be duly legalized or Apostilled (depending on whether the country issuing the document is a member State of the La Hague Convention of Apostille or not), as well as to be translated into Spanish. Kindly visit the website of the Embassy of Spain in Hanoi for further information on legalizations and translations (only available in Spanish and Vietnamese).
2. When a family member of an European citizen covered by the Directive has to go to Spain without the company of the latter or not for the purpose of reuniting with him/her (i.e. for business purposes), he/she shall have to apply for a normal Schengen visa (not the special one under Directive 2004/38/CE) and he/she will have to comply with all the specific requirements of that kind of visa. In these cases, the visas are not processed as priority nor are they free of charge.
3. The issuance of a special visa under Directive 2004/38/CE does not imply the absolute right of entry or residence in Spain, since these rights shall be considered by the competent authorities and there is a possibility of refusal of entry or residence due to reasons of public order, public security or public health.

4. The judgement of the compliance with all the requirements to obtain the residence authorization in Spain corresponds to the Office of Foreigners in Spain, once the interesting party lodges his/her residence authorization application in Spain. Therefore, the visa issued under this special regime of the Directive 2004/38/CE does not constitute an automatic right of residence in Spain. The foreigner's application for residence in Spain can be refused if deemed that he/she does not meet all the legal requirements for this authorization.