

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

Name of legal analyst: Michaela Latini	Date Table completed: 30 May 2008
Contact details: michaela.latini@milieu.be	
Country	ITALY

List of transposing national legislation (including legal reference and abbreviations used in TOC)

D.Lgs n. 30/07: Decreto Legislativo 6 febbraio 2007, n. 30 "Attuazione della direttiva 2004/38/CE relativa al diritto dei cittadini dell'Unione e dei loro familiari di circolare e di soggiornare liberamente nel territorio degli Stati membri", pubblicato nella Gazzetta Ufficiale n. 72 del 27 marzo 2007 . Legislative Decree of 6 February 2007, n. 30 on the transposition of Directive 2004/38/EC concerning the right of citizens of the Union and their family member to move and reside freely within the territory of the Member States", published in the Official Journal (O.J.) n. 72 of 27 March 2007.

D.Lgs n. 286/98: Decreto Legislativo 25 luglio 1998, n. 286 "Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero", pubblicato nella Gazzetta Ufficiale n. 191 del 18 agosto 1998 - Supplemento Ordinario n. 139. Legislative Decree of 25 July 1998, n. 286 on Laws on the regulation of immigration and provisions on the conditions of the foreigner national, published in the O.J. n. 191 of 18 August 1998, Supplemento Ordinario, n. 139.

Law 28 May 2007, n. 68: Legge 28 maggio 2007, n. 68 "Disciplina dei soggiorni di breve durata degli stranieri per visite, affari, turismo e studio ", pubblicata nella Gazzetta Ufficiale, Serie generale, n. 126, del 1 giugno 2007. Law 68/2007 on the residence for short periods of foreigner nationals for visits, business tourism and study, published in the O.J. n. 126, of June 2007.

D.Lgs n. 32/08: Decreto legislativo 28 febbraio 2008, n. 32 "Modifiche e integrazioni al decreto legislativo 6 febbraio 2007, n. 30, recante attuazione della direttiva 2004/38/CE relativa al diritto dei cittadini dell'Unione e loro familiari di circolare e di soggiornare liberamente nel territorio degli Stati membri", pubblicato nella Gazzetta Ufficiale n. 52 del 1 marzo 2008. Legislative Decree of 28 February 2008 amending and supplementing Legislative Decree of 6 February 2007, n. 30 transposing Directive 2004/38/EC concerning the right of citizens of the Union and their family member to move and reside freely within the territory of the Member States, published in the O.J. n. 52 of 1 March 2008.

Law Decree 92/2008: Decreto legge 23 maggio 2008, n. 92 Misure urgenti in materia di sicurezza pubblica., pubblicato sulla Gazzetta Ufficiale del 26 maggio 2008 - in vigore dal giorno successivo. Law Decree 23 May 2008, n.92, Measures on public security, published in the O.J. n. 122 of 26/5/08, entered into force the following day that is the 27 May 2008. [Law n.125/2008 has converted Law Decree 92/08 with amendments].

Law n.3/2003: Legge 16 gennaio 2003, n. 3 Disposizioni ordinamentali in materia di pubblica amministrazione, pubblicata nella *Gazzetta Ufficiale* n. 15 del 20 Gennaio 2003 - Supplemento Ordinario n. 5. Law of 16 January 2003, n. 3 on Provisions in the field of public administration, published in the O.J. n. 15 of 20 January 2003, SO n. 5.

RD n. 773/31: Regio decreto 18 giugno 1931, n. 773 Approvazione del testo unico delle leggi di pubblica sicurezza, pubblicato nel Supplemento Ordinario, alla Gazzetta Ufficiale, n. 146 del 26 giugno 1931. RD 18 June 1931 n. 773 on the approval of the Laws in the field of public administration, published in the O.J. n. 146 of 26 June 1931

Law n. 1185/67: Legge 21 novembre 1967, n. 1185: Norme sui passaporti, pubblicata nella Gazzetta Ufficiale n. 314 del 18 dicembre. Law of 21 November 1967 n. 1185, provisions on passports published in the O.J. n. 314 of 18 December

Law of 24 December 1954, n. 1228: Legge 24 December 1954, n. 1228 , "Legge anagrafica" - Law of 24 December 1954 n. 1228 , "Anagrafic Law"

Presidential Decree (PD) n. 223/89: Decreto del Presidente della Repubblica 30 maggio 1989, n. 223 Regolamento anagrafico della popolazione residente, pubblicato nella Gazzetta Ufficiale del 8 giugno 1989 n. 132. Presidential Decree of 30 may 1989 n. 223 on the new registry of the resident population, published in the OJ of 8 June 1989, n. 132.

Presidential Decree n. 445/2000: Decreto del Presidente della Repubblica del 28 Dicembre 2000 n. 445, Testo Unico delle disposizioni legislative e regolamentari in materia di documentazione amministrativa, pubblicato nella Gazzetta Ufficiale n. 42 del 20 febbraio 2001 Supplemento Ordinario n. 30. Presidential Decree of 28 December 2000, n. 44, Laws on legislative and statutory provisions in the subject of administrative documentation, published in the O.J. n. 42 of 20 February 2001, Supplemento Ordinario n. 30

D.Lgs n. 181/2000: Decreto Legislativo 21 aprile 2000, n. 181 "Disposizioni per agevolare l'incontro fra domanda ed offerta di lavoro, in attuazione dell'articolo 45, comma 1, lettera a), della legge 17 maggio 1999, n. 144", pubblicato nella *Gazzetta Ufficiale* n. 154 del 4 luglio 2000. Legislative Decree of 21 April 2000, n. 181 on provisions facilitating the meeting between supply and demand work, implementing Article 45, paragraph 1, letter a) of Law on May 17, 1999, n. 144, published in the O.J. n. 154 of 14 July 2000.

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

D.Lgs n. 297/2002: Decreto Legislativo 19 dicembre 2002, n. 297 "Disposizioni modificative e correttive del decreto legislativo 21 aprile 2000, n. 181, recante norme per agevolare l'incontro tra domanda e offerta di lavoro, in attuazione dell'articolo 45, comma 1, lettera a) della legge 17 maggio 1999, n. 144", pubblicato nella *Gazzetta Ufficiale* n. 11 del 15 gennaio 2003. Legislative Decree of 19 December 2002, n. 297, on provisions amending and correcting legislative decree of April 21, 2000, n. 181 on provisions facilitating the meeting between supply and demand work, implementing Article 45, paragraph 1, letter a) of Law on May 17, 1999, n. 144, published in the O.J. n. 11 of 15 January 2003.

Law 152/75: Legge 22 maggio 1975, n. 152, Disposizioni a tutela dell'ordine pubblico, pubblicata nella *Gazzetta Ufficiale* n. 136 del 24/05/1975. Law 22 May 1975, n. 152, Provisions against Mafia, published in the O.J. n. 136 of 24/05/1975

Law 69/05: Legge 22 aprile 2005, n. 69 "Disposizioni per conformare il diritto interno alla decisione quadro 2002/584/GAI del Consiglio, del 13 giugno 2002, relativa al mandato d'arresto europeo e alle procedure di consegna tra Stati membri", pubblicata nella *Gazzetta Ufficiale* n. 98 del 29 aprile 2005. Law 22 April 2005, n. 69, provisions to transpose Council Framework Decision 2002/584/JHA of the of 13 June 2002, on the European arrest warrant and the surrender procedures between Member States, published in the O.J. n. 98 of 29/4/2005.

Criminal Procedural Code (CPP): Codice di procedura penale, D.P.R. 22 settembre 1988, n. 447(CPP), Criminal Procedural Code, approved by Decree of the President of the Republic on 22 September 1988, n. 447

Criminal Code (CP): Codice penale, R. D. n. 1398 del 19 ottobre 1930 - Pubblicato in s. o. *Gazzetta Ufficiale*, n. 253 del 28-10-1930 (CP). Criminal Code *approved by Decree* n. 1398 of 19 October 1930, published in the O.J. n. 253 del 28-10-1930

Law 1423/56: Legge 27 dicembre 1956, n. 1423 - Misure di prevenzione nei confronti delle persone pericolose per la sicurezza e per la pubblica moralità, pubblicata nella *gazzetta ufficiale* 31 dicembre 1965, n. 327. Law of 27 December 1956, n. 1423 Prevention measures against persons dangerous for public security and morality, published in the O.J. of 31/12/1965, n. 327.

Law 575/65: Legge 31 maggio 1965, n. 575 - Disposizioni contro la mafia, pubblicata nella *gazzetta ufficiale* 5 giugno 1975, n. 138. Law 31 May 1965 n. 575, Provisions against Mafia, published in the O.J. of 5/6/1975, n. 138

Law 645/52: Legge 20 giugno 1952, n. 645 "Norme di attuazione della XII disposizione transitoria e finale (comma primo) della Costituzione", pubblicata nella *gazzetta ufficiale* n. 143 del 23 giugno 1952. Law 20 June 1952, n. 645, Provisions transposing the XII temporary and final provision (first paragraph) of the Constitution, published in the O.J. n. 143 of 23/6/1952

Law 895/67: Legge 2 ottobre 1967, n. 895 - Disposizioni per il controllo delle armi, pubblicata nella *gazzetta ufficiale*, 12 ottobre 1967, n. 255. Law of 2 October 1967, n. 895, Provisions on the control of weapons, published in the O.J. n. 255 of 12/10/67

Law 497/74: Legge 14 ottobre 1974, n. 497 - Nuove norme contro la criminalità, pubblicata nella *gazzetta ufficiale* 22 ottobre 1974, n. 275. Law 14 October 1974, n. 497, Provisions against criminality, published in the O.J. of 22/10/1974, n. 275

Italian Constitution: Deliberazione dell'Assemblea Costituente del 22 dicembre 1947; promulgazione del Capo Provvisorio dello Stato del 27 dicembre 1947; pubblicazione sulla *Gazzetta Ufficiale* edizione straordinaria n. 298 del 27 dicembre 1947; entrata in vigore il 1° gennaio 1948. Italian Constitution, published in the extraordinary edition of the Italian O.J. n. 298 of 27 December 1947 and entered into force on 1 January 1948.

Circolare del Ministero dell'Interno n. 19 del 6 aprile 2007: Attuazione della Direttiva 2004/38/CE del Parlamento Europeo e del Consiglio del 29 Aprile 2004 relativa al diritto dei cittadini dell'unione e dei loro familiari di circolare e di soggiornare liberamente nel territorio degli Stati Membri, che modifica il regolamento CEE 1612/68 ed abroga le Direttive 64/221/CEE, 68/360/CEE, 72/194/CEE, 73/194/CEE, 75/34/CEE, 75/35 (CE), 90/364/CEE, 90/365/CEE e 93/96/CEE. Circular of Ministry of the Interior n. 19 of 6 April 2007: on the transposition of Directive 2004/38/EU of the European Parliament and of the Council of 29 April 2004 concerning the right of Union citizens and their family member to move and reside freely within the territory of the Member States, that modifies Regulation EEC n. 1612/68 and repeals Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/194/EEC, 75/34/EEC, 75/35 (EC), 90/364/EEC, 90/365/EEC e 93/96/EEC.

Circolare del Ministero dell'Interno del 10 aprile 2007: Decreto Legislativo 6 febbraio 2007 n. 30 Attuazione della Direttiva 2004/38/CE relativa al diritto dei cittadini dell'unione e dei loro familiari di circolare e di soggiornare liberamente nel territorio degli Stati Membri". Circular of the Ministry of Interior of 10 April 2007 Legislative Decree 6 February 2007 n. 30 on the transposition of Directive 2004/38/EU concerning the right of Union citizens and their family member to move and reside freely within the territory of the Member States.

Circolare del Ministero dell'Interno del 18 luglio 2007: Decreto Legislativo 6 febbraio 2007. Diritto di libera circolazione e soggiorno dei cittadini dell'Unione e dei loro familiari Circular of the Ministry of Interior of 18 July 2007: Legislative Decree of 6 February 2007 n. 30. Right of free movement and residence of Union citizens and their family members.

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

Circolare del Ministero dell'Interno n. 45 del 8 agosto 2007: Decreto Legislativo n.. 30/07. Diritto di libera circolazione e soggiorno dei cittadini dell'Unione europea. Circular of the Ministry of Interior n. 45 of 8 August 2007. Legislative Decree of 6 February 2007 n. 30. Right of free movement and residence of Union citizens.

Circolare del Ministero dell'Interno n. 54 del 8 ottobre 2007 Applicazione dell'imposta di bollo sulle attestazioni rilasciate ai cittadini dell'Unione Europea ai sensi del Decreto Legislativo n. 30/07: Circular n. 54 of 8 October 2007 on the Application of charges on the acts released to Union citizens according to D.Lgs. 30/07.

Other abbreviations

- CA: competent authorities
- Art.: Article
- O.J.: Official Journal
- **D.Lgs: Legislative Decree**
- **PD: Presidential Decree**
- **CP: Criminal Code (Codice Penale)**
- **CPP: Criminal Procedural Code Codice di Procedura Penale)**

Analysed legislation in conformity? (click as appropriate)

YES ☐

NO ☐
Incomplete or/and Incorrect **G I**

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

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
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;	Art. 2.1 a) D.Lgs n. 30/07 In this regard also Circular of the Ministry of Interior of 18 July 2007	Art. 2 (Definizioni) Ai fini del presente decreto legislativo, si intende per: a) «cittadino dell'Unione»: qualsiasi persona avente la cittadinanza di uno Stato membro;	Art. 2 (Definitions) For the purposes of this Decree: a) "Union citizen" means any person having the nationality of a Member State;	Y	Effective transposition The definition as such is literally transposed by the Italian Decree; however, the mentioned Circular specifies that also citizens of Norway, Island, Lichtenstein and of Switzerland and the Republic of San Marino are considered as Union citizen, with reference to the transposing Decree.
Art. 2.2 (a)	2) "Family member" means: (a) the spouse;	Art. 2.1 b) 1) D.Lgs n. 30/07 In this regard also Circular of the Ministry of Interior n. 19 of 6 April 2007	b) «familiare»: 1) il coniuge;	b) "Family member" means: 1) the spouse;	Y	Literal transposition
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;	Art. 2.1 b) 2) D.Lgs n. 30/07	2) il partner che abbia contratto con il cittadino dell'Unione un'unione registrata sulla base della legislazione di uno Stato membro, qualora la legislazione dello Stato membro ospitante equipari l'unione registrata al matrimonio e nel rispetto delle condizioni previste dalla pertinente legislazione dello Stato membro ospitante;	2) 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;	Y	Literal transposition However, despite the fact that Italy has literally transposed this definition, the concept of registered partnership does not currently exist in Italy. Therefore "registered partnership" is not equivalent to marriage. So it has finally been decided to transpose the definitions of partner (Art. 2.1 b) 2.1 b) 3 and 2.1 b) 4) but then in the body of the Directive, the concrete rights that should be recognised to partners are not transposed/recognised (for instance Art. 8.5 b), 10.2 b), 13.1, 13.2 b), 13.2 c) of the Directive).

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

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
						This is because "partners with whom an EU citizen has made a registered partnership" are not recognised as "family member".
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);	Art. 2.1 b) 3) D.Lgs n. 30/07	3) i discendenti diretti di età inferiore a 21 anni o a carico e quelli del coniuge o partner di cui alla lettera b);	3) 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);	Y	Literal transposition (for "partners" see comment in correspondence of Article 2.2. (b) of the Directive)
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);	Art. 2.1 b) 4) D.Lgs n. 30/07	4) gli ascendenti diretti a carico e quelli del coniuge o partner di cui alla lettera b);	4) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point b);	Y	Literal transposition (for "partners" see comment in correspondence of Article 2.2. (b) of the Directive)
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.	Art. 2.1 c) D.Lgs n. 30/07	c) «Stato membro ospitante»: lo Stato membro nel quale il cittadino dell'Unione si reca al fine di esercitare il diritto di libera circolazione o di soggiorno.	c) "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.	Y	Literal transposition
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.	Art. 3.1 D.Lgs n. 30/07	Art. 3 (Aventi diritto) 1. Il presente decreto legislativo si applica a qualsiasi cittadino dell'Unione che si rechi o soggiorni in uno Stato membro diverso da quello di cui ha la cittadinanza, nonché ai suoi familiari ai sensi dell'articolo 2, comma 1, lettera b), che accompagnino o raggiungano il cittadino medesimo.	Art. 3 (Beneficiaries) This Legislative Decree 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 paragraph 1 b) of Article 2 who accompany or join them.	Y	Literal transposition
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	Art. 3.2 a) D.Lgs n. 30/07 In this regard Circular of the Ministry of Interior of 18 July 2007	2. Senza pregiudizio del diritto personale di libera circolazione e di soggiorno dell'interessato, lo Stato membro ospitante, conformemente alla sua legislazione nazionale, agevola l'ingresso e il soggiorno delle seguenti persone: a) ogni altro familiare, qualunque sia la sua cittadinanza, non definito all'articolo 2, comma	2. 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,	Y	Literal transposition The Circular refers to the documents that are requested for the registration (pag. 3).- See below Article 8. See also CS for some implementation aspects. The Host Member State should be understood as Italy in this context.

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

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
	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;		1, lettera b), se e' a carico o convive, nel paese di provenienza, con il cittadino dell'Unione titolare del diritto di soggiorno a titolo principale o se gravi motivi di salute impongono che il cittadino dell'Unione lo assista personalmente;	not falling under the definition in paragraph 1 b) of Article 2 who, in the country from which 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;		
Art. 3.2 (b)	(b) the partner with whom the Union citizen has a durable relationship, duly attested.	Art. 3.2 b) D.Lgs n. 30/07 In this regard Circular of the Ministry of Interior of 18 July 2007	b) il partner con cui il cittadino dell'Unione abbia una relazione stabile debitamente attestata dallo Stato del cittadino dell'Unione.	b) the partner with whom the Union citizen has a durable relationship, duly attested by the State of the Union citizen.	N, Incorrect	Almost literal transposition. But overall incorrect transposition since more stringent. The sentence “by the State of the Union citizen” has been added by the transposing Decree and this does change the meaning of the provision since it limits the means of proof for the couple. The means of proof that attest the relationship could also come from the State where they were residing (not necessarily the home MS). There could be also other possible ways of attesting a relationship.
	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.	Art. 3.3 D.Lgs n. 30/07	3. Lo Stato membro ospitante effettua un esame approfondito della situazione personale e giustifica l'eventuale rifiuto del loro ingresso o soggiorno.	3. 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.	Y	Literal transposition Host MS should be understood as Italy.
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	Art. 4.1 D.Lgs n. 30/07	Art. 4 (Diritto di circolazione nell'ambito dell'Unione europea) 1. Ferme le disposizioni relative ai controlli dei documenti di	Art. 4 (Right to move within the European Union) 1. Without prejudice to the provisions on travel documents applicable to national border	Y	Effective transposition In Italy identity cards and Passports are valid for expatriation, not so the driver licence that is an identity

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

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
	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.	Art. 4.2 D.Lgs n. 30/07	viaggio alla frontiera, il cittadino dell'Unione in possesso di documento d'identità valido per l'espatrio, secondo la legislazione dello Stato membro, ed i suoi familiari non aventi la cittadinanza di uno Stato membro, ma in possesso di un passaporto valido, hanno il diritto di lasciare il territorio nazionale per recarsi in un altro Stato dell'Unione. 2. Per i soggetti di cui al comma 1, minori degli anni diciotto, ovvero interdetti o inabilitati, il diritto di circolazione e' esercitato secondo le modalità stabilite dalla legislazione dello Stato di cui hanno la cittadinanza.	controls, the Union citizen with a valid identity document/card which is valid for expatriation, according to the legislation of the Member State, and their family members who are not nationals of a Member State but who hold a valid passport shall have the right to leave the national territory to travel to another Member State. 2. The persons mentioned in paragraph 1, who are minors or civilly-disabled or incapacitated persons, exercise their right to move according to the procedures set out by the legislation of the State of nationality.		document but is not valid for expatriation. Thus the reference in the Italian act. The transposing decree contains an additional provision that does not impinge on the correct transposition of Article 4.1 of the Directive. Probably Italy refers to the fact that minors or civilly-disabled or incapacitated might be for example accompanied by an older but only if this is provided for in the State of nationality.
Art. 4.2	No exit visa or equivalent formality may be imposed on the persons to whom paragraph 1 applies.	.			Y	Effective transposition This provision can be considered as transposed referring to Art. 4.1 of D.Lgs n. 30/07 (that requires Union citizens and his/her family members to only have an identity document in order to leave the territory, so, no further limitation/requirements. <i>A contrario</i> , no exit visa is required.
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.	Art. 5 Law, n. 1185/67	Il passaporto è rilasciato, rinnovato,[...] dal Ministro per gli affari esteri e per sua delega: a) in Italia: dai questori e, in casi eccezionali, dagli ispettori di frontiera per gli italiani all'estero; b) all'estero: dai rappresentanti	The passport is issued , renewed, [...] by the Ministry of Foreign Affairs and upon its delegation a) in Italy by the <i>questori</i> and, in exceptional cases, by borders Inspectors fro Italians leaving abroad; b) abroad: by the diplomatic and	Y	Correct transposition

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

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
		Art. 3 RD n. 773/31	<p>diplomatici e consolari.</p> <p>.</p> <p>Il sindaco è tenuto a rilasciare alle persone di età superiore agli anni quindici aventi nel Comune la loro residenza o la loro dimora, quando ne facciano richiesta, una carta di identità conforme al modello stabilito dal Ministero dell'interno.</p> <p>[...]</p> <p>La carta di identità ha durata di cinque anni [...]</p>	<p>consular representations</p> <p>The Major shall release an identity card that is conform to the model established by the Ministry of Interior, to the persons who have more than 15 years having the residence or their <i>dimora</i> in the Commune and who request it.</p> <p>The identity card has is valid for five years [...]</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.	<p>Art. 17 Law, n. 1185/67 as amended by Art. 24.2 a) Law n. 3/03</p> <p>Art 2 Law, n. 1185/67</p>	<p>[...] Il passaporto ordinario è valido per dieci anni. [...]</p> <p>Il passaporto è valido per tutti i Paesi i cui Governi sono riconosciuti dal Governo italiano, salvo le limitazioni previste dalla presente legge. A domanda dell'interessato il passaporto può essere reso valido, mediante l'indicazione delle località di destinazione, per i Paesi i cui Governi non sono riconosciuti.</p>	<p>[...] The ordinary passport is valid for ten years. [...]</p> <p>The passport is valid for all States which Governments are recognised by the Italian Government, except restrictions foreseen by this law. Upon request of the interested person, the passport may be valid, through specification of the destination locality, for States the Governments of which are not recognised.</p>	Y	Correct transposition
Art. 5.1	<p>Right on Entry</p> <p>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 leave to enter their territory with a valid passport.</p>	<p>Art. 5.1 D.Lgs n. 30/07</p> <p>In this regard Circular of the Ministry of Interior of 10 April 2007</p>	<p>Art. 5 (Diritto di ingresso)</p> <p>1. Ferme le disposizioni relative ai controlli dei documenti di viaggio alla frontiera, il cittadino dell'Unione in possesso di documento d'identità valido per l'espatrio, secondo la legislazione dello Stato membro, ed i suoi familiari non aventi la cittadinanza di uno Stato membro, ma in possesso di un passaporto valido, sono ammessi nel</p>	<p>Art. 5 (Right on Entry)</p> <p>1. Without prejudice to the provisions on travel documents applicable to border controls, Member States shall grant Union citizens leave to enter their territory with a valid identity document/card which is valid for expatriation, according the legislation of the Member State, and shall grant family members who are not nationals of a</p>	Y	<p>Effective transposition</p> <p>Despite the reference to Member States, Italy does not want to regulate what other MS have to do. It wants to recognise the validity of the document if this is valid for the MS of nationality.</p>

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

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
			territorio nazionale.	Member State leave to enter their territory with a valid passport.		
	No entry visa or equivalent formality may be imposed on Union citizens.				Y	Effective transposition This provision can be considered as transposed referring to Art. 5.1 of D.Lgs n. 30/07 (that requires Union citizens and his/her family members to only have an identity document in order to enter the territory, so, no further limitation/requirements).
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.	Art. 5.2 D.Lgs n. 30/07 In this regard Circular of the Ministry of Interior of 10 April 2007	2. I familiari non aventi la cittadinanza di uno Stato membro sono assoggettati all'obbligo del visto d'ingresso, nei casi in cui e' richiesto. Il possesso della carta di soggiorno di cui all'articolo 10 in corso di validità esonera dall'obbligo di munirsi del visto.	2. Family members who are not nationals of a Member State shall only be required to have an entry visa, when requested. The possession of the valid residence card referred to in Article 10 shall exempt such family members from the visa requirement.	Y	Effective transposition The national provision omits to refer to "Regulation (EC) No 539/2001 or, where appropriate, with national law", stating in general "when requested". It would have been more appropriate/precise to mention the Regulation, but this cannot be considered as a conformity problem that affects the substance of the provision since the Regulation is directly applicable. The sentence "For the purposes of this Directive," is omitted but in this context this is not a conformity problem either. Reference to Article 10 seems to cover any residence card and not only residence cards issued by Italy.
	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.	Art. 5.3 D.Lgs n. 30/07	3. I visti di cui al comma 2 sono rilasciati gratuitamente e con priorità rispetto alle altre richieste.	3. Visas referred to in paragraph 2 [of Art. 5 of the Decree] are to be issued free of charge as soon as possible and on the basis of an accelerated procedure.	Y	Effective transposition Still pending answer from the Ministry of External Affairs on whether in practice the procedures is dealt with priority.

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

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
						COM would like to interpret it as “as soon as possible, as close to 5 working days as possible”.
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.	Art. 5.4 D.Lgs n. 30/07	4. Nei casi in cui e' esibita la carta di soggiorno di cui all'articolo 10 non sono apposti timbri di ingresso o di uscita nel passaporto del familiare non avente la cittadinanza di uno Stato membro dell'Unione europea.	4. 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.	Y	Effective transposition The wording of the national Decree is slightly different but does not change the meaning of the provision. As above, Italy refers to any residence card, in addition Article 10 of Regulation 562/2006 (the Schengen borders code) also contains this obligation and it is directly applicable.
Art. 5.4	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.	Art. 5.5 D.Lgs n. 30/07	5. Il respingimento nei confronti di un cittadino dell'Unione o di un suo familiare non avente la cittadinanza di uno Stato membro, sprovvisto dei documenti di viaggio o del visto di ingresso, non e' disposto se l'interessato, entro ventiquattro ore dalla richiesta, fa pervenire i documenti necessari ovvero dimostra con altra idonea documentazione, secondo la legge nazionale, la qualifica di titolare del diritto di libera circolazione.	5. A Union citizen or a family member who is not a national of a Member State and who does not have the necessary travel documents or, if required, the necessary visa, cannot be turned back if he/she brings the necessary documents or if he/she corroborates by other suitable means according the national law, that they are covered by the right of free movement and residence, within 24 hours from the request.	N, Incorrect	Incorrect transposition The wording of the national Decree is slightly different in particular it does not guarantee that reasonable opportunities are given and a reasonable period of time. It leaves too much discretion to the authorities.
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.	Art. 1.2 Law 28 May 2007, n. 68	2. Al momento dell'ingresso o, in caso di provenienza da Paesi dell'area Schengen, entro otto giorni dall'ingresso, lo straniero dichiara la sua presenza, rispettivamente all'autorità di frontiera o al questore della provincia in cui si trova, secondo le modalità stabilite con decreto del Ministro dell'interno.	2. When entering or, if coming from a Schengen area country, within 8 days, from the entry in the national territory, the foreign national declares his/her presence, respectively to the border authority or the <i>Questore</i> of the Province where the person concerned is, according the procedures set by a Ministry of Interior' decree.	N, Incorrect	Incorrect transposition Italy has used this option. In the case referred to in Art. 1.2, if the foreign national comes from a third country she/he needs to declare the presence immediately when entering; if the foreign national comes from a Schengen area country then he/she has 8 days to declare his/her presence in the national territory. The sanctions that apply in

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

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
		Art. 1.3 Law 28 May 2007, n. 68 and new Art. 5 <i>bis</i> as added by Art. 1.1 a) D.Lgs n. 32/08	3. In caso di inosservanza degli obblighi di cui al comma 2, salvo che il ritardo sia dipeso da forza maggiore, lo straniero è espulso ai sensi dell'articolo 13 del citato testo unico di cui al decreto legislativo 25 luglio 1998, n. 286, e successive modificazioni. [...] In ragione della prevista durata del suo soggiorno, il cittadino dell'Unione o il suo familiare puo' presentarsi ad un ufficio di polizia per dichiarare la propria presenza nel territorio nazionale, secondo le modalita' stabilite con decreto del Ministro dell'interno da adottare entro trenta giorni dalla data di entrata in vigore della presente disposizione. Qualora non sia stata effettuata tale dichiarazione di presenza, si presume, salvo prova contraria, che il soggiorno si sia protratto da oltre tre mesi;	3. Failing to comply with the requirement of paragraph 2, except when the delay depends on <i>force majeure</i> , the foreign person is expelled according to Art. 13 of D.Lgs, n. 286 of 1998 and its further amendments. [...] {Art. 13 of the Laws <i>on the regulation of immigration and provisions on the conditions of the foreigner national</i> , deals with “administrative expulsion”} According to the length of his/her stay, the Union citizen or his/her family member, may go to a police office in order to declare his/her presence in the national territory, according to the procedures established by a decree of the Ministry of Interior that needs to be adopted within 30 days from the date as of which this provision has entered into force. If the declaration of presence is not made, it is presumed, until proof of the contrary, that the period of residence is extended of more than three months;	y/n	case of failure to comply with the provision, cannot be considered as “proportionate and non-discriminatory” as the Directive requires, since Law n. 68/2007 foresees the expulsion of the person concerned [since it refers to art. 18 of D.Lgs, n. 286 of 1998] (Law 68/2007 applies to country visits of less than 3 months. For visits of longer than 3 months, the law foresees different conditions and requirements). This provision has been added by the new D.Lgs n. 32/08 and is ambiguous since it is not clear the situation in which the provision shall apply. The provision seems to say that for periods of residence of longer than 3 months there is no obligation to declare the presence in the territory since, in case of no declaration it is presumed that the periods of residence is longer than 3 months. In this case, however, if the Union citizen or family member does not fulfil the conditions refereed to in Art. 7 of D.Lgs n. 30/07 it seems that he/she could be expelled according to Art. 21 of the same Decree. [also refer to Article 15(1) of the Directive for more details]. Moreover, the Ministry of Interior should issue soon a decree specifying the procedures on how to report the presence in the Italian territory. On

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

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
		<p>Order of the President of the Council of Ministers on May 30, 2008 (Order No. 3676) Provisions urgent civil protection to address the state of emergency in relation to settlements of nomadic communities in the region Lazio.</p> <p>Order of the President of the Council of Ministers on May 30, 2008 (Order No. 3677) Provisions urgent civil protection to address the state of emergency in relation to settlements of nomadic communities in the region Lombardy</p> <p>Order of the President of the Council of Ministers on May 30, 2008 (Order No. 3678) Provisions urgent civil protection to address the state of emergency in relation to settlements of nomadic communities in the region Campania.</p>				<p>the 27 June 2008, officials at the Ministry of Internal Affairs have reported that this Decree s has not yet issued.</p> <p>In this context the <i>Ordinanze</i> issued by the President of the Council of Ministers do not comply with this particular provision because they give the special Commissioners appointed by the said <i>Ordinanze</i> , a series of powers concerning nomads camps/settlements that are not compatible with the Directive. See CS for a more detailed comment on this.</p>
Chapter III	RIGHT OF RESIDENCE					
Art. 6.1	Right of residence up to 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	Art. 6.1 D.Lgs n. 30/07	Art. 6 (Diritto di soggiorno fino a tre mesi) 1. I cittadini dell'Unione hanno il diritto di soggiornare nel territorio nazionale per un periodo non superiore a tre mesi senza alcuna	Art. 6 (Right of residence up to three months) 1. Union citizens shall have the right of residence on the national territory for a period of up to three months without any	Y, (Not for jobseekers)	Effective transposition

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

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
	hold a valid identity card or passport.	Art. 1.1 Law 28 May 2007, n. 68	condizione o formalità, salvo il possesso di un documento d'identità valido per l'espatrio secondo la legislazione dello Stato di cui hanno la cittadinanza. 1. Ai sensi dell'articolo 4, comma 4, e dell'articolo 5, comma 3, del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, di cui al decreto legislativo 25 luglio 1998, n. 286, e successive modificazioni, per l'ingresso in Italia per visite, affari, turismo e studio non è richiesto il permesso di soggiorno qualora la durata del soggiorno stesso sia non superiore a tre mesi. In tali casi si applicano le disposizioni di cui all'articolo 4, comma 2, del medesimo testo unico e il termine di durata per cui è consentito il soggiorno è quello indicato nel visto di ingresso, se richiesto.	conditions or any formalities other than the requirement to hold a valid identity document/card which is valid for expatriation according to the legislation of the State of nationality. 1. According to Article 4.4 and 5.3 of D.Lgs. n. 286 of 1998 and its further amendments, in order to enter in Italy for visits, business, tourism and study reasons, a residence permit is not required if the person concerned remains for not longer than 3 months. In this case provisions of Article 4.2 of the same act apply and the duration term for which the residence is allowed, is the one specified in the entry visa, if required.		Effective transposition Law 28 May 2007, n. 68 that has been issued in order to transpose the EU provision on EU foreign nationals does not only refer to EU nationals but also to third country nationals. The difference with D.Lgs n. 30/07 is that Law is more specific and one could say <i>Lex specialis/generalis</i> .
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.	Art. 6.2 D.Lgs n. 30/07	2. Le disposizioni del comma 1 si applicano anche ai familiari non aventi la cittadinanza di uno Stato membro che accompagnano o raggiungono il cittadino dell'Unione, in possesso di un passaporto in corso di validità, che hanno fatto ingresso nel territorio nazionale ai sensi dell'articolo 5, comma 2.	2. The provisions of paragraph 1 shall also apply to family members who are not nationals of a Member State, in possession of a valid passport who are not nationals of a Member State, accompanying or joining the Union citizen and who have entered the national territory according to Article 5.2.	N, Incorrect	Incorrect transposition The Italian provision adds in the end of Art. 6.2: "[...] family members who are not nationals of a Member State [...] who have entered the national territory according to Article 5.2" This renders the transposition as incorrect since as per the Directive the family member who are not national of a MS and who wants to reside for up to 3 months only needs a valid passport. This is not the same

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

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
						<p>for Italy since the family member who is not a national of a MS also in cases of residences of up to 3 months needs a visa in cases provided for in Art. 5.2 (Art. 5.2 of the Directive) in any case family members who are not nationals of a Member State have to comply with the provision of Article 5.2 in order to enter the national territory.</p> <p>(Also see CS for a more detailed analysis of the non conformity problem in relation to new Article 61.11 <i>bis</i> of the CP creating an aggravating circumstance for persons committing a crime who are illegally in the territory of Italy).</p>
Art.7.1 (a)	<p>Right of residence for more than three months</p> <p>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:</p> <p>(a) are workers or self-employed persons in the host Member State; or</p>	<p>Art. 7.1 a) D.Lgs n. 30/07</p> <p>In this regard also Circular of the Ministry of Interior of 6 and of 10 April 2007</p>	<p>Art. 7 (Diritto di soggiorno per un periodo superiore a tre mesi)</p> <p>1. Il cittadino dell'Unione ha diritto di soggiornare nel territorio nazionale per un periodo superiore a tre mesi quando:</p> <p>a) e' lavoratore subordinato o autonomo nello Stato;</p>	<p>Art. 7 (Right of residence for more than three months)</p> <p>The Union citizen shall have the right of residence on the national territory for a period of longer than three months if they:</p> <p>a) is a worker or self-employed person in the State;</p>	Y	<p>Almost literal transposition</p> <p>The Italian Decree uses the term “the Union citizen” and not “all Union citizens”; this does not affect the correct transposition of this particular provision since the meaning is the same.</p>
Art.7.1 (b)	<p>(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</p>	<p>Art. 7.1 b) D.Lgs n. 30/07</p>	<p>b) dispone per sé stesso e per i propri familiari di risorse economiche sufficienti, per non diventare un onere a carico dell'assistenza sociale dello Stato durante il periodo di soggiorno, e di un'assicurazione sanitaria o di altro titolo idoneo comunque denominato che copra tutti i rischi nel territorio nazionale;</p>	<p>b) have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the State during their period of residence and have comprehensive sickness insurance cover, or any other suitable instrument whichever called in the national territory;</p>	Y	<p>Almost literal transposition</p> <p>The Italian Decree does not specify “host” Member State. This is implied by the transposing provision that is therefore in compliance with the Directive.</p> <p><i>Art. 7.1 a) D.Lgs n. 30/07 will be amended if the draft Legislative decree amending and supplementing D.Lgs n. 30/07 is finally adopted.</i></p> <p><i>A new par is added after par. b),</i></p>

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

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
						<i>namely b)bis.</i>
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; <u>and</u>	Art. 7.1 c) D.Lgs n. 30/07	c) e' iscritto presso un istituto pubblico o privato riconosciuto per seguirvi come attività principale un corso di studi o di formazione professionale e [...]	c) is enrolled at a private or public establishment, for the principal purpose of following a course of study, or vocational training and [...]	Y	Effective transposition The sentence “or financed by the host Member State on the basis of its legislation or administrative practice” is omitted in the national provision. This however does not represent a gap since, referring to “[...] or public establishment” this implies that the establishment is at least financed by the State.
	- 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	Art. 7.1 c) D.Lgs n. 30/07 Also Circular of the Ministry of Interior of 18 July 2007	[...] dispone, per sé stesso e per i propri familiari, di risorse economiche sufficienti, per non diventare un onere a carico dell'assistenza sociale dello Stato durante il suo periodo di soggiorno, da attestare attraverso una dichiarazione o con altra idonea documentazione, e di un'assicurazione sanitaria o di altro titolo idoneo che copra tutti i rischi nel territorio nazionale;	[...] that he/she has sufficient resources for him/herself and his/her family members not to become a burden on the social assistance system of State during their period of residence, to prove by means of a declaration or by such equivalent means as they may choose, and have comprehensive sickness insurance cover or any other suitable instrument that covers all the risks on the national territory;	Y	Almost literal transposition Circular 18 July specifies that Union citizens (and their dependant family members) who reside in Italy for professional trainings or for study reasons shall show that they have a comprehensive sickness insurance cover.
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).	Art. 7.1 d) D.Lgs n. 30/07	d) e' familiare, come definito dall'articolo 2, che accompagna o raggiunge un cittadino dell'Unione che ha diritto di soggiornare ai sensi delle lettere a), b) o c).	d) is a family member, as defined in Art. 2, accompanying or joining a Union citizen who has the right to reside according to points (a), (b) or (c).	Y	Effective transposition The national provision adds “as defined in Art. 2”, to the definition of family member which does not affect conformity.
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).	Art. 7.2 D.Lgs n. 30/07	2. Il diritto di soggiorno di cui al comma 1 e' esteso ai familiari non aventi la cittadinanza di uno Stato membro quando accompagnano o raggiungono nel territorio nazionale il cittadino dell'Unione, purché questi risponda alle condizioni di cui al comma 1, lettere a), b) o c).	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 national territory, provided that such Union citizen satisfies the conditions referred to in	Y	Literal transposition

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

[illegible]

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

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
			<i>essere comprovata dalla presentazione dell'interessato presso il servizio competente nel cui ambito territoriale si trovi il domicilio del medesimo, accompagnata da una dichiarazione, ai sensi del decreto del Presidente della Repubblica 28 dicembre 2000, n. 445, che attesti l'eventuale attività lavorativa precedentemente svolta, nonché l'immediata disponibilità allo svolgimento di attività lavorativa..]</i>	<i>unemployment] must be proven by appearance of the interested person to the competent department in whose territory the said person has his/her domicile; it is also required a declaration, according to Presidential Decree 28 December 2000 n. 445, certifying any work previously performed and the immediate availability for the performance of work..]</i>		the host Member (in this case in Italy). Therefore transposition is correct. –national territory here is Italy.
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;	Art. 7.3 c) D.Lgs n. 30/07	c) e' in stato di disoccupazione involontaria debitamente comprovata al termine di un contratto di lavoro di durata determinata inferiore ad un anno, ovvero si e' trovato in tale stato durante i primi dodici mesi di soggiorno nel territorio nazionale, e' iscritto presso il Centro per l'impiego ovvero ha reso la dichiarazione, di cui all'articolo 2, comma 1, del decreto legislativo 21 aprile 2000, n. 181, così come sostituito dall'articolo 3 del decreto legislativo 19 dicembre 2002, n. 297, che attesti l'immediata disponibilità allo svolgimento di attività lavorativa. In tale caso, l'interessato conserva la qualità di lavoratore subordinato per un periodo di un anno;	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 in the national territory and has registered as a job-seeker with the <i>Centro per l'impiego</i> or has made the statement, as referred to in article 2 paragraph 1 of Legislative Decree 21 April 2000, n. 181, as replaced by article 3 of Legislative Decree 19 December 2002, n. 297, that shows the immediate availability to work. In this case, the status of worker shall be retained for one year.	Y	Effective transposition The Italian provision specifies that the status of worker shall be retained for one year. This is in conformity with the Directive that states “no less than six months”. The provision is even more favourable.
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	Art. 7.3 d) D.Lgs n. 30/07	d) segue un corso di formazione professionale. Salvo il caso di disoccupazione involontaria, la conservazione della qualità di	d) he/she embarks on vocational training. Unless he/she is involuntarily unemployed, the retention of the status of worker	Y	Literal transposition

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

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
	related to the previous employment.		lavoratore subordinato presuppone che esista un collegamento tra l'attività professionale precedentemente svolta e il corso di formazione seguito.	shall require the training to be related to the previous employment.		
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 transposition The fact that such provision has not been transposed, means that in Italy there are no derogations to paragraph 1 d) and to paragraph 2; Therefore all family members of a Union citizen who is a student have the right of residence in Italy. This makes the Italian act more favourable.
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.	Art. 9.1 D.Lgs n. 30/07 In this regard also Circular of the Ministry of Interior of 6 April 2007 Also Circular n. 45 of 8 August 2007 and Circular of the Ministry of Interior of 18 July 2007: The Circular mentions the different cases of registration: for minors who are not accompanied, for religious grounds, for work reasons.	Art. 9 (Formalità amministrative per i cittadini dell'Unione ed i loro familiari) 1. Al cittadino dell'Unione che intende soggiornare in Italia, ai sensi dell'articolo 7 per un periodo superiore a tre mesi, si applica la legge 24 dicembre 1954 n. 1228, ed il nuovo regolamento anagrafico della popolazione residente, approvato con decreto del Presidente della Repubblica 30 maggio 1989, n. 223.	Art. 9 (Administrative formalities for Union citizens and their families) 1. Law of 24 December 1954, n. 1228 and the new registry of the resident population, approved by Presidential Decree of 30 May 1989, n. 223, shall apply to the Union citizen who intends to reside in Italy for longer than three months, according to Article 7.	Y	Effective transposition Article 7 (the reference to this article is redundant but pertinent since in fact concerns the right of residence for more than three months that is the case referred here by Article 8(1) of the Directive. The Italian provision refers to Law n. 1228 on the register of births, death and marriages and other relevant positions, of resident population and to Decree n. 223 on the new registry of the resident population (the mentioned acts also apply to Italian citizens). Law of 1128 and Presidential Decree of 30 May 1989, n. 223 do not contain specific provisions for EU citizens. Their provisions also apply to Italians citizens.

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

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
		<p><i>Art. 36 Presidential Decree of 30 May 1989, n. 223</i></p> <p><i>Art. 5 Law of 24 December 1954, n. 1228</i></p> <p>Order of the President of the Council of Ministers on May 30, 2008 (Order No. 3676) Provisions urgent civil protection to address the state of emergency in relation to settlements of nomadic communities in the region Lazio.</p>	<p>[Articolo 36 Presidential Decree of 30 May 1989, n. 223 <i>Ricorsi in materia di certificazioni anagrafiche.</i> <i>1. Avverso il rifiuto opposto dall'ufficiale di anagrafe al rilascio dei certificati anagrafici e in caso di errori contenuti in essi, l'interessato può produrre ricorso al prefetto.</i></p> <p>Art. 5 Law of 24 December 1954, n. 1228 <i>L'ufficiale d'anagrafe che sia venuto a conoscenza di fatti che comportino la istituzione o la mutazione di posizioni anagrafiche, per i quali non siano state rese le prescritte dichiarazioni, deve invitare gli interessati a renderle. In caso di mancata dichiarazione, l'ufficiale di anagrafe provvede di ufficio, notificando all'interessato il provvedimento stesso. Contro il provvedimento d'ufficio è ammesso ricorso al prefetto.]</i></p>	<p>[Article 36 Presidential Decree of 30 May 1989, n. 223 <i>Appeals regarding certification registries.</i> <i>1. Against the refusal by an official of the registry to issue personal details certificates and in case of errors in them, the interested person may file an appeal to the prefetto.</i></p> <p>Art. 5 Law of 24 December 1954, n. 1228 <i>The official of the registry (personal details registry) who becomes aware of facts that lead to the establishment or change of registry's positions, for which the required declarations have not been made, shall invite the interested persons to make such declarations. In case of non-declaration, the official of the registry shall, acting ex officio, notify the person concerned the measure itself. Against the measure taken ex officio it is possible to file an appeal to the prefetto.]</i></p>		<p>According to Presidential Decree of 30 May 1989, n. 223 and Law of 24 December 1954, n. 1228 the persons concerned are entitled to appeal before the <i>Prefetto</i> if the application is dismissed for lack of requirements foreseen by the two mentioned acts.</p> <p>In this context the Ordinanze issued by the President of the Council of Ministers do not comply with this particular provision because they give the special Commissioners appointed by the said Ordinanze, a series of powers concerning nomads camps/settlements that are not compatible with the Directive.</p>

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

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
		<p>Order of the President of the Council of Ministers on May 30, 2008 (Order No. 3677) Provisions urgent civil protection to address the state of emergency in relation to settlements of nomadic communities in the region Lombardy</p> <p>Order of the President of the Council of Ministers on May 30, 2008 (Order No. 3678) Provisions urgent civil protection to address the state of emergency in relation to settlements of nomadic communities in the region Campania</p>				In particular he/she is supposed to identify illegal camps and to do a census of the persons, also minors, living in such settlements. See CS for a more detailed comment on this.
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 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.	<p>Art. 9.2 D.Lgs n. 30/07</p> <p>Also Circular n. 45 of 8 August 2007</p>	2. Fermo quanto previsto dal comma 1, l'iscrizione e' comunque richiesta trascorsi tre mesi dall'ingresso ed e' rilasciata immediatamente una attestazione contenente l'indicazione del nome e della dimora del richiedente, nonché la data della richiesta.	2. Without prejudice to what stated in paragraph 1, the registration is in any case required after three months from the date of arrival and a registration certificate is issued immediately, sta The deadline for registration may not be less than three months from the date of arrival. A registration certificate shall be 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. ting the name and address of the person registering and the date of the request of registration.	Y	<p>Effective transposition</p> <p>The Italian provision refers to the date of the request of registration; while the Directive refers to the date of registration but this does not impinge on the substance of the provision. (See also comment under Art. 8.5 c) of the Directive)</p> <p>Moreover, the Directive requires to state the “address” of the person that in Italian would be “domicilio”. The transposing provision says: “dimora”, which is technically not the same. The Italian system makes a difference between these terms. In particular “dimora” is the place where a person is even only for a short period, <i>i.e.</i>, when he/she is in a hotel during holidays. “Domicilio” is the principal/main seat of his/her</p>

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

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
						<p>business and interests, that is of the economical, financial and property activities. However, “dimora” is the minimum requirement that a foreign national shall have and communicate to the authorities. In this regard, until the person concerned is not registered, his/her address is a “dimora” and only after registration at the appropriate Office of <i>anagrafe</i> (personal details registry), one can refer to residence. In this regard it is not possible to assess the provision as incorrect. The aim of the Italian provision is to facilitate other Member States’ citizens: it is important for them to communicate the address where they can be found. Therefore there is no incorrectness but only a way of facilitating the registration for foreign citizens.</p> <p>Residence is the place where the person usually lives.</p> <p>Circular n. 45 of 8 August 2007 explains that the certificate stating the name and address of the person registering and the date of the request of registration does not constitute a document that authorises the residence but has the aim at showing Union citizen’s compliance with the obligation regarding the registration according to the procedures described in the Decree (it is clear that the person has the right to reside and that is why the certificate does not authorise residence).</p> <p><i>Art. 9.2 D.Lgs n. 30/07 will be</i></p>

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

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
		Art. 11 Law of 24 December 1954, n. 1228 as amended	Per le persone residenti nei territori dello Stato in seguito ad immigrazione dall'estero, che non hanno provveduto a curare la propria iscrizione e quella delle persone sottoposte alla loro patria potestà o tutela nell'anagrafe del Comune dove dimorano abitualmente [...], nonché per chiunque consegue l'iscrizione contemporanea nell'anagrafe di più Comuni, si applica la sanzione amministrativa da lire 100.000 a lire 500.000 (after amendment llaw decree 55/83: 1.000.000 to lire 5.000.000)	For the persons residing in the territory of the State, following immigration from abroad, who have not made the registration - for themselves nor for the persons subject to their parental authority or "protection"-guardianship (<i>tutela</i>) - in the registry of births, death etc in the Commune where they habitually <i>dimorano</i> (where they have their address) [...], as well as for any person making at the same time the registration in the registry of births, death etc of more than one Commune, the administrative sanction of from 100.000 to lire 500.000 (after amendment by law decree 55/83: 1.000.000 to lire 5.000.000)		<p><i>replaced if the draft Legislative decree amending and supplementing D.Lgs n. 30/07 is finally adopted.</i></p> <p>According to Law of 24 December 1954, n. 1228 in case of non registration of the persons residing in the national territory coming from abroad the sanctions administrative (fine): from 100.000 a lire 500.000 shall apply.</p> <p>(after amendment 55/83: 1.000.000 – approximately € 516,00 to lire 5.000.000 – approximately € 250,00. We assume that the sanction appear to be proportional and non-discriminatory, since it also apply to Italian citizens).</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,	Art. 9.3 a) D.Lgs n. 30/07 In this regard also Circular of the Ministry of Interior n. 45 of 8 August 2007	3. Oltre a quanto previsto per i cittadini italiani dalla normativa di cui al comma 1, per l'iscrizione anagrafica di cui al comma 2, il cittadino dell'Unione deve produrre la documentazione attestante: a) l'attività lavorativa, subordinata o autonoma, esercitata se l'iscrizione e' richiesta ai sensi dell'articolo 7, comma 1, lettera a);	3. Besides what provided for in paragraph 1 for Italian citizens, for the registration stated in paragraph 2, Union citizens shall present the documentation proving: a) that they are workers or self-employed persons if the registration is required according Article 7.1 a);	Y	<p>Effective transposition</p> <p>Article 7.1 a) referred to in the national provision corresponds to point (a) of Article 7(1) of the Directive.</p> <p>The Italian Decree does not expressly states the requirement of "present a valid identity card or passport.", however, it refers to "what provided for in paragraph 1 for Italian citizens", <i>i.e.</i>, to Law of 24 December 1954, n. 1228 Presidential Decree of 30 May 1989, n. 223. This latter in its Article 6.3, requires that</p>

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

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
		Art. 6.3 Presidential Decree of 30 May 1989, n. 223	6.3 Le persone che rendono le dichiarazioni anagrafiche debbono comprovare la propria identità mediante l'esibizione di un documento di riconoscimento.	6.3 The persons making a registration shall proof their identity showing an identity document.		<p>the persons making a registration shall proof their identity showing an identity document. Therefore, the Directive's provision is effectively transposed.</p> <p>The Italian Decree fails to refer to "a confirmation of engagement from the employer"; this however does not affect the correct transposition since the Directive gives the alternative between the "confirmation of engagement" or a "certificate of employment [...]". The Italian provision is therefore more general as compared to the specific certificates mentioned in the Directive.</p> <p>The mentioned Circular explains which are the documents proving that they are workers (show the last pay roll, or receipt of the payment of INPS' contribute.....) or self-employed persons (certificate of registration in the Chamber of Commerce or TVA registration). These are examples.</p>
	— Union citizens to whom point (b) of Article 7(1) applies present a valid identity card or passport and provide proof that they satisfy the conditions laid down therein,	Art. 9.3 b) D.Lgs n. 30/07 In this regard also Circular of the Ministry of Interior n. 19 of 6 April 2007	b) la disponibilità di risorse economiche sufficienti per se' e per i propri familiari, secondo i criteri di cui all'articolo 29, comma 3, lettera b), del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, di cui al decreto legislativo 25 luglio 1998, n. 286, nonché la titolarità di una assicurazione sanitaria ovvero di altro titolo comunque denominato idoneo a coprire tutti i	b) sufficient resources for themselves and their family members, according to the criteria set out in Article 29.3 b) of the laws (<i>testo unico</i>) on immigration and the provisions on the conditions of the foreigners covered by Legislative Decree 25 July 1998, n. 286, and a sickness insurance or any other suitable instrument whichever called, that covers all the risks in the national territory, when the registration is required	N, Incorrect	<p>Incorrect transposition</p> <p>The transposing Decree repeats the criteria corresponding to point (b) of Article 7(1) of the Directive.</p> <p>The requirement to present a valid identity card or passport is fulfilled by the introduction to this transposing provision (see <i>supra</i> comment on Article 9.3 a) of the Italian provision).</p> <p>Article 29.3 b) of Legislative Decree</p>

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

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
			rischi nel territorio nazionale, se l'iscrizione e' richiesta ai sensi dell'articolo 7, comma 1, lettera b);	according Article 7.1 b); .		<p>286/1998 requires a foreign person who wants to rejoin his/her family member the EU citizen has to provide evidence of having an annual salary deriving from legal sources, not lower than the annual amount of the social allowance, if only one member rejoins; double of that amount, if two or three family members rejoin, three time the annual amount if four or more members rejoin. In order to determine the annual salary of the person making the request, even the annual salary of the cohabitants is taken into account.</p> <p>In order to quantify the economic resources Italy uses the parameter of the amount of the social allowance//assistance. In this regard Circular of the Ministry of Interior of 6 April 2007 gives specific information quantifying the amount that is considered as "sufficient resources". In this regard this provision and the following ones are to be considered as incorrectly transposed.</p> <p>For more details, refer to Article 8(4) of the Directive.</p>
	— 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.	Art. 9.3 c) D.Lgs n. 30/07 In this regard also Circular of the Ministry of Interior n. 19 of 6 April 2007	c) l'iscrizione presso un istituto pubblico o privato riconosciuto dalla vigente normativa e la titolarità di un'assicurazione sanitaria ovvero di altro titolo comunque denominato idoneo a coprire tutti i rischi, nonché la disponibilità di risorse economiche sufficienti per se' e per i propri familiari, secondo i	c) to be enrolled at a public or private establishment accredited by the existing legislation and a sickness insurance or any other suitable instrument whichever called, covering all the risks, and sufficient resources for themselves and their family members, according to the criteria set out in Article 29.3 b)	N, Incorrect	<p>Incorrect transposition</p> <p>The transposing Decree repeats the criteria corresponding to point (b) of Article 7(1) of the Directive.</p> <p>The requirement to present a valid identity card or passport is fulfilled by the introduction to this transposing provision (see <i>supra</i> comment on</p>

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

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
			<p>criteri di cui all'articolo 29, comma 3, lettera <i>b</i>), del citato decreto legislativo n. 286 del 1998, se l'iscrizione e' richiesta ai sensi dell'articolo 7, comma 1, lettera <i>c</i>).</p>	<p>of the above mentioned Legislative Decree n. 286 of 1998, when the registration is required according Article 7.1 c);</p>		<p>Article 9.3 a) of the Italian provision).</p> <p>The sentence “or financed by the host Member State on the basis of its legislation or administrative practice” is omitted in the national provision. This however does not represent a gap since, referring to “[...] or public establishment” this implies that the establishment is at least financed by the State.</p> <p>Article 29.3 b) of Legislative Decree 286/1998 sets the criteria that have to be taken into account when making the declaration referred to in point (c) of Article 7(1). The Directive says that “Member States may not require this declaration to refer to any specific amount of resources”; Article 29.3 b) of Legislative Decree 286/1998 refers to specific amounts setting the limits under which the resources shall not go, i.e., the amount of the social allowance/assistance. So in the declaration, students have to declare a fixed amount as well. However, the competent authorities that have been contacted have specified that students can make a self certification of the resources.</p> <p>(See also comment above referred to the previous provision).</p> <p>Art. 9.3 c) D.Lgs n. 30/07 <i>will be amended if the draft Legislative decree amending and supplementing D.Lgs n. 30/07 is finally adopted.</i></p>

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

[illegible]

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

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
			<i>coniuge, dell'ascendente o discendente;</i> <i>i- iscrizione in albi, in elenchi tenuti da pubbliche amministrazioni;</i> <i>l-appartenenza a ordini professionali;</i> <i>m- titolo di studio, esami sostenuti;</i> <i>n-qualifica professionale posseduta, titolo di specializzazione, di abilitazione, di formazione, di aggiornamento e di qualificazione tecnica;</i> <i>o- situazione reddituale o economica anche ai fini della concessione dei benefici di qualsiasi tipo previsti da leggi speciali;</i> <i>p- assolvimento di specifici obblighi contributivi con l'indicazione dell'ammontare corrisposto;</i> <i>q- possesso e numero del codice fiscale, della partita IVA e di qualsiasi dato presente nell'archivio dell'anagrafe tributaria;</i> <i>r- stato di disoccupazione;</i> <i>s- qualità di pensionato e categoria di pensione;</i> <i>t- qualità di studente;</i> <i>u- qualità di legale rappresentante di persone fisiche o giuridiche, di tutore, di curatore e simili;</i> <i>v- iscrizione presso associazioni o formazioni sociali di qualsiasi tipo;</i> <i>z- tutte le situazioni relative all'adempimento degli obblighi</i>	<i>i- entry in the registers, in lists kept by public administrations;</i> <i>l- membership in professional associations;</i> <i>m- educational qualifications, exams,</i> <i>n- professional qualification possessed, title of specialization, certification, training, and upgrade of technical skills;</i> <i>o- economic or income situation also for the purpose of granting benefits of any kind provided by special laws;</i> <i>p- performance of specific taxes obligations with an indication of the amount paid;</i> <i>q- possession and number of tax code, VAT and any data existing in the archive of the tax registry;</i> <i>r- unemployment status;</i> <i>s- retired and category of retirement;</i> <i>t- being a student;</i> <i>u- being a legal representative of natural or legal persons, guardian, curator and other similar;</i> <i>v- register with associations or social formations of any kind;</i> <i>z- all situations relating to the fulfilment of military service obligations, including those certified in the new entry sheet;</i> <i>aa- to not have prior criminal convictions and not to be recipient of measures concerning the implementation of security measures and preventive measures, civil decisions and administrative</i>		<p>may however set some indicative amount, subject to the precision that it is only indicative”.</p> <p>However, what stated in the mentioned Circular is not clear at all. On the one hand it seems to impose a fix amount but then, it refers to a table with salaries threshold that is given as an example. Moreover, Circular of 18 July 2007, clearly states, referring to Circular n. 19 of 6 April 2007, that precise information are given as to the entity of such resources that the concerned person shall have and declare. From the text of the law, it seems that if the person does not meet the quantities, then he/she will not be registered. In case he/she might appeal according to art. 8 of the Decree. The question regarding whether if a person does not meet those quantities there would be an assessment of the personal circumstances has been double checked with the national competent authorities that have reported that the personal circumstances of the person concerned are not taken into account. This means that his/her request is automatically rejected and this is not in compliance with the Directive.</p> <p>The incomes of other family members are also taking into account: if only one member rejoins; double of that amount, if two or three family members rejoin, three times the annual amount if four or more members rejoin. In order to determine the annual salary of the person making</p>

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

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
		Art. 47 Presidential Decree of 28 December 2000 n. 445	<p><i>militari, ivi comprese quelle attestate nel foglio matricolare dello stato di servizio;</i> <i>aaa- di non aver riportato condanne penali e di non essere destinatario di provvedimenti che riguardano l'applicazione di misure di sicurezza e di misure di prevenzione, di decisioni civili e di provvedimenti amministrativi iscritti nel casellario giudiziale ai sensi della vigente normativa;</i> <i>bbbb- di non essere a conoscenza di essere sottoposto a procedimenti penali;</i> <i>bbbb-bis) di non essere l'ente destinatario di provvedimenti giudiziari che applicano le sanzioni amministrative di cui al decreto legislativo 8 giugno 2001, n. 231;</i> <i>ccccc-qualità di vigenza a carico;</i> <i>dddd- tutti i dati a diretta conoscenza dell'interessato contenuti nei registri dello stato civile;</i> <i>eeee- di non trovarsi in stato di liquidazione o di fallimento e di non aver presentato domanda di concordato. (R)</i> Aggiornamento Il D.P.R. 14 novembre 2002, n. 313 ha disposto che la presente modifica "ha effetto a decorrere dal quarantacinquesimo giorno a partire dalla data di pubblicazione del suddetto decreto nella Gazzetta Ufficiale".</p> <p>Articolo 47 (R) <i>Dichiarazioni sostitutive dell'atto</i></p>	<p><i>measures recorded in police records under existing legislation ;</i> <i>bbb- not to be aware of being subjected to criminal proceedings;</i> <i>bbb-bis) not being the entity recipient of a judicial decision applying administrative sanctions provided for in Legislative Decree 8 June 2001, n. 231;</i> <i>cccc- quality of dependence;</i> <i>dddd- all the data that are known by the interested person contained in the registers of marital status;</i> <i>eeee- that they are not in a state of liquidation or bankruptcy and that have applied for an agreement</i></p> <p>Update Il D.P.R. 14 November 2002, n. 313 has stated that these amendments produce "effect as of the 45th day starting to count from the date of publication in the Official Journal".</p> <p>Article 47 (R)</p>		<p>the request, even the annual salary of the cohabitants is taken into account.</p> <p>Art. 9.4 D.Lgs n. 30/07 will be amended if the draft Legislative decree amending and supplementing D.Lgs n. 30/07 is finally adopted.</p>

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

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
			<p><i>di notorietà</i></p> <p>1. <i>L'atto di notorietà concernente stati, qualità personali o fatti che siano a diretta conoscenza dell'interessato è sostituito da dichiarazione resa e sottoscritta dal medesimo con la osservanza delle modalità di cui all'articolo 38. (R)</i></p> <p>2. <i>La dichiarazione resa nell'interesse proprio del dichiarante può riguardare anche stati, qualità personali e fatti relativi ad altri soggetti di cui egli abbia diretta conoscenza. (R)</i></p> <p>3. <i>Fatte salve le eccezioni espressamente previste per legge, nei rapporti con la pubblica amministrazione e con i concessionari di pubblici servizi, tutti gli stati, le qualità personali e i fatti non espressamente indicati nell'articolo 46 sono comprovati dall'interessato mediante la dichiarazione sostitutiva di atto di notorietà. (R)</i></p> <p>4. <i>Salvo il caso in cui la legge preveda espressamente che la denuncia all'Autorità di Polizia Giudiziaria è presupposto necessario per attivare il procedimento amministrativo di rilascio del duplicato di documenti di riconoscimento o comunque attestanti stati e qualità personali dell'interessato, lo smarrimento dei documenti medesimi è comprovato da chi ne richiede il duplicato mediante dichiarazione sostitutiva. (R)]</i></p>	<p><i>Statements replacing the affidavit</i></p> <p>1. <i>The affidavit concerning states, personal qualities or facts that are directly known by the interested person is replaced by a declaration made and signed complying with the procedures laid down in Article 38.</i></p> <p>2. <i>The statement made in his/her own interest may also concern states, personal qualities and facts relating to other subjects of whom he/she has direct knowledge.</i></p> <p>3. <i>Subject to the exceptions expressly provided by law, in dealings with the public administration and with the concessionaires of public services, all states, the personal qualities and facts not expressly mentioned in art. 46 are supported by the interested person by the statements replacing the affidavit.</i></p> <p>4. <i>Excluded where the law expressly provides that the complaint to the Judicial Police is necessary to activate the administrative procedure that issues the duplicate of identification documents or documents attesting the states and personal qualities of the person concerned, the loss of the documents themselves is evidenced by the person applying for the duplicate in a</i></p>		

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

[illegible]

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

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
			<p>dichiarazioni sostitutive di cui agli articoli 46 e 47 limitatamente agli stati, alle qualità personali e ai fatti certificabili o attestabili da parte di soggetti pubblici italiani, fatte salve le speciali disposizioni contenute nelle leggi e nei regolamenti concernenti la disciplina dell'immigrazione e la condizione dello straniero. (R)</p> <p>3 Al di fuori dei casi previsti al comma 2, i cittadini di Stati non appartenenti all'Unione autorizzati a soggiornare nel territorio dello Stato possono utilizzare le dichiarazioni sostitutive di cui agli articoli 46 e 47 nei casi in cui la produzione delle stesse avvenga in applicazione di convenzioni internazionali fra l'Italia ed il Paese di provenienza del dichiarante. (R)</p> <p>4. Al di fuori dei casi di cui ai commi 2 e 3 gli stati, le qualità personali e i fatti, sono documentati mediante certificati o attestazioni rilasciati dalla competente autorità dello Stato estero, corredati di traduzione in lingua italiana autenticata dall'autorità consolare italiana che ne attesta la conformità all'originale, dopo aver ammonito l'interessato sulle conseguenze penali della produzione di atti o documenti non veritieri.]</p>	<p>statements referred to in Articles 46 and 47 but limited to states, personal qualities and facts that are possible to certify or certified by the Italian public entities, except the special provisions contained in laws and regulations governing immigration and the condition of foreigners</p> <p>3. Outside the cases referred to in paragraph 2, citizens of non EU Member States authorised to reside in the territory of the State may use the replacement statements referred to in Articles 46 and 47 according that they are produced according to international conventions between Italy and the country of origin of the person concerned.</p> <p>4. Outside of cases referred to in paragraphs 2 and 3 states, the personal qualities and facts are documented by certificates or attestations issued by the competent foreign authority of the foreign State, accompanied by an Italian translation certified by the Italian consular authority which attests the conformity of the document to the original version, after having warned the person concerned about the consequences of criminal acts or producing false documents.]</p>		documentation).
	(a) a valid identity card or passport;	Art. 9.5 a) D.Lgs n. 30/07	a) un documento di identità o il passaporto in corso di validità, nonché il visto di ingresso quando richiesto;	a) a valid identity document or passport and the entry visa when required;	Y	Effective transposition (however, see assessment of transposition of Article 10).

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

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
						The Italian provision also refers to the entry visa when required; this means that the provision refers in fact to family members who are not themselves Union citizens since the entry visa is only required for those latter. But it can also be a general provision applying to both since the documents under Article 8a and 10 are the same. (Same comment as above).
	(b) a document attesting to the existence of a family relationship or of a registered partnership;	Art. 9.5 b) D.Lgs n. 30/07	<i>b)</i> un documento che attesti la qualità di familiare e [...]	<i>b)</i> a document attesting to the existence of a family relationship and [...]	Y	Effective transposition The reference to “registered partnership” is missing since that concept does not currently exist in Italy.. Please refer to comment in Art. 2 above
	(c) where appropriate, the registration certificate of the Union citizen whom they are accompanying or joining;	Art. 9.5 c) D.Lgs n. 30/07	<i>c)</i> l'attestato della richiesta d'iscrizione anagrafica del familiare cittadino dell'Unione.	<i>c)</i> the certificate of the application for registration of the family member of the Union citizen.	Y	Effective transposition The transposing provision refers to the certificate of the application for registration and not to the registration certificate as the Directive requires. This is more a linguistic “ <i>nuance</i> ”, In fact in Italy when requesting the registration a certificate of application for registration is issued immediately, then this last certificate is enough to satisfy the Directive’s requirement (registration certificate).
	(d) in cases falling under points (c) and (d) of Article 2(2), documentary evidence that the conditions laid down therein are met;	Art. 9.5 b) D.Lgs n. 30/07	<i>b)</i> un documento che attesti la qualità di familiare e [...]	<i>b)</i> a document attesting to the existence of a family relationship and [...]	Y	Transposed since family members provided for in Article 2(2 c) and d) of the Directive can be descendants or ascendants.
	(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	Art. 9.5 b) D.Lgs n. 30/07 Circular of the Ministry of Interior of 18 July 2007	<i>b)</i> un documento che attesti, qualora richiesto, la qualità di familiare a carico; [...]	<i>b)</i> a document attesting to the existence if requested, of dependant family member; [...]	Y	Effective transposition The Italian provision is more favourable since it says that is sufficient to proof that the person concerned is dependant family

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

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
	citizen, or proof of the existence of serious health grounds which strictly require the personal care of the family member by the Union citizen;					<p>member without specifying the grounds of health [serious- which strictly require the personal care of the family member by the Union citizen;].</p> <p>The documents referred to in Article 3(2)(a) are the contained in the Circular (page 3). The Circular refers to the documents that Union citizens shall have in order to register (in this case the Union citizen can self declare that they are dependants or members of the household of the Union citizen, or proof of the existence of serious health grounds).</p>
	(f) in cases falling under Article 3(2)(b), proof of the existence of a durable relationship with the Union citizen.	Circular of the Ministry of Interior of 18 July 2007			NT	<p>Not transposed</p> <p>However the Circular specifies that the documents that are requested for the registration are: [...]document of the State of the Union citizen, who is the holder of the right of residence, from which it appears the relationship or the durable relationship registered in the same State; [...]</p>
Art. 9.1	<p>Administrative formalities for family members who are not nationals of a Member State.</p> <p>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.</p>	Art. 10.1 D.Lgs n. 30/07	<p>Art. 10 (Carta di soggiorno per i familiari del cittadino comunitario non aventi la cittadinanza di uno Stato membro dell'Unione europea)</p> <p>1. I familiari del cittadino dell'Unione non aventi la cittadinanza di uno Stato membro, di cui all'articolo 2, trascorsi tre mesi dall'ingresso nel territorio nazionale, richiedono alla questura competente per territorio di residenza la «Carta di soggiorno di familiare di un cittadino dell'Unione», [...]</p>	<p>Art. 10 (Residence cards for family members of Union citizens who are not nationals of a Member State)</p> <p>1. After three months from the date of arrival in the national territory, family members of a Union citizen who are not nationals of a Member State, referred to in Article 2, shall ask for the “<i>Carta di soggiorno di familiare di un cittadino dell'Unione</i>” (residence card for family member of a Union citizen), [...] to the Police</p>	Y	<p>Almost literal transposition</p> <p><i>Art. 10.1 D.Lgs n. 30/07 will be replaced if the draft Legislative decree amending and supplementing D.Lgs n. 30/07 is finally adopted.</i></p>

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

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
		<p>Art. 9.7 D.Lgs n. 30/07</p> <p>In this regard also Circular of the Ministry of Interior n. 19 of 6 April 2007</p> <p>Art. 6.7 of Legislative Decree n. 286 of 1998</p>	<p>7. Le richieste di iscrizioni anagrafiche dei familiari del cittadino dell'Unione che non abbiano la cittadinanza di uno Stato membro sono trasmesse, ai sensi dell'articolo 6, comma 7, del citato decreto legislativo n. 286 del 1998, a cura delle amministrazioni comunali alla Questura competente per territorio.</p> <p>[Article 6.7 of Legislative Decree n. 286 of 1998</p> <p>7. Le iscrizioni e variazioni anagrafiche dello straniero regolarmente soggiornante sono effettuate alle medesime condizioni dei cittadini italiani con le modalita' previste dal regolamento di attuazione. In ogni caso la dimora dello straniero si considera abituale anche in caso di documentata ospitalita' da piu' di tre mesi presso un centro di accoglienza. Dell'avvenuta iscrizione o variazione l'ufficio da' comunicazione alla questura territorialmente competente.]</p>	<p>(Questura), territorially competent</p> <p>7. The applications for registration of Union citizens' family members who are not nationals of a Member State, are sent by the municipal administrations/services to the competent (territorial competence) Police (Questura), according to Article 6.7 of Legislative Decree n. 286 of 1998.</p> <p>[Article 6.7 of Legislative Decree n. 286 of 1998</p> <p>7. The registrations and the variations on the registry of the foreigner regularly residing are carried out under the same conditions as for Italian citizens with the modalities 'provided by the Rules of implementation. In any case, the residence (dimora), so it would be more the address than the residence) of the foreigner is considered normal even in the case of documented hospitality for more than three months at a reception centre. The office informs the questura that is territorially competent of the registration and of any variation.]</p>		<p>In this regards the Circular specifies that the registration of the family member who is not national of a MS is subject to the release of the <i>Carta di soggiorno di familiare di un cittadino dell'Unione</i> although it is not impeded to request the registration before obtaining the <i>Carta di soggiorno di familiare di un cittadino dell'Unione</i></p> <p>This means that if the person concerned holds already the <i>Carta di soggiorno</i> then it is obvious that he/she is entitled to register; if she/he does not have yet the <i>Carta di soggiorno</i> but has done e.g., all the papers etc, so he/she has the "permission" (<i>nulla osta</i>) to register but the <i>Carta di soggiorno</i> has not yet arrived, then he/she might ask for registration BUT the procedure of registration will be considered as completed once the <i>Carta di soggiorno</i> is shown.</p>
Art. 9.2	2. The deadline for submitting the residence card application may not be less than three months from the date of arrival.	Art. 10.1 D.Lgs n. 30/07	[...] trascorsi tre mesi dall'ingresso nel territorio nazionale, [...]	[...] after three months from the date of arrival in the national territory, [...]	Y	<p>Almost literal transposition</p> <p><i>Art. 10.1 D.Lgs n. 30/07 will be replaced if the draft Legislative</i></p>

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

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
						<i>decree amending and supplementing D.Lgs n. 30/07 is finally adopted.</i>
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.				Y	Not transposed – no sanctions However, if the draft legislative decree (currently blocked) modifying the current Legislative Decree 30/2007 transposing Directive 2004/38 is finally adopted, then this particular provision will be considered as incorrectly transposed. According to the draft Decree not holding registrations certificate and failure to request a residence card are grounds for expulsion and this cannot be considered as a “proportionate and non-discriminatory sanctions”, so it is not in compliance with the Directive.
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.	Art. 10.1 D.Lgs n. 30/07	1. I familiari del cittadino dell'Unione non aventi la cittadinanza di uno Stato membro, di cui all'articolo 2, [...] richiedono alla questura competente per territorio di residenza la «Carta di soggiorno di familiare di un cittadino dell'Unione», redatta su modello conforme a quello stabilito con decreto del Ministro dell'interno da emanarsi entro sei mesi dalla data di entrata in vigore del presente decreto legislativo. Fino alla data di entrata in vigore del predetto decreto, e' rilasciato il titolo di soggiorno previsto dalla normativa vigente alla data di entrata in vigore del presente decreto.	1. After three months from the date of arrival in the national territory, family members of a Union citizen who are not nationals of a Member State, referred to in Article 2, [...] shall ask for the “ <i>Carta di soggiorno di familiare di un cittadino dell'Unione</i> ” (residence card for family member of a Union citizen), [...] to the Police (<i>Questura</i>) that is territorially competent. The card shall be prepared on a model in accordance with a decree of the Ministry of Interior Affairs hat needs to be issued within six months from the date of entry into force of this Legislative Decree. Until the entry into force of the decree, the residence card is issued according to the	N, Incorrect	Incorrect transposition Incorrect transposition since the implementing measures (the transposing provision refers to a model of residence card to be “issued within six months from the date of entry into force of this Legislative Decree”, (i.e., 11 April 2007)) should have been in force by the deadline of transposition. Contacts with authorities (on 27 June 2008) have revealed that the model of residence card has not yet been prepared. <i>Art. 10.1 D.Lgs n. 30/07 will be replaced if the draft Legislative decree amending and supplementing D.Lgs n. 30/07 is finally adopted.</i>

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

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
		Art. 10.2 D.Lgs n. 30/07	2. Al momento della richiesta di rilascio della carta di soggiorno, al familiare del cittadino dell'Unione e' rilasciata una ricevuta secondo il modello definito con decreto del Ministro dell'interno di cui al comma 1.	legislation in force at the date of entry into force of this decree. 2. When submitting the residence card application, the family member of a Union citizen receives a certificate according to the modality indicated by Ministerial decree referred to in paragraph 1.		This provision has correctly transposed the last part of the Directive's provision. "When submitting" implies immediately.
Art.10.2 (a)	2. For the residence card to be issued, Member States shall require presentation of the following documents: (a) a valid passport;	Art. 10.3 a) D.Lgs n. 30/07	3. Per il rilascio della Carta di soggiorno, e' richiesta la presentazione: a) del passaporto o documento equivalente, in corso di validità, nonché del visto di ingresso, qualora richiesto;	3. For the residence card to be issued, presentation of the following documents is required: a) passport; or equivalent valid document and entry visa when required;	N, Incorrect	Incorrect transposition Incorrect transposition since the national provisions also adds the requirement of the entry visa (when required).
Art.10.2 (b)	(b) a document attesting to the existence of a family relationship or of a registered partnership;	Art. 10.3 b) D.Lgs n. 30/07	b) di un documento che attesti la qualità di familiare e, qualora richiesto, di familiare a carico;	b) document attesting to the existence of a family relationship and, if required, of dependant family member;	Y	Effective transposition Effective transposition since it also adds the presentation of the document attesting to the existence of dependant family member; if required. Art. 10.3 b) of D.Lgs n. 30/07 fails to refer to "registered partnership" since in Italy they are not regulated.- See comments on Article 2.2(b) above.
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;	Art. 10.3 c) D.Lgs n. 30/07	c) dell'attestato della richiesta d'iscrizione anagrafica del familiare cittadino dell'Unione;	c) certificate of the application for registration of the family member of the Union citizen;	N, Incorrect	Incorrect transposition The transposing provision refers to the certificate of the application for registration and not to the registration certificate as the Directive requires. This is more a linguistic "nuance", In fact in Italy when requesting the registration, a certificate of application for registration is issued immediately, then this last certificate is enough to satisfy the Directive's

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

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
			d) della fotografia dell'interessato, in formato tessera, in quattro esemplari.	d) four passport photos of the person concerned.		requirement (registration certificate This is an additional requirement that makes the Italian provision more stringent. Therefore transposition is incorrect in relation to this point.
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;	Art. 10.3 b) D.Lgs n. 30/07	[...] e, qualora richiesto, di familiare a carico; [...]	[...] and, if required, of dependant family member [...]	Y	Effective transposition Effective transposition since Art. 10.3 b) of the Italian Decree refers to both cases pf Art. 10.2 d) and 10.2 e) of the Directive.
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 member by the Union citizen;	Art. 10.3 b) D.Lgs n. 30/07	[...] e, qualora richiesto, di familiare a carico; [...]	[...] and, if required, of dependant family member [...]	Y	Effective transposition Both provisions (10.2 d) and e)) present the same differences as showed in correspondence of Art. 8.5 of the Directive (Art. 9,5 of the Italian provision). In Italy in order to have the personal data (<i>anagrafe</i>) registration as a family member of a Union citizen, as well as to have the Residence Card, no specific evidences are required as of being child minor of 21 of the citizen or partner or of the direct ascendant and neither the health grounds; only the document showing the quality of dependant family member is more generally required. Therefore Italy puts less condition. Therefore the provision is more favourable.
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.	Circular of the Ministry of Interior of 18 July 2007			NT	Not transposed However the Circular specifies that the documents that are requested for the registration are: [...]document of the State of the Union citizen, who is the holder of the right of residence,

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

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
						from which it appears the relationship or the durable relationship registered in the same State; [...]
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.	Art. 10.4 D.Lgs n. 30/07	4. La carta di soggiorno di familiare di un cittadino dell'Unione ha una validità di cinque anni dalla data del rilascio.	4. The resident card of a family member of a Union citizen shall be valid for five years from the date of issue.	Y	Effective transposition The Italian provision has not transposed the last part of the Directive's Art. 11.1; however this does not have practical consequences on the right of residence of the family member. Italy will not issue residence cards for less than 5 years
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.	Art. 10.5 D.Lgs n. 30/07	5. La carta di soggiorno mantiene la propria validità anche in caso di assenze temporanee del titolare non superiori a sei mesi l'anno, nonché di assenze di durata superiore per l'assolvimento di obblighi militari ovvero di assenze fino a dodici mesi consecutivi per rilevanti motivi, quali la gravidanza e la maternità, malattia grave, studi o formazione professionale o distacco per motivi di lavoro in un altro Stato; e' onere dell'interessato esibire la documentazione atta a dimostrare i fatti che consentono la perduranza di validità.	5. The resident card remains valid in case of temporary absences not exceeding six months a year or by absences of a longer duration for compulsory military service or by absences 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 State; it is on the party concerned to show the documents that corroborate the existence/validity of the facts that render the resident card still valid.	Y	Effective transposition although there are some differences in the wording. The national provision says "absences" in plural instead of "one absence". This might be a typo mistake or a case of less stringent requirement. One could argue that more absences of a maximum of 12 months would make possible even two or three absences (of a maximum of 12 months) in one year, going therefore further than the Directive. Moreover Art. 10.5 of D.Lgs n. 30/07 makes no distinction between "another Member State" or a "third country" but more generally refers to "another State", therefore including another MS or a third country. The Italian provision adds that the party concerned shall corroborate/proof the existence of the facts that render the resident card still valid: this requirement, although not given by the Directive does not seem to render transposition more stringent since it does not affect the duration

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

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
						requirements. The Italian authorities will not check. However, if for any reasons it is “discovered” it is on the party concerned to prove. This is linked to prove duration under Article 16 and 21 for acquiring the right of permanent residence.
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).	Art. 11.1 D.Lgs n. 30/07	Art. 11 (Conservazione del diritto di soggiorno dei familiari in caso di decesso o di partenza del cittadino dell'Unione europea) 1. Il decesso del cittadino dell'Unione o la sua partenza dal territorio nazionale non incidono sul diritto di soggiorno dei suoi familiari aventi la cittadinanza di uno Stato membro, a condizione che essi abbiano acquisito il diritto di soggiorno permanente ai sensi dell'articolo 14 o siano in possesso dei requisiti previsti dall'articolo 7, comma 1.	Art. 11 (Retention of the right of residence by family members in the event of death or departure of the Union citizen) 1. The Union citizen's death or departure from the national territory shall not affect the right of residence of his/her family members who are nationals of a Member State, provided that the persons concerned have acquired the right of permanent residence according to Article 14 or they fulfil the requirements laid down in Article 7.1.	Y	Effective transposition The structure of the Italian provision is slightly different a compared to the Directive but the substance is the same. The Italian provision expressly recalls the acquisition of the right of permanent residence. This does not constitute a conformity issue since if the conditions for permanent residence exist (Article 14 of Lgs n. 30/07), then <i>a fortiori</i> the concerned person has the right described in the first paragraph, i.e, the right of residence. Article 18 is Literally transposed The people retaining the right can then acquire the right of permanent residence after 5 years of residence. The other way round, namely, if the person concerned does not have the right of permanent residence, in order to keep the right of residence in case of death or departure of the Union citizen, it is sufficient to fulfil the requirements of Art. 7.1 (that are those requested in order to obtain the right of residence for more than 3 months). In this case the provision refers to the whole Article 7 of the Directive

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

[illegible]

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

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
			modificazioni.	amendments, applies.		Art. 30.5 family members of a Union citizen who are not nationals of a Member State might keep the right of residence in Italy although they have resided for less than one year in the national territory. In this case however, the right of residence is converted into right of residence as workers or self employed persons or for study reasons. (Basically if the death Union citizen had the right of residence, that right goes to his/her the family member but converted into a right of residence for specific reasons that are explained above). Italy is therefore facilitating such right even when the conditions are not met, then one could argue that Italian legislation is more favourable.
	Such family members shall retain their right of residence exclusively on a personal basis.				NT	Not transposed
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 the completion of their studies.	Art. 11.4 D.Lgs n. 30/07	4. La partenza del cittadino dell'Unione dal territorio nazionale o il suo decesso non comportano la perdita del diritto di soggiorno dei figli o del genitore che ne ha l'affidamento, indipendentemente dal requisito della cittadinanza, se essi risiedono nello Stato e sono iscritti in un istituto scolastico per seguirvi gli studi, e fino al termine degli studi stessi.	4. The Union citizen's departure from the national territory or his/her death shall not entail loss of the right of residence of his/her children or of the parent who has custody of the children, irrespective of nationality, if the children reside in State and are enrolled at an educational establishment, for the purpose of studying there, until the completion of their studies.	Y	Effective transposition The Italian provision only refers to "custody" and not to "actual custody" but the "actual" is implicit
Art.13.1	Retention of the right of residence by family members in the event of divorce, annulment of marriage or termination of registered partnership	Art. 12.1 D.Lgs n. 30/07	Art. 12 (Mantenimento del diritto di soggiorno dei familiari in caso di divorzio e di annullamento del matrimonio) 1. Il divorzio e l'annullamento del	Art. 12 (Retention of the right of residence by family members in the event of divorce, annulment of marriage)	Y	Almost literal transposition The concept of registered partnership does not currently exist in Italy.

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

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
	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.		matrimonio dei cittadini dell'Unione non incidono sul diritto di soggiorno dei loro familiari aventi la cittadinanza di uno Stato membro, [...]	1. Divorce and annulment of the Union citizen's marriage, shall not affect the right of residence of his/her family members who are nationals of a Member State, [...]		(for “registered partnership” see comment in correspondence of Article 2(2). (b) of the Directive)
	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).	Art. 12.1 D.Lgs n. 30/07	[...] a condizione che essi abbiano acquisito il diritto di soggiorno permanente di cui all'articolo 14 o soddisfino personalmente le condizioni previste all'articolo 7, comma 1	[...] provided that they [the persons concerned have acquired the right of permanent residence referred to in Article 14 or they personally fulfil the requirements laid down in Article 7.1.	Y	Almost literal transposition See comments on Article 12.1 regarding reference to Art. 14 and 7.1. If the family member has the right of permanent residence referred to in Article 14 then obviously divorce etc. do not affect his/her right of residence ; on the contrary if he/she satisfies the conditions laid down in Art. 7.1, then divorce etc. do not affect his/her right of residence either.
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	Art. 12.2 a) D.Lgs n. 30/07	2. Il divorzio e l'annullamento del matrimonio con il cittadino dell'Unione non comportano la perdita del diritto di soggiorno dei familiari del cittadino dell'Unione non aventi la cittadinanza di uno Stato membro a condizione che essi abbiano acquisito il diritto al soggiorno permanente di cui all'articolo 14 o che si verifichi una delle seguenti condizioni: a) il matrimonio e' durato almeno tre anni, di cui almeno un anno nel territorio nazionale, prima dell'inizio del procedimento di divorzio o annullamento;	2. Divorce and annulment of marriage with a Union citizens shall not entail loss of the right of residence of a Union citizen's family members who are not nationals of a Member State provided that they have acquired the right of permanent residence referred to in Article 14 or one of the following conditions exist: a) the marriage has lasted at least three years, including one year in the national territory, before the beginning of the divorce or annulment proceeding;	Y	Almost literal transposition For the reference to Article 14 refer to comment <i>supra</i> (Article 12.1 do the national provision). The concept of registered partnership does not currently exist in Italy (see comments above). The Italian provision does not insert “;” in the end of the paragraph; this does not represent a problem since the text of the provision clearly states that “or one of the following conditions exist”, that mean the different subparagraphs are alternative, in line with the Directive (the same comment applies for

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

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
						Articles Art. 1.2 b) and Art. 12.2 c)). For comments in relation to Art.14 please see comments on Art. 12.2 of the Directive. (for “registered partnership” see comment in correspondence of Article 2(2). (b) of the Directive)
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	Art. 12.2 b) D.Lgs n. 30/07	<i>b) il coniuge non avente la cittadinanza di uno Stato membro ha ottenuto l'affidamento dei figli del cittadino dell'Unione in base ad accordo tra i coniugi o a decisione giudiziaria;</i>	<i>b) by agreement between the spouses or by court order, the spouse who is not a national of a Member State has custody of the Union citizen's children; or</i>	Y	Almost literal transposition There is no reference to the “partner” since the concept of registered partnership does not currently exist in Italy . (see comments).
Art.13.2 (c)	(c) this is warranted by particularly difficult circumstances, such as having been a victim of domestic violence while the marriage or registered partnership was subsisting; or	Art. 12.2 c) D.Lgs n. 30/07	<i>c) l'interessato risulti parte offesa in procedimento penale, in corso o definito con sentenza di condanna, per reati contro la persona commessi nell'ambito familiare;</i>	<i>c) the concerned person is offended party in a criminal proceeding, which is still going on or settles/concluded with a conviction judgment regarding crimes against the person committed within the family orbit/environment;</i>	N, Incorrect	Incorrect transposition and more stringent The Directive more generally refers to “particularly difficult circumstances”, that is not the same as the situations mentioned in the transposing decree that is in fact more stringent. In addition, the Directive says that the annulment or divorce [...] do not affect the right of residence of the partner or spouse for having been victim of domestic violence. The Directive does not mention the necessity of a criminal proceeding. On the contrary, the Italian provision says that the person concerned (the spouse) is offended party in a criminal proceeding, which is still going on or settles/concluded with a conviction judgment regarding crimes against the person committed within the family orbit/environment; in this regard the transposing

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

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
						provision is also much more stringent. (for “registered partnership” see comment in correspondence of Article 2(2) (b) of the Directive)
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.	Art. 12.2 d) D.Lgs n. 30/07	d) il coniuge non avente la cittadinanza di uno Stato membro beneficia, in base ad un accordo tra i coniugi o a decisione giudiziaria, di un diritto di visita al figlio minore, a condizione che l'organo giurisdizionale ha ritenuto che le visite devono obbligatoriamente essere effettuate nel territorio nazionale, e fino a quando sono considerate necessarie.	d) by agreement between the spouses or by court order, the spouse 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 national territory, and for as long as is required.	Y	Almost literal transposition There is no reference to the “partner” since the concept of registered partnership does not currently exist in Italy. (for “partner” see comment in correspondence of Article 2(2) (b) of 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 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).	Art. 12.4 and 12.3 D.Lgs n. 30/07	4. Nei casi di cui al comma 2, salvo che gli interessati abbiano acquisito il diritto di soggiorno permanente di cui al successivo articolo 14, il loro diritto di soggiorno e' comunque subordinato al requisito che essi dimostrino di esercitare un'attività lavorativa subordinata o autonoma, o di disporre per se' e per i familiari di risorse sufficienti, affinché non divengano un onere per il sistema di assistenza sociale dello Stato durante il soggiorno, nonché di una assicurazione sanitaria che copra tutti i rischi nello Stato, ovvero di fare parte del nucleo familiare, già costituito nello Stato, di una persona che soddisfa tali condizioni. Le risorse sufficienti sono quelle indicate all'articolo 9, comma 3.	4. Except when the concerned persons have acquired the right of permanent residence according Article 14, in cases falling under paragraph 2, the right of permanent 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 State during their period of residence and have comprehensive sickness insurance cover in the State, or that they are members of the family, already constituted in the State, of a person satisfying these requirements. 'Sufficient	Y	Effective transposition Almost literal transposition of the substantial requirements although in the last part it refers to the “sufficient resources” as defined in Article 8(4) of the Directive -Article 9.3 of Italian Decree that is not correctly transposed in itself.

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

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
			3. Nei casi di cui al comma 2, quando non si verifichi alcuna delle condizioni di cui alle lettere a), b), c) e d), si applica l'articolo 30, comma 5, del citato decreto legislativo n. 286 del 1998, e successive modificazioni.	resources' shall be as defined in Article 9.3. 3. In cases falling under paragraph 2, when none of the conditions referred to in letters a), b), c) and d) are satisfied, Article 30.5 of the mentioned Legislative Decree n. 286 of 1998, and its amendments, shall apply.	Y	This provision has been added by the transposing Decree. When the requirement of paragraph a), b), c) d) are not fulfilled a permit of residence for the person concerned, is given according to Art. 30.5 of Legislative Decree n. 286/1998. In fact, in this case, the right of residence is converted into permit of residence as workers or self employed persons or for study reasons. (Basically in case of divorce, annulment of the Union citizen's marriage the right of the Union citizen goes to his/her family member but converted into a permit of residence for specific reasons that are explained above). The reference to the Articles is obviously different, therefore correct: Article 9.3 of the national Decree transposes Article 8(4) of the Directive. For the reference to Article 14 refer to comment <i>supra</i> (Article 12.1 do the national provision).
	Such family members shall retain their right of residence exclusively on personal basis.				NT	Not transposed
Art.14.1	Retention of the right of residence Union citizens and their family members shall have the right of residence provided	Art. 13.1 D.Lgs n. 30/07	1. I cittadini dell'Unione ed i loro familiari beneficiano del diritto di soggiorno di cui all'articolo 6, finché hanno le risorse	1. Union citizens and their family members shall have the right of residence provided for in Article 6, as long as they have	Y	Correct transposition The statement in the last part of the Italian provision refers to Article 27's

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

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
	for in Article 6, as long as they do not become an unreasonable burden on the social assistance system of the host Member State.		economiche di cui all'articolo 9, comma 3, che gli impediscono di diventare un onere eccessivo per il sistema di assistenza sociale dello Stato membro ospitante e finché non costituiscano un pericolo per l'ordine e la sicurezza pubblica.	the resources referred to in Article 9.3, so not to become an unreasonable burden on the social assistance system of the host Member State and as long as they do not represent a danger for public policy or public security.		<p>grounds for restricting the right of residence. Therefore is correct.</p> <p>As the provision is framed, it does not imply that if an EU citizen asks for social assistance, he/she will be considered as an unreasonable burden. It shall also be considered that Italy will not "take the initiative" to check the existence of the resources referred to in Art. 1. Italy might become aware of the insufficient resources because the person asks for the social assistance or because he/she declares it.</p> <p>Actually it would seem that the provision is even more favourable since according to Art. 13.1 D.Lgs n. 30/07 the retention of the right of residence is subject not only to one condition (resources referred to in Article 9(3) so not to become an unreasonable burden on the social assistance system of the host Member State) but also to another one (do not represent a danger for public policy or public security). So even if someone does not have resources he/she cannot lose the right unless he/she is a danger to public policy or public security. Therefore in this sense the requirements are two: "as long as they have the resources [...]" and "as long as they do not represent a danger for public policy or public security."</p>
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	Art. 13.2 D.Lgs n. 30/07 In this regard also Circular of the Ministry of Interior n.19 of 6	2. I cittadini dell'Unione e i loro familiari beneficiano del diritto di soggiorno di cui agli articoli 7, 11 e 12, finché soddisfano le	2. Union citizens and their family Members shall have the right of residence provided for in Articles 7, 11 and 12 as long as	Y	<p>Literal transposition.</p> <p>Articles 7, 11 and 12 of the Italian Decree transpose Articles 7, 12 and</p>

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

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
	conditions set out therein.	April 2007	condizioni fissate negli stessi articoli.	they meet the conditions set out therein.		13 of the Directive.
	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 7, 12 and 13, Member States may verify if these conditions are fulfilled. This verification shall not be carried out systematically.	<p>Order of the President of the Council of Ministers on May 30, 2008 (Order No. 3676) Provisions urgent civil protection to address the state of emergency in relation to settlements of nomadic communities in the region Lazio.</p> <p>Order of the President of the Council of Ministers on May 30, 2008 (Order No. 3677) Provisions urgent civil protection to address the state of emergency in relation to settlements of nomadic communities in the region Lombardy</p> <p>Order of the President of the Council of Ministers on May 30, 2008 (Order No. 3678) Provisions urgent civil protection to address the state of emergency in relation to settlements of nomadic communities in the region Campania</p>			NT	<p>Not transposed. It seems that they will not check.</p> <p>However, recent <i>Ordinanze</i> issued by the President of the Council of Ministers require special Commissioners appointed by the said <i>Ordinanze</i> , to do a series of checks to nomads camps that are not compatible with the Directive.</p> <p>In particular he/she is supposed to make (apparently) systematic monitoring of the nomads camps (e.g. identify illegal camps, to do a census of all the persons living in such camps , to adopt measures aimed at clearing and restoration of areas which are occupied by illegal camps, etc). This goes beyond the provision of the Directive.</p> <p>See CS for a more detailed comment on this.</p>
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.				NT	Not transposed
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:	Art. 13.3 a) D.Lgs n. 30/07	3. Ferme le disposizioni concernenti l'allontanamento per motivi di ordine e sicurezza pubblica, un provvedimento di allontanamento non può essere adottato nei confronti di cittadini	3. Without prejudice to what stated in the provisions on expulsion for public policy and public security, an expulsion measure may in no case be adopted against Union citizens	Y, More favourable	<p>More favourable transposition</p> <p>The Italian provision only refers to provisions on expulsion for public policy and public security, while the Directive refers to the whole Chapter</p>

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

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
	(a) the Union citizens are workers or self-employed persons, or		dell'Unione o dei loro familiari, qualora; a) i cittadini dell'Unione siano lavoratori subordinati o autonomi;	or their family members if: a) the Union citizens are workers or self-employed persons;		VI, which includes provisions on public health. See content of art 20(8) of the Italian Decree that transposes art. 29(2) of the Dir which does not allow for expulsion on the grounds of public health.
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.	Art. 13.3 b) D.Lgs n. 30/07	b) i cittadini dell'Unione siano entrati nel territorio dello Stato per cercare un posto di lavoro. In tale caso i cittadini dell'Unione e i membri della loro famiglia non possono essere allontanati fino a quando i cittadini dell'Unione possono dimostrare di essere iscritti nel Centro per l'impiego da non più di sei mesi, ovvero di aver reso la dichiarazione di immediata disponibilità allo svolgimento dell'attività lavorativa, di cui all'articolo 2, comma 1, del decreto legislativo 21 aprile 2000, n. 181, così come sostituito dall'articolo 3 del decreto legislativo 19 dicembre 2002, n. 297 e di non essere stati esclusi dallo stato di disoccupazione ai sensi dell'articolo 4 del medesimo decreto legislativo n. 297 del 2002.	b) the Union citizens entered the territory of the 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 registered in the <i>Centro per l'impiego</i> for not longer than six months, or by means of a declaration have declared immediate willingness to carry out work referred to in Article 2.1 of Legislative Decree of 21 April 2000, n. 181 as repealed by Article 3 of Legislative Decree of 19 December 2002, n. 297 and not be excluded from unemployment status according to Article 4 of Legislative Decree n. 297 of 2002.	Y, More favourable	More favourable transposition The first part of the provision has been literally transposed; in the second part of the transposing Decree, the fact to be registered in the employment office represents evidence that the Union citizens are continuing to seek employment. The same for the other two requirements mentioned in the Italian provision, namely, the declaration of immediate readiness to carry out work, and not be excluded from unemployment status. There is no mention of the evidence to "have a genuine chance of being engaged." And this renders the Italian provision even more favourable.
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 on grounds other than public policy, public security or public health.	Art. 8 D.Lgs n. 30/07	Art. 8 (Ricorsi avverso il mancato riconoscimento del diritto di soggiorno) 1. Avverso il provvedimento di rifiuto e revoca del diritto di cui agli articoli 6 e 7, e' ammesso ricorso al tribunale in composizione monocratica del luogo ove dimora il richiedente, il quale provvede, sentito l'interessato, nei modi di cui agli articoli 737 e seguenti del codice	Art. 8 (Appeal against non recognition of the right of residence) 1. The measures refusing or revokes the rights provided for in Article 6 and 7, can be appealed before the <i>monocratic</i> Court of the place where the person concerned has his/her " <i>dimora</i> " (place where a person is even only for a short period) the Court decides according to	N, Incomplete and Incorrect	Incomplete and incorrect transposition The Italian legislation does not contain a provision framed as the one of the Directive. Art. 21 refers to guarantees (not all) set in Art. 30 and 31 (see highlighted in bold in the text of the Law) with the following differences: - the person concerned shall

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

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
		New Art. 21 D.Lgs n. 30/07 as replaced by Art. 1.1 e) D.Lgs n. 32/08	<p>di procedura civile.</p> <p>Art. 21 (Allontanamento per cessazione delle condizioni che determinano il diritto di soggiorno)</p> <p>1. Il provvedimento di allontanamento dei cittadini degli altri Stati membri dell'Unione europea e dei loro familiari, qualunque sia la loro cittadinanza, può altresì essere adottato quando vengono a mancare le condizioni che determinano il diritto di soggiorno dell'interessato ai sensi degli articoli 6, 7 e 13 e salvo quanto previsto dagli articoli 11 e 12.</p> <p>2. Il provvedimento di cui al comma 1 e' adottato dal Prefetto, territorialmente competente secondo la residenza o dimora del destinatario, anche su segnalazione motivata del sindaco del luogo di residenza o dimora, con atto motivato e notificato all'interessato. Il provvedimento e' adottato tenendo conto della durata del soggiorno dell'interessato, della sua età, della sua salute, della sua integrazione sociale e culturale e dei suoi legami con il Paese di origine. Il</p>	<p>the procedures referred to in Articles 737 and following of the civil procedural code, after having heard the person concerned.</p> <p>Art. 21 (Expulsion on grounds of cessation of the conditions that give the right of residence)</p> <p>1. The expulsion decision of other Member States' citizens and their family members irrespective of nationality, may also be adopted when the conditions that give the person concerned the right of residence, referred to in Articles 6, 7 and 13 lack, except what provided for in Articles 11 and 12.</p> <p>2. The decision referred to in paragraph 1 is adopted by the <i>Prefetto</i> territorially competent, according to the residence or <i>dimora</i>/address of the person concerned, also upon a grounded recommendation of the Major of the place of residence or of the <i>dimora</i>/address, by an act that explains the grounds of the decision and that is notified to the person concerned. The expulsion decision takes into consideration how long the individual concerned has resided</p>		<p>be informed precisely and in full of the grounds of expulsion, while the Italian provision requests that the act shall explain the grounds</p> <p>- the application for an interim order to suspend enforcement of that decision is not included in Italy for grounds other than public policy, public security or public health.</p> <p>In this regard see also the ECJ¹ that has stated that " Member States must take all steps to ensure that the safeguard of the provisions of the directive is available to any national of another Member State who is subject to a decision ordering expulsion".</p> <p>Transposition is therefore incorrect in this regard.</p> <p>Articles 8 of D.Lgs n. 30/07, only mentions the possibility to appeal for the non recognition of the right provided for in Article 6 and 7. Article 8 does not refer to expulsion and therefore does not include the guarantees provided for in Art. 15 and therefore in Art. 30 and 31. (However, it is partially covered by Article 21 which refers to expulsion on grounds other than public order etc.)</p>

¹ E.g., Case C-136/03 Dörr and Ünal par. 49.
Milieu Ltd
Europa Institute, Edinburgh University

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

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
			<p>provvedimento riporta le modalita' di impugnazione, nonché il termine per lasciare il territorio nazionale, che non può essere inferiore ad un mese. Se il destinatario non comprende la lingua italiana, si applicano le disposizioni di cui all'articolo 20, comma 10</p> <p>3. Unitamente al provvedimento di allontanamento e' consegnata all'interessato una attestazione di obbligo di adempimento dell'allontanamento, secondo le modalità stabilite con decreto del</p>	<p>on its territory, his/her age, state of health, social and cultural integration into the host Member State and the extent of his/her links with the country of origin. The expulsion decision indicates the redress procedures and the deadline to leave the national territory that cannot be less than one month. If the person concerned does not have an understating of the Italian language, the provision of Art. 20.10 shall apply .</p> <p>[Art. 20.10. [...] If the person concerned does not comprehend the Italian language, then the expulsion measure is accompanied by a translation of its content, also using suitable models, sufficiently detailed, written in a language that the person concerned is able to comprehend or if this is not possible for lack of translation's personnel, in any event in French, English, Spanish or German, according to the preference indicated by the person concerned. The persons concerned shall be notified the expulsion measure.]</p> <p>3. Together with the expulsion decision the person concerned is given a certificate concerning the obligation to fulfil the expulsion, according to the procedures set by a decree of the</p>		

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

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
			Ministro dell'interno e del Ministro degli affari esteri, da presentare presso un consolato italiano. [Il provvedimento di allontanamento di cui al comma 1 non puo' prevedere un divieto di reingresso sul territorio nazionale.]	Ministries of Internal and External Affairs; the mentioned certificate shall be produced with an Italian Consulate. [The expulsion decision referred to in paragraph 1 shall not impose a ban on entry in the national territory.]		
			4. [...]	4. [...]		
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.	New Art. 21.1 D.Lgs n. 30/07 as replaced by Art. 1.1 e) D.Lgs n. 32/08	Art. 21 (Allontanamento per cessazione delle condizioni che determinano il diritto di soggiorno) 1. Il provvedimento di allontanamento dei cittadini degli altri Stati membri dell'Unione europea e dei loro familiari, qualunque sia la loro cittadinanza, può altresì essere adottato quando vengono a mancare le condizioni che determinano il diritto di soggiorno dell'interessato ai sensi degli articoli 6, 7 e 13 e salvo quanto previsto dagli articoli 11 e 12. [...]	Art. 21 (Expulsion on grounds of cessation of the conditions that give the right of residence) 1. The expulsion decision of other Member States' citizens and their family members irrespective of nationality, may also be adopted when the conditions that give the person concerned the right of residence, referred to in Articles 6, 7 and 13 lack, except what provided for in Articles 11 and 12. [...]	N, Incorrect	Incorrect transposition Not transposed as such but the Italian rule seems to be more stringent since Article 21 of D.Lgs n. 30/07 (as amended) says that an “expulsion decision of other Member States’ citizens and their family members irrespective of nationality, may also be adopted when the conditions that give the person concerned the right of residence, referred to in Articles 6, 7 and 13 do not exist, (except what provided for in Articles 11 and 12)”. Article 6.1 of the transposing Decree requires as an essential condition in order to have the right of residence, a valid identity document which is valid for expatriation according to the legislation of the State of nationality. This seems to imply that if the conditions are not fulfilled (expiry of the document), this might be a ground of expulsion, in contradiction to the Directive’s provision. The expiry of the identity document is therefore considered as a situation that makes the residence of the person concerned as unlawful.

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

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
						(Also see CS for a more detailed analysis of the non conformity problem in relation to new Article 61.11bis of the CP creating an aggravating circumstance for persons committing a crime who are illegally in the territory of Italy).
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.	New Art. 21 D.Lgs n. 30/07 as replaced by Art. 1.1 e) D.Lgs n. 32/08	[...] Il provvedimento di allontanamento di cui al comma 1 non può prevedere un divieto di reingresso sul territorio nazionale.	[...] The expulsion decision referred to in paragraph 1 shall not impose a ban on entry in the national territory.	Y	Effective transposition Correct transposition since this provision only refers to expulsion decision based on the cessation of the conditions that give the right of residence and not to all expulsion measures referred to in the Directive
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.	Art. 14.1 D.Lgs n. 30/07	Art. 14 (Diritto di soggiorno permanente) 1. Il cittadino dell'Unione che ha soggiornato legalmente ed in via continuativa per cinque anni nel territorio nazionale ha diritto al soggiorno permanente non subordinato alle condizioni previste dagli articoli 7, 11, 12 e 13.	Art. 14 (Right of permanent residence) 1. Union citizens who have resided legally for a continuous period of five years in the national territory shall have the right of permanent residence there and this right shall not be subject to the conditions provided for in Article 7, 11, 12 and 13.	Y	Effective transposition The substance of the provision is correctly transposed but the Directive refers to the whole Chapter III (articles 6 to 15), while the transposing Decree only refers to Articles 7 (that transposes Article 7 of the Directive) 11 (that transposes Article 12 of the Directive), 12 (that transposes Article 13) and 13 (that transposes Article 14). Although the Decree refers to lesser provisions as compared to the Directive, transposition is effective because the provisions not covered by the Italian reference have no a real impact on the conditions for residence.
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	Art. 14.2 D.Lgs n. 30/07	2. Salve le disposizioni degli articoli 11 e 12, il familiare non avente la cittadinanza di uno Stato membro acquisisce il diritto di	2. Except the provisions of Articles 11 and 12, family members who are not nationals of a Member State acquire the	Y	Effective transposition Although the provision makes a reference to Articles 11 (Art. 12 of

Directive 2004/38/EC on the right of citizens of the Union and their family members
to move and reside freely within the territory of the Member-States

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
	Member State for a continuous period of five years.		soggiorno permanente se ha soggiornato legalmente in via continuativa per cinque anni nel territorio nazionale unitamente al cittadino dell'Unione.	right of permanent residence if have legally resided with the Union citizen in the national territory for a continuous period of five years.		the Directive) and 12 (Art. 13 of the Directive) that the Directive does not do it can be considered that transposition is effective since the substance of the provision (also considered Art. 18 of the Directive) appears the same. Art 18 in fact says that family members of Union citizens who are not national of a MS have to satisfy the conditions laid down in Art. 12 and 13 of the Directive if pertinent.
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.	Art. 14.3 D.Lgs n. 30/07 In this regard also Circular of the Ministry of Interior n. 19 of 6 April 2007	3. La continuità del soggiorno non e' pregiudicata da assenze che non superino complessivamente sei mesi l'anno, nonché da assenze di durata superiore per l'assolvimento di obblighi militari ovvero da assenze fino a dodici mesi consecutivi per motivi rilevanti, quali la gravidanza e la maternità, malattia grave, studi o formazione professionale o distacco per motivi di lavoro in un altro Stato membro o in un Paese terzo.	3. Continuity of residence shall not be affected by absences not exceeding a total of six months a year, or by absences of a longer duration for compulsory military service, or by absences 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.	Y	Effective transposition Correct transposition although there are some differences in the wording. The national provision says "absences" in plural instead of "one absence". This looks like a typo mistake.
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.	Art. 14.4 D.Lgs n. 30/07	4. Il diritto di soggiorno permanente si perde in ogni caso a seguito di assenze dal territorio nazionale di durata superiore a due anni consecutivi.	4. Once acquired, the right of permanent residence shall be lost only through absence from the national territory for a period exceeding two consecutive years.	Y	Almost literal transposition <i>A new par, namely Art. 14.4bis D.Lgs n. 30/07 will be added if the draft Legislative decree amending and supplementing D.Lgs n. 30/07 is finally adopted.</i>
Art.17.1 (a)	Exemptions for persons no longer working in the host Member State and their family members	Art. 15.1 a) D.Lgs n. 30/07	Art. 15 (Deroghe a favore dei lavoratori che hanno cessato la loro attività nello Stato membro ospitante e dei loro familiari)	Art. 15 (Exemptions for persons no longer working in the host Member State and their family members)	Y	Almost literal transposition Article 14 corresponds to Article 16

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

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
	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: (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.		1. In deroga all'articolo 14 ha diritto di soggiorno permanente nello Stato prima della maturazione di un periodo continuativo di cinque anni di soggiorno: a) il lavoratore subordinato o autonomo il quale, nel momento in cui cessa l'attività, ha raggiunto l'età prevista ai fini dell'acquisizione del diritto alla pensione di vecchiaia, o il lavoratore subordinato che cessa di svolgere un'attività subordinata a seguito di pensionamento anticipato, a condizione che abbia svolto nel territorio dello Stato la propria attività almeno negli ultimi dodici mesi e vi abbia soggiornato in via continuativa per oltre tre anni.	1. By way of derogation from Article 16, the right of permanent residence in the State shall be enjoyed before completion of a continuous period of five years of residence by: a) workers or self-employed persons who, at the time they stop working, have reached the age for entitlement to an old age pension or workers who cease paid employment to take early retirement, provided that they have been working in the territory of the State for at least the preceding twelve months and have resided there continuously for more than three years.		of the Directive.
	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;	Art. 15.1 a) D.Lgs n. 30/07	Ove il lavoratore appartenga ad una categoria per la quale la legge non riconosce il diritto alla pensione di vecchiaia, la condizione relativa all'età e' considerata soddisfatta quando l'interessato ha raggiunto l'età di 60 anni;	If the worker belongs to a certain category for which the law 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;	Y	Effective transposition The provision has a slight different structure but is transposed, although the Italian provision more generally refers to "worker" and not to "certain categories of self-employed" as the Directive does. In this sense the transposing provision is wider than the Directive.
Art.17.1 (b)	(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. 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	Art. 15.1 b) D.Lgs n. 30/07	b) il lavoratore subordinato o autonomo che ha soggiornato in modo continuativo nello Stato per oltre due anni e cessa di esercitare l'attività professionale a causa di una sopravvenuta incapacità lavorativa permanente. Ove tale incapacità sia stata causata da un infortunio sul lavoro	b) workers or self-employed persons who have resided continuously in the State for more than two years and stop working there as a result of permanent incapacity to work. If such incapacity is the result of an accident at work or an occupational disease entitling the	Y	Literal transposition

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

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
	institution in the host Member State, no condition shall be imposed as to length of residence;		o da una malattia professionale che dà all'interessato diritto ad una prestazione interamente o parzialmente a carico di un'istituzione dello Stato, non si applica alcuna condizione relativa alla durata del soggiorno;	person concerned to a benefit payable in full or in part by an institution of the State, no condition shall be imposed as to length of residence;		
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.	Art. 15.1 c) D.Lgs n. 30/07 Art. 3 Presidential Decree n. 223/89	c) il lavoratore subordinato o autonomo che, dopo tre anni d'attività e di soggiorno continuativi nello Stato, eserciti un'attività subordinata o autonoma in un altro Stato membro, pur continuando a risiedere nel territorio dello Stato, permanendo le condizioni previste per l'iscrizione anagrafica. [*Presidential Decree n. 223/89, Articolo 3 - Popolazione residente. 1. Per persone residenti nel comune s'intendono quelle aventi la propria dimora abituale nel comune. 2. Non cessano di appartenere alla popolazione residente le persone temporaneamente dimoranti in altri comuni o all'estero per l'esercizio di occupazioni stagionali o per causa di durata limitata.]	c) workers or self-employed persons who, after three years of continuous employment and residence in the State, work in an employed or self-employed capacity in another Member State, while retaining their place of residence in the State, while the conditions for the registration still exist. [*Presidential Decree n. 223/89, Article 3 - Resident population. 1. Residents in the municipality are those who have their habitual residence in the municipality. 2. Persons temporarily residents in other municipalities or abroad for the exercise of seasonal jobs or because of a reason of limited duration, do not cease to belong to the residing population.]	N, Ambiguous	Ambiguous transposition The transposing provision refers to the “State”, i.e., Italy, which is understood as the “host Member State” referred to in the Directive. The last part of the provision is not transposed as such and the Italian provision refers to “conditions for the registration still exist”. These conditions are the ones referred to in Article 9 of D.Lgs 30/07 that are different as compared to the requirements set in the Directive. However, the Italian provision appears to be lesser restrictive since the Union citizen is not required to go back in the State each day or at least once a week (the conditions referred for the registration have still to be fulfilled). According to Presidential Decree n. 223/89, the persons who temporarily reside (<i>dimorano</i>) in a foreign country or in other national Municipalities (<i>Comuni</i>) for carrying out seasonal work or of a limited duration, do not lose the status of resident population.* It is difficult to give a definitive answer: on the one hand Italy seems to request something more than the

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

[illegible]

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

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
			<p>alla ricerca di una attivita' lavorativa secondo modalita' definite con i servizi competenti; Art. 3</p> <p>1. All'articolo 2 del decreto legislativo 21 aprile 2000, n. 181, sono apportate le seguenti modificazioni:</p> <p>a) i commi 1, 3 e 4 sono sostituiti dai seguenti:</p> <p>"1. La condizione di cui all'articolo 1, comma 2, lettera c), dev'essere comprovata dalla presentazione dell'interessato presso il servizio competente nel cui ambito territoriale si trovi il domicilio del medesimo, accompagnata da una dichiarazione, ai sensi del decreto del Presidente della Repubblica 28 dicembre 2000, n. 445, che attesti l'eventuale attivita' lavorativa precedentemente svolta, nonche' l'immediata disponibilita' allo svolgimento di attivita' lavorativa.</p> <p>4. La verifica dell'effettiva permanenza nello stato di disoccupazione e' effettuata dai servizi competenti con le seguenti modalita':</p> <p>a) sulla base delle comunicazioni di cui all'articolo 4-bis o di altre informazioni fornite dagli organi di vigilanza;</p> <p>b) in relazione al rispetto delle misure concordate con il disoccupato.";</p> <p>b) al comma 5, le parole: "20 ottobre 1998, n. 403." sono sostituite dalle seguenti: "decreto</p>	<p><i>and who is looking for a job according to modalities defined with the competent services;</i></p> <p><i>Art. 3</i></p> <p><i>1. The following changes are made to Article 2 of Legislative Decree on April 21, 2000, n. 181,:</i></p> <p><i>a) paragraphs 1, 3 and 4 are replaced by the following:</i></p> <p><i>"1. The condition referred to in Article 1, paragraph 2, letter c) [on the state unemployment] must be proven by appearance of the interested person to the competent department in whose territory the said person has his/her domicile; it is also required a declaration, according to Presidential Decree 28 December 2000 n. 445, certifying any work previously performed and the immediate availability for the performance of work.</i></p> <p><i>4. The verification of the stay of the state of unemployment is carried out by the competent services with the following rules :</i></p> <p><i>a) on the basis of the communications referred to in Article 4-bis or other information supplied by supervision organs ;</i></p> <p><i>b) according to the modalities agreed with the unemployed person.";</i></p> <p><i>b) in paragraph 5, the words: "20 October 1998, n. 403." Are</i></p>		

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

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
			<p>del Presidente della Repubblica 28 dicembre 2000, n. 445.";</p> <p>c) al comma 6, la parola: "inferiori" e' sostituita dalla seguente: "fino";</p> <p>d) il comma 7 e' soppresso.</p> <p>2. Gli interessati all'accertamento della condizione di cui all'articolo 1, comma 2, lettera c), sono tenuti a presentarsi presso il servizio competente per territorio entro centottanta giorni dalla data di entrata in vigore del presente decreto ed a rendere la dichiarazione di cui al comma 1. Restano valide le dichiarazioni di disponibilita' allo svolgimento dell'attivita' lavorativa prestate ai sensi della precedente normativa e gli obblighi che ne derivano per i servizi competenti.</p> <p>Art. 5.</p> <p>1. L'articolo 4 del decreto legislativo 21 aprile 2000, n. 181, e' sostituito dal seguente:</p> <p>"Art. 4 (<i>Perdita dello stato di disoccupazione</i>). - 1. Le Regioni stabiliscono i criteri per l'adozione da parte dei servizi competenti di procedure uniformi in materia di accertamento dello stato di disoccupazione sulla base dei seguenti principi:</p> <p>a) conservazione dello stato di disoccupazione a seguito di svolgimento di attivita' lavorativa tale da assicurare un reddito</p>	<p><i>replaced by the following: "decree of the President of the republic 28 December 2000, n. 445.";</i></p> <p><i>c) in paragraph 6, the word: "inferior" is replaced by the following: "until";</i></p> <p><i>d) paragraph 7 is repealed.</i></p> <p><i>2. The parties interested to ascertain the condition of Article 1, paragraph 2, letter c) are required to appear to the relevant department responsible for the area within one-hundred days from the date of entry into force of this Decree and to make the declaration referred to in paragraph 1. The declarations of availability to work that have been made under the previous legislation and the competent services' obligations remain valid.</i></p> <p><i>Art. 5.</i></p> <p><i>1. Article 4 of legislative decree 21 April 2000, n. 181, is replaced by the following:</i></p> <p><i>" principi:</i></p> <p><i>Art. 4 (Loss of the state of unemployment). -- 1. The regions determine the criteria for the adoption by the competent departments of uniform procedures for investigation of the state of unemployment based on the following principles</i></p> <p><i>a) conservation of the state of unemployment as a result of the carrying out work that ensures</i></p>		

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

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
			<p>annuale non superiore al reddito minimo personale escluso da imposizione. Tale soglia di reddito non si applica ai soggetti di cui all'articolo 8, commi 2 e 3, del decreto legislativo 1 dicembre 1997, n. 468;</p> <p>b) perdita dello stato di disoccupazione in caso di mancata presentazione senza giustificato motivo alla convocazione del servizio competente nell'ambito delle misure di prevenzione di cui all'articolo 3;</p> <p>c) perdita dello stato di disoccupazione in caso di rifiuto senza giustificato motivo di una congrua offerta di lavoro a tempo pieno ed indeterminato o temporaneo o di lavoro temporaneo ai sensi della legge 24 giugno 1997, n. 196, con durata del contratto a termine o, rispettivamente, della missione, in entrambi i casi superiore almeno a otto mesi, ovvero a quattro mesi se si tratta di giovani, nell'ambito dei bacini, distanza dal domicilio e tempi di trasporto con mezzi pubblici, stabiliti dalle Regioni;</p> <p>d) sospensione dello stato di disoccupazione in caso di accettazione di un'offerta di lavoro a tempo determinato o di lavoro temporaneo di durata inferiore a otto mesi, ovvero di quattro mesi se si tratta di giovani.".]</p>	<p><i>an annual income not exceeding the minimum personal income excluded from taxation. This threshold of income does not apply to persons in Article 8, paragraphs 2 and 3, of Legislative Decree on December 1, 1997, n. 468;</i></p> <p><i>b) loss of the state of unemployment when the person concerned does not appear without a justified reason before the competent department, in the framework of preventive measures set out in Article 3;</i></p> <p><i>c) loss of the state of unemployment in case of refusal without a justified reason of a fair job full-time and indefinite or fixed or temporary work according to Law of June 24, 1997, n. 196, with a duration of term contract or, respectively, of the mission, in both cases at least eight months, or four months if for young people, in the docks, distance from home and transport times with the public means, established by the Regions;</i></p> <p><i>d) Suspension of the state of unemployment in case of acceptance of a fixed-term job offer or temporary work for less than eight months, or four months in case of young people".]</i></p>		
Art.17.2	2. The conditions as to length of residence and employment laid down in point (a) of paragraph 1 and the	Art. 15.4 D.Lgs n. 30/07	4. La sussistenza delle condizioni relative alla durata del soggiorno e dell'attività di cui al comma 1,	4. The conditions as to length of residence and employment laid down in paragraph 1 points a)	Y	<p>Almost literal transposition</p> <p>There is no reference to the "partner"</p>

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

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
	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.		lettera a) e lettera b), non sono necessarie se il coniuge e' cittadino italiano, ovvero ha perso la cittadinanza italiana a seguito del matrimonio con il lavoratore dipendente o autonomo.	and b) shall not apply if the worker's or the self-employed person's spouse is an Italian national or has lost the Italian nationality by marriage to that worker or self-employed person.		since the concept of registered partnership does not currently exist in Italy. Notice that the Dir differentiates between (a): length of employment and residence; and (b) only length of residence. However, since the Italian transposing provision does not specify "length of employment and residence;" and "only length of residence." But it recalls them by referring to par 1 a) and b).
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.	Art. 15.5 D.Lgs n. 30/07	5. I familiari, qualunque sia la loro cittadinanza, del lavoratore subordinato o autonomo, che soggiornano con quest'ultimo nel territorio dello Stato, godono del diritto di soggiorno permanente se il lavoratore stesso ha acquisito il diritto di soggiorno permanente in forza del comma 1	5. Irrespective of nationality, the family members of a worker or a self-employed person who are residing with him in the territory of the State shall have the right of permanent residence 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.	Y	Literal transposition
Art.17.4 (a)	4. If, however, the worker or self-employed person dies while still working but before acquiring permanent residence 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	Art. 15.6 a) D.Lgs n. 30/07	6. Se il lavoratore subordinato o autonomo decede mentre era in attività senza aver ancora acquisito il diritto di soggiorno permanente a norma del comma 1, i familiari che hanno soggiornato con il lavoratore nel territorio acquisiscono il diritto di soggiorno permanente, qualora si verifica una delle seguenti condizioni: a) il lavoratore subordinato o autonomo, alla data del suo decesso, abbia soggiornato in via continuativa nel territorio nazionale per due anni;	6. If the worker or self-employed person dies while still working but before acquiring permanent residence status on the basis of paragraph 1, his family members who are residing with him in the territory 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 national territory for two years; or	Y	Literal transposition The Italian provision does not insert “;” in the end of the paragraph; this does not represent a problem since the text of the provision clearly states that “or one of the following conditions exist”, that means the different subparagraphs are alternative, in line with the Directive (the same comment applies for Article Art. 17.4 b)).
Art.17.4 (b)	(b) the death resulted from an accident at work or an occupational disease; or	Art. 15.6 b) D.Lgs n. 30/07	b) il decesso sia avvenuto in seguito ad un infortunio sul lavoro	b) the death resulted from an accident at work or an	Y	Literal transposition

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

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
			o ad una malattia professionale;	occupational disease;		
Art.17.4 (c)	(c) the surviving spouse lost the nationality of that Member State following marriage to the worker or self-employed person.	Art. 15.6 c) D.Lgs n. 30/07	c) il coniuge superstite abbia perso la cittadinanza italiana a seguito del matrimonio con il lavoratore dipendente o autonomo.	c) the surviving spouse lost the Italian nationality following marriage to the worker or self-employed person.	Y	Literal transposition
Art.18	Acquisition of the right of permanent residence by certain family members who are not nationals of a Member State. 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.	Art. 15.7 D.Lgs n. 30/07	7. Se non rientrano nelle condizioni previste dal presente articolo, i familiari del cittadino dell'Unione di cui all'articolo 11, comma 2, e all'articolo 12, comma 2, che soddisfano le condizioni ivi previste, acquisiscono il diritto di soggiorno permanente dopo aver soggiornato legalmente e in via continuativa per cinque anni nello Stato membro ospitante.	7. If the conditions laid down in this Article are not satisfied, family members of a Union citizen referred to in Articles 11.2 and 12.2, 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.	Y	Literal transposition Articles 11.2 and 12.2 correspond to Articles 12(2) and 13(2) of the Directive.
Chapter IV	RIGHT OF PERMANENT RESIDENCE <i>Section I. Administrative formalities</i>					
Art.19.1	Document certifying permanent residence for Union citizens 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.	Art. 16.1 and 16.2 D.Lgs n. 30/07 In this regard also Circular of the Ministry of Interior n. 19 of 6 April 2007	Art. 16 (Attestazione di soggiorno permanente per i cittadini dell'Unione europea) 1. A richiesta dell'interessato, il comune di residenza rilascia al cittadino di uno Stato membro dell'Unione europea un attestato che certifichi la sua condizione di titolare del diritto di soggiorno permanente. [...] [...] la richiesta corredata dalla documentazione atta a provare le condizioni, rispettivamente previsti dall'articolo 14 e dall'articolo 15.	Art. 16 (Certification of permanent residence for Union citizens) 1. Upon a request of the person concerned, the Commune (Municipality) of residence shall issue Union citizens with a document certifying his/her entitlement to permanent residence. [...] [...] the application that is presented together with the documents that prove respectively the conditions laid down in Articles 14 and 15.	Y	Effective transposition The verification of the duration of residence is left quite general by the Directive that does not explain how the Member State shall verify this. The Italian provision more specifically recalls Articles 14 and 15 of the same Decree that transpose respectively Article 16 and 17 of the Directive.

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

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
			2. L'attestato di cui al comma 1 può essere sostituito da una istruzione contenuta nel microchip della carta di identità elettronica di cui al decreto legislativo 7 marzo 2005, n. 82, secondo le regole tecniche stabilite dal Ministero dell'interno.	2. The document referred to in paragraph 1 may be replaced by an instruction contained in the microchip of the electronic identity card referred to in Legislative Decree of 7 March 2005, n. 82, according the technical rules set out by the Ministry of Interior .		This provision only specifies how the entitlement to permanent residence can be certified, so it does not affect the correct transposition of the Directive's provision. Circular n. 19 specifies that the requirement of "continuity" might be proved by the registration of the concerned person
Art.19.2	2. The document certifying permanent residence shall be issued as soon as possible.	Art. 16.1 D.Lgs n. 30/07	[...] L'attestato e' rilasciato entro trenta giorni dalla richiesta	[...] The document [certifying permanent residence] shall be issued within 30 days from the application [...]	Y	Effective transposition Effective transposition, although the Italian provision specifies that the document certifying permanent residence shall be accompanied with documents proving the conditions laid down in Articles 14 and 15. 30 days seem soon enough.
Art.20.1	Permanent residence card for family members who are not nationals of a Member State 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.	Art. 17.1 and 17.2 D.Lgs n. 30/07	Art. 17 (Carta di soggiorno permanente per i familiari non aventi la cittadinanza di uno Stato membro) 1. Ai familiari del cittadino comunitario non aventi la cittadinanza di uno Stato membro dell'Unione europea, che abbiano maturato il diritto di soggiorno permanente, la Questura rilascia una «Carta di soggiorno permanente per familiari di cittadini europei». 2. La richiesta di Carta di soggiorno permanente e' presentata alla Questura competente per territorio di residenza [...] ed e' rilasciata entro 90 giorni, su modello conforme a quello stabilito con decreto del Ministro dell'interno.	Art. 17 (Permanent residence card for family members who are not nationals of a Member State) 1. The Police (<i>Questura</i>) shall issue family members who are not nationals of a Member State entitled to permanent residence with a "permanent residence card for family members of Union citizens". 2. The application for the Permanent residence card is submitted to the Police territorially competent [...] and is issued within 90 days in a model complying with the one established by Ministry of Interior' decree.	N, Incomplete	Incomplete transposition The first part of the provision is correctly transposed. In Italy the <i>Questura</i> issues the permanent residence card. The second part of the provision: It refers to within 90 days instead of within six months of the submission of the application. Therefore more favourable. But it is incompletely transposed since it does not mention that permanent residence card shall be renewable automatically every 10 years. This represents a gap.

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

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
Art.20.2	2. The application for a permanent residence card shall be submitted before the residence card expires. 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.	Art. 17.2 D.Lgs n. 30/07	2. La richiesta di Carta di soggiorno permanente e' presentata alla Questura competente per territorio di residenza prima dello scadere del periodo di validità della Carta di soggiorno di cui all'articolo 10 [...].	2. The application for the Permanent residence card is submitted to the Police territorially competent, before the residence card expires as referred to in Article 10 [...].	Y, More favourable	More favourable transposition More favourable since the Italian provision does not establish sanctions for failure to comply with the requirement to apply for a permanent residence card.
Art.20.3	3. Interruption in residence not exceeding two consecutive years shall not affect the validity of the permanent residence card.	Art. 17.4 D.Lgs n. 30/07	4. Le interruzioni di soggiorno che non superino, ogni volta, i due anni consecutivi, non incidono sulla validità della carta di soggiorno permanente.	4. Interruption in residence not exceeding two consecutive years shall not affect the validity of the permanent residence card.	Y	Literal transposition However it shall be noted that the Italian official version of the Directive does not refer to “consecutive years” as the English version does.
Art. 21	Continuity of residence For the purposes of this Directive, continuity of residence may be attested by any means of proof in use in the host Member State. Continuity of residence is broken by any expulsion decision duly enforced against the person concerned.	Art. 18.1 and 18.2 D.Lgs n. 30/07 as amended by Art. 1.1 b) D.Lgs n. 32/08 In this regard also Circular of the Ministry of Interior n. 19 of 6 April 2007	Art. 18 (Continuità del soggiorno) 1. La continuità del soggiorno, ai fini del presente decreto legislativo, nonché i requisiti prescritti dagli articoli 13, 14, 15 e 16 possono essere comprovati con le modalità previste dalla legislazione vigente. 2. La continuità del soggiorno e' interrotta dal provvedimento di allontanamento adottato nei confronti della persona interessata «, che costituisce causa di cancellazione anagrafica»;	Art. 18 (Continuity of residence) 1. For the purposes of this decree, continuity of residence and the requirements set out by Articles 13, 14, 15 and 16 may be attested by the modalities set out by the legislation in force . 2. Continuity of residence is broken by any expulsion decision, taken against the person concerned, and that represents a ground of cancellation from the personal details registry.	N, Incorrect	Incorrect transposition The Italian transposing Decree says that not only the continuity of residence but also the requirements set out in Articles 13, 14, 15 and 16 [of the Decree], may be attested by any means of proof. Articles 14, 15 and 16 refer to the “continuity”, while Article 13 concerns the retention of the right of residence. It can be affirmed that in order to proof the “continuity” the same requirements mentioned in the Directive may be used. Therefore in this regard no conformity issue arise. The Italian provision refers to “expulsion decision taken [...]” and not to “expulsion decision duly enforced” as the Directive does. In Italian term used “ <i>adottato</i> ”: “taken (in English) does not

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

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
						<p>necessarily differ from the term used in the Directive. It can be a matter of interpretation. The verb “<i>adottato</i>” in itself might be interpreted as “enforced-<i>eseguito</i>”. However, in this context the translation and/or the text of the Italian provision should have been more precise.</p> <p>Circular n. 19 specifies that the requirement of “continuity” might be proved by the registration of the concerned person.</p> <p>About the requirement of “legally resided” the Circular adds that the person concerned, during the five years of residence shall have resided in the Italian territory under the conditions laid down in the Italian Decree and without having being expelled, which is not in line with the Directive: the Dir means residing according to the Dir. It can also be that they reside legally under other legislation.</p>
Chapter V	PROVISIONS COMMON TO THE RIGHT OF RESIDENCE AND THE RIGHT OF PERMANENT RESIDENCE	Art. 19.1 D.Lgs n. 30/07 In this regard also Circular of the Ministry of Interior of 6 April 2007	Art. 19 (Disposizioni comuni al diritto di soggiorno e al diritto di soggiorno permanente)	Art. 19 (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.				Y	<p>Effective transposition</p> <p>There is no such a specific provision. However the provision can be considered as transposed since the Directive cannot be applied to only a part of the Italian territory.</p>

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

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
						Moreover, throughout the text, it is always referred to the national territory, that is, the whole Italian territory.
	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.	Art. 19.2 D.Lgs n. 30/07	2. Fatte salve le disposizioni specifiche espressamente previste dal Trattato CE e dal diritto derivato, ogni cittadino dell'Unione che risiede, in base al presente decreto, nel territorio nazionale gode di pari trattamento rispetto ai cittadini italiani nel campo di applicazione del Trattato. Il beneficio di tale diritto si estende ai familiari non aventi la cittadinanza di uno Stato membro che siano titolari del diritto di soggiorno o del diritto di soggiorno permanente.	2. 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 decree in the national territory shall enjoy equal treatment with the Italian nationals within the 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.	NT	Not transposed Although there is no express transposing provision in this regard. paragraph 2 of Art. 19 says that within the scope of the Treaty, every Union citizen shall enjoy equal treatment with the Italian nationals, [...] (so if there are restrictions for IT citizens, then the same restrictions apply for the EU citizen for equal treatment reason)
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 self employment there.	Art. 19.1 D.Lgs n. 30/07	1. I cittadini dell'Unione e i loro familiari hanno diritto di esercitare qualsiasi attività economica autonoma o subordinata, escluse le attività che la legge, conformemente ai Trattati dell'Unione europea ed alla normativa comunitaria in vigore, riserva ai cittadini italiani.	1. Union citizens and their family members shall be entitled to take up employment or self employment, excluded those activities that the law, in accordance with the European Union Treaty and the European legislation, reserve to Italian citizens.	N, Ambiguous	Ambiguous transposition Effective transposition of the first part of the provision since although the Italian Decree is framed slightly differently it seems to apply to the same subjects. The transposing provision also refers to Union citizens; this in principle does not represent a problem since it is implicit in the original text that the Union citizens are <i>a fortiori</i> entitled to take up employment. (The problem is for third country family members that's why the provision appears to be ambiguous) The exclusion of employment reserved for Italians is done according to the EC Treaty (thus the public service exception according to Article 39(4)).

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

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
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 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.	Art. 19.2 D.Lgs n. 30/07 Also Circular of the Ministry of Interior of 18 July 2007 Art. 6.3 D.Lgs n. 30/07	2. Fatte salve le disposizioni specifiche espressamente previste dal Trattato CE e dal diritto derivato, ogni cittadino dell'Unione che risiede, in base al presente decreto, nel territorio nazionale gode di pari trattamento rispetto ai cittadini italiani nel campo di applicazione del Trattato. Il beneficio di tale diritto si estende ai familiari non aventi la cittadinanza di uno Stato membro che siano titolari del diritto di soggiorno o del diritto di soggiorno permanente. [...] 3. Fatte salve le disposizioni di leggi speciali conformi ai Trattati dell'Unione europea ed alla normativa comunitaria in vigore, i cittadini di cui ai commi 1 e 2, nello svolgimento delle attività consentite, sono tenuti ai medesimi adempimenti richiesti ai cittadini italiani.	2. 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 decree in the national territory shall enjoy equal treatment with the Italian nationals within the 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. [...] 3. Subject to the provisions of special laws in accordance with the European Union Treaties and community law that is in force, citizens referred to in paragraphs 1 and 2, are subjects to the same duties as Italian nationals, while pursuing activities which are allowed.	Y	Effective transposition Almost literal transposition but incorrect since the Italian provision says "residing on the basis of the decree". as replacement for on the basis of the Directive (since the Decree is not properly transposed so the residing might be more restrictive) Circular 18 July specifies that the worker who is a Union citizen and his/her family members are covered by the national health system (<i>Servizio Sanitario Nazionale</i>). Art. 6.3 of D.Lgs n. 30/07 is here repeated in order to show that equal treatment is established for Union citizens who hold a right of residence for up to three months.
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 such status and members of their	Art. 19.3 D.Lgs n. 30/07	3. In deroga al comma 2 e se non attribuito autonomamente in virtù dell'attività esercitata o da altre disposizioni di legge, il cittadino dell'Unione ed i suoi familiari non godono del diritto a prestazioni d'assistenza sociale durante i primi tre mesi di soggiorno o, comunque, nei casi previsti dall'articolo 13, comma 3, lettera b), salvo che tale diritto sia automaticamente riconosciuto in forza dell'attività esercitata o da altre disposizioni di legge.	3. By way of derogation from paragraph 2 and if not automatically given by the activity exercised or by other provisions of the law, the Union citizen and his/her family members do not enjoy the right to social assistance during the first three months of residence or, where appropriate, the longer period provided for in Article 13.3 b), except when such right is given automatically from the activity exercised or by	N, Incomplete	Incomplete transposition since the last part of the Directive's provision has not been transposed. Transposition is correct as long as the mentioned Italian law includes the status referred to in the text of the Directive. Recent contact with the national authority has confirmed that "Except when such right is given automatically from the activity exercised or by other provisions of the law" refers to workers and self-employed persons, as the Directive

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

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
	families.			provisions of the law. (Article 13.3b of D.Lgs n. 30/07: b) the Union citizens entered the territory of the 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 registered in the <i>Centro per l'impiego</i> for not longer than six months, or by means of a declaration have declared immediate willingness to carry out work referred to in Article 2.1 of Legislative Decree of 21 April 2000, n. 181 as repealed by Article 3 of Legislative Decree of 19 December 2002, n. 297 and not be excluded from unemployment status according to Article 4 of Legislative Decree n. 297 of 2002.)		does. The Italian provision should have been more precise.
Art.25.1	General provisions concerning residence documents 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.	Art. 19.4 D.Lgs n. 30/07	4. La qualità di titolare di diritto di soggiorno e di titolare di diritto di soggiorno permanente può essere attestata con qualsiasi mezzo di prova previsto dalla normativa vigente.	4. The entitlement to the right of residence and to the right of permanent residence may be attested by any other means of proof given by the law In force.	N, Incomplete	Incomplete transposition The last part of the Directive is transposed, while the first part referring to different certificates/documents is not reproduced; this represents a gap. The provision thus, only refers to the means of proof of the right of residence but not to the exercise of a right or the completion of an administrative formality.

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

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
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.	<p>Art. 10.6 D.Lgs n. 30/07</p> <p>Art. 17.3 D.Lgs n. 30/07</p> <p>Art. 5.3 D.Lgs n. 30/07</p> <p>Also Circular n. 54 of 8 October 2007</p>	<p>6. Il rilascio della carta di soggiorno di cui al comma 1 e' gratuito, salvo il rimborso del costo degli stampati e del materiale usato per il documento.</p> <p>3. Il rilascio dell'attestazione e' gratuito, salvo il rimborso del costo degli stampati o del materiale utilizzato.</p> <p>3. I visti di cui al comma 2 sono rilasciati gratuitamente e con priorit� rispetto alle altre richieste.</p>	<p>6. The resident card referred to in paragraph 1 is issued on a free basis, except the reimbursement of the costs of the forms and of the material used for the document.</p> <p>3. The issue of the document is free of charge, except the reimbursement of the cost of the forms and of the material used.</p> <p>3. Visas referred to in paragraph 2 [of Art. 5 of the Decree] are to be issued free of charge as soon as possible and on the basis of an accelerated procedure.</p>	Y	<p>Effective transposition.</p> <p>The transposing Decree only refers to the resident card and not to all documents mentioned in Art.25.1 of the Directive. However, through out the text, the transposing Decree refers to different documents that shall be free of charge: Articles 5.3; 10.6; 17.3.</p> <p>The mentioned Circular has specified that the documents certifying the registration, the permanent residence and the respective applications are subject to a charge of 14,62 � The Circular also specifies that the mentioned acts/documents are subject to this charge as they are considered as act or measures of administrative organs of the State, Region, Municipality , Provinces, issued to whom request them (who makes the application).</p>

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

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
Art.26	Checks 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.	Art. 6.3 D.Lgs n. 30/07	3. Fatte salve le disposizioni di leggi speciali conformi ai Trattati dell'Unione europea ed alla normativa comunitaria in vigore, i cittadini di cui ai commi 1 e 2, nello svolgimento delle attività consentite, sono tenuti ai medesimi adempimenti richiesti ai cittadini italiani.	3. Subject to the provisions of special laws in accordance with the European Union Treaties and community law that is in force, citizens referred to in paragraphs 1 and 2, are subjects to the same duties as Italian nationals, while pursuing activities which are allowed.	Y	Effective transposition As stated in the ToC sent to the Commission by the Ministry of Interior Affairs, in Italy, there is no legislative provision imposing on Italian citizens what stated in this Directive's Article; Art. 4 of <i>Testo Unico</i> of the Law on Public security (approved by RD 773/1931) states that public security authorities have the power (<i>facoltà</i> : in the sense of freedom) to order dangerous and suspicious persons, and persons who are not able or refuse to proof their identity, to subject them to report them. Moreover Art. 6.3 says that even in cases of short residence (we are within the right of residence up to 3 months), EU citizens and their family members who are in Italy have to behave as Italian citizens ("are subjects to the same duties as Italian nationals, while pursuing activities which are allowed.").
Chapter VI	RESTRICTIONS ON THE RIGHT OF ENTRY AND THE RIGHT OF RESIDENCE ON GROUNDS OF PUBLIC POLICY, PUBLIC SECURITY OR PUBLIC HEALTH		Art. 20 (Limitazioni al diritto di ingresso e di soggiorno)	Art. 20 (Restrictions on the right of entry and the right of residence)		The Italian provision more generally refers to "restrictions on the right of entry and the right of residence" without mentioning, in its title, to the grounds specified in the Directive. Overall this Article is not correctly transposed. The structure itself of the provision and the cross reference to many other legislation create confusion and ambiguity throughout the text of the Decree.
Art.27.1	General principles 1. Subject to the provisions of this	Art. 20 D.Lgs n. 30/07 as replaced by Art. 1.1 c) D.Lgs n.	Art. 20 (Limitazioni al diritto di ingresso e di soggiorno)	Art. 20 (Restrictions on the right of entry and the right of	N, Incorrect	Incorrect transposition

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

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
	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 health.	32/08 Art. 20.1 D.Lgs n. 30/07 Art. 20.2 D.Lgs n. 30/07 - Art. 18 Law n. 152/75 - Art. 18 Law n. 152/75 then refers to: - Law 1965, n.575 on provisions against Mafia - part I, title VI of book II of the criminal code - Articles 284,285,286,306,438, 439,605 and 630 of the criminal code - Law 1952,n. 645 on provisions transposing the XII temporary and final provisions (par 1) of the Constitution): Article 1 Law 1952,n. 645 - Law 2 October 1967, n.895 on provisions for the control of weapons - Articles 8 and following of Law 14 October 1974,n.497 on new provisions against criminality	1. Salvo quanto previsto dall'articolo 21, il diritto di ingresso e soggiorno dei cittadini dell'Unione o dei loro familiari, qualsiasi sia la loro cittadinanza, puo' essere limitato con apposito provvedimento solo per: motivi di sicurezza dello Stato; motivi imperativi di pubblica sicurezza; altri motivi di ordine pubblico o di pubblica sicurezza. 2. I motivi di sicurezza dello Stato sussistono anche quando la persona da allontanare appartiene ad una delle categorie di cui all'articolo 18 della legge 22 maggio 1975, n. 152, ovvero vi sono fondati motivi di ritenere che la sua permanenza nel territorio dello Stato possa in qualsiasi modo agevolare organizzazioni o attività terroristiche, anche internazionali. TESTI RICHIAMATI DALL' Art 20.2 D.Lgs n. 30/07 (Legge 22 maggio 1975, n. 152, disposizioni a tutela dell'ordine pubblico). Articolo 18 le disposizioni della legge 31 maggio 1965,n.575 [riguardanti disposizioni contro la mafia], si applicano anche a coloro che: 1) operanti in gruppi o isolatamente,pongano in essere	residence) 1. Except what provided for in Article 21, the right of entry and the right of residence of Union citizens and their family members, irrespective of nationality, may be restricted by suitable measure only on grounds of State security; imperative public security; other public order (public policy) or public security grounds. 2. State security grounds are also when the person who has to be expelled belongs to one of the categories referred to in Article 18 of Law 22 May 1975, n. 152, or when there are sounds grounds to believe that his/her permanence in the territory of the State may in anyway facilitate terrorist organisations or activities (that might be also international ones). PROVISIONS REFERRED TO BY Art. 20.2 D.Lgs n. 30/07 (Law 22 May 1975, n. 152, provisions on the protection of the public order). Article 18 Provisions of Law 1965, n.575 [on provisions against Mafia] will also apply to: 1) who acting within a group or alone, does preparatory acts that		COMMENT on transposition of Art. 27.1 of the Directive In general, the reference made by the Italian transposing provision, to a number of other Laws, decrees, codes, articles, etc, makes it difficult to comprehensibly understand for which crimes exactly an EU national may be expelled. Several behaviours might fit in the definitions and situations that are described and referred to by the Italian transposing provision. Below there is an analysis of the grounds that may be considered as public policy and public security (for public health see Article 29). These laws apply to both EU citizens and Nationals but different punitive measures apply to EU citizens (namely expulsion is the penalty applied to EU citizens). This is not in itself against EU law, since the ECJ has ruled in <i>Ministere de l'Interieur v. Olazabal</i> ² that EU law does not require that identical measures are taken against nationals and EU citizens. Furthermore the ECJ stated that MS may adopt "with respect to nationals of other Member States, and in particular on the grounds of public policy, measures which they cannot apply to their own nationals, inasmuch as they have no authority to expel the latter from the territory or to deny them access thereto".

² See Case C-100/01 *Ministere de l'Interieur v. Olazabal*. In particular par. 40
Milieu Ltd
Europa Institute, Edinburgh University

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

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
			atti preparatori, obiettivamente rilevanti, diretti a sovvertire l'ordinamento dello stato, con la commissione di uno dei reati previsti dal capo I titolo VI, del libro II del codice penale o dagli articoli 284, 285, 286, 306, 438, 439, 605 e 630 dello stesso codice; 2) abbiano fatto parte di associazioni politiche disciolte ai sensi della legge 20 giugno 1952, n. 645, e nei confronti dei quali debba ritenersi, per il comportamento successivo, che continuano a svolgere una attività analoga a quella precedente; 3) compiano atti preparatori, obiettivamente rilevanti, diretti alla ricostituzione del partito fascista	are objectively relevant (i.e., important), directed to disturb the State order, by committing one the crimes foreseen in part I, title VI of book II of the criminal code or one of the crimes foreseen in articles 284, 285, 286, 306, 438, 439, 605 and 630 of the same code; 2) who used to be part of political associations that according to Law of 20 June 1952, n. 645 (Law 1952, n. 645 on provisions transposing the XII temporary and final provisions (par 1) of the Constitution) have been dissolved and it is believed that for their subsequent behaviour, they continue carrying out an activity that is equivalent to the previous one; 3) who does preparatory acts that are objectively relevant (i.e., important), directed to the		However, despite the fact the MS have authority to take different measures (including expulsion of EU citizens), these have to comply with the Directive in particular with the principle of proportionality. The analysis below takes into account the ECJ jurisprudence and the Directive requirements to determine whether the grounds referred to by the Italian legislation and for which an expulsion measure may be adopted are in conformity with the Directive: 1. State Security grounds (Public security): The definition given by the Italian provisions of "State security" grounds cannot be considered in conformity with Directive. Each situation defined as grounds of state security are analysed in this section. Art. 20.2 of D.Lgs n. 30/07, defines State security grounds by reference to several Italian acts, including the

³ Case C-50/06 *Commission v Netherlands* par, 43. In this regard also *Rutili*, paragraph 28; *Bouchereau*, paragraph 35.

⁴ Case C-50/06 *Commission v Netherlands* par, 29 ("[...] the expulsion of such a citizen on grounds of public policy must be based on his personal conduct and **may not be justified by previous criminal convictions in themselves**), 41 ([...] "A previous criminal conviction can therefore be taken into account only in so far as the circumstances which gave rise to that conviction are evidence of personal conduct constituting a present threat to the requirements of public policy"), 44 ("According to the Court, Community law also precludes provisions of national law based on a presumption that nationals of other Member States who have received a particular sentence for specific offences must be expelled"), Case C- 493/01 Orfanopoulos par 93, joint cases C- 482/01 and C- 493/01, par. 67.

⁵ See XII provisional and final provision of the Italian Constitution that says: "The reorganisation of the dissolved fascist party, under whatever form, is banned/prohibited".

[In deroga all'articolo 48, sono stabilite con legge, per non oltre un quinquennio dalla entrata in vigore della Costituzione, limitazioni temporanee al diritto di voto e alla eleggibilità per i capi responsabili del regime fascista.]

⁶ E.g., C-348/96: *Calfa* par 23 "However, as the Court has repeatedly stated, the public policy exception, like all derogations from a fundamental principle of the Treaty, must be interpreted restrictively".

⁷ Case C- 100/01 *Ministere de l'Interieur v. Olazabal*. In that case, M. Olazabal, convicted of being a member of ETA (the Basque terrorist group) was prevented from staying on French territory because his presence was considered to be a menace for the public order. The court accepts this idea but curtails the rules France imposed upon Mr. Olazabal and only accepts some of them, the others being considered as encroaching too much on his fundamental right of freedom of circulation as a European citizen.

⁸ As Case C-50/06 *Commission v Netherlands* par 43, *Commission v. Spain*, par. 46, C-441/02 *Commission v. Germany*, par 35.

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

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
			<p>ai sensi dell'articolo 1 della citata legge n.645 del 1952,in particolare con l'esaltazione o la pratica della violenza;</p> <p>4) fuori dei casi indicati nei numeri precedenti,siano stati condannati per uno dei delitti previsti nella legge 2 ottobre 1967,n.895 ,e negli articoli 8 e seguenti della legge 14 ottobre 1974,n.497 ,e successive modificazioni,quando debba ritenersi,per il loro comportamento successivo,che siano proclivi a commettere un reato della stessa specie col fine indicato nel precedente n.1).</p> <p>le disposizioni di cui al precedente comma si applicano altresì agli istigatori,ai mandanti e ai finanziatori.</p> <p>è finanziatore colui il quale fornisce somme di denaro o altri beni,conoscendo lo scopo a cui sono destinati.</p> <p>TESTI RICHIAMATI DALL' Art 18 Legge 152/75</p> <p>- Legge 1965, n.575</p> <p>- capo I titolo VI ,del libro II del codice penale: Articoli 422 fino a 437:</p> <p>Art. 422 - Strage</p> <p>Chiunque, fuori dei casi preveduti dall'articolo 285, al fine di uccidere, compie atti tali da porre in pericolo la</p>	<p>reconstitution of the fascist party according to Article 1 of the mentioned Law 1952,n. 645, in particular using exaltation or violence;</p> <p>4) the persons who, excluded the cases referred to in the previous numbers, have been convicted for one of the crimes foreseen in the Law 2 October 1967, n.895 and in articles 8 and following of the Law 14 October 1974, n. 497 and further amendments, and it is believed that, for their subsequent behaviour, they are inclined to commit a crime of the same kind with the aim indicated in the previous n.1.</p> <p>The provisos of the previous par shall also apply to instigators, to principals and sponsors (financing!)</p> <p>Sponsor is who gives an amount of money or other goods knowing the purpose to which there are destined.</p> <p>PROVISIONS REFERRED TO BY Art. 18 Law n. /75</p> <p>- Law 1965, n.575</p> <p>- Chapter I Heading VI of Book II of the Criminal Code: Article 422 to 437:</p> <p>Article 422 - Slaughter</p> <p>Anyone who, except in the cases specified in Article 285, with the intention to kill, performs acts which endanger public</p>		<p>CPP and CP. Three situations are considered as grounds of State Security:</p> <p>1.1 Article 18 of Law 152/1975 which is the law against Mafia. This provision further refers to several crimes of the Criminal Code. The crimes referred by Art. 18 Law 152/75 are the following which can be grouped in 3 situation:</p> <p><i>a) preparatory acts (in group or alone) that are objectively relevant, aiming at subverting State order, by committing the following crimes of the CP:</i></p> <p>Article 422 - Slaughter</p> <p>Article 423 – Fire</p> <p>Art. 423 bis Forest fire</p> <p>Article 424 – Damage followed by fire</p> <p>Article 425 – Aggravating circumstances</p> <p>Article 426 – Floods, landslides and avalanches</p> <p>Article 427 – Damage followed by flood, landslide or avalanche</p> <p>Article 428 - Shipwreck, sinking or aviation disaster</p> <p>Article 429 – Damage followed by shipwreck</p> <p>Article 430 – Railway disaster</p> <p>Art. 431 – Danger of railway disaster caused by damage</p> <p>Article 432 – Attacks on the safety of transportation systems</p> <p>Article 433 – Attacks on the safety of electricity, gas and public communications installations</p> <p>Article 434 – Collapse of</p>

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

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
			<p>pubblica incolumità è punito, se dal fatto deriva la morte di più persone, con <i>[la morte]</i>. Se è cagionata la morte di una sola persona si applica l'ergastolo. In ogni altro caso si applica la reclusione non inferiore a quindici anni.</p> <p>Art. 423 - Incendio Chiunque cagiona un incendio è punito con la reclusione da tre a sette anni.</p> <p>La disposizione precedente si applica anche nel caso d'incendio della cosa propria, se dal fatto deriva pericolo per la incolumità pubblica.</p> <p>Art. 423-bis. Incendio boschivo. Chiunque cagioni un incendio su boschi, selve o foreste ovvero su vivai forestali destinati al rimboschimento, propri o altrui, è punito con la reclusione da quattro a dieci anni.</p> <p>Se l'incendio di cui al primo comma è cagionato per colpa, la pena è della reclusione da uno a cinque anni.</p> <p>Le pene previste dal primo e dal secondo comma sono aumentate se dall'incendio deriva pericolo per edifici o danno su aree protette.</p> <p>Le pene previste dal primo e dal secondo comma sono aumentate della metà, se dall'incendio deriva un danno grave, esteso e persistente all'ambiente.</p> <p>Art. 424 - Danneggiamento seguito da incendio</p>	<p>safety, shall be punished, if the act leads to the death of more than one person, to <i>[death]</i>. If this results in the death of one person, the punishment shall be life imprisonment. In all other cases, imprisonment shall be for no less than fifteen years.</p> <p>Article 423 - Fire Anyone who causes a fire shall be punished from three to seven years of imprisonment. The above provision shall also apply if the person causes a fire on his own property, if the fire constitutes a danger to public safety.</p> <p>Art. 423 bis Forest fire Anyone who causes a fire on forests, woods or forests or at the forest nurseries destined to reforestation, [own or others] is punished with imprisonment from four to ten years.</p> <p>If the fire referred to in the first par is caused by guilt (<i>colpa</i>), the sanction is imprisonment from one to five years.</p> <p>The penalties provided by the first and second paragraph are increased if from fire derives danger to buildings or damage on protected areas.</p> <p>The penalties provided by the first and second paragraph of increased met if from fire derives serious harm, extensive and persistent environment.</p> <p>Article 424 – Damage followed by fire Anyone who, with the sole</p>		<p>constructions or other malicious disasters</p> <p>Article 435 – Manufacture or ownership of explosives</p> <p>Article 436 – Removal, concealment or damage to public safety equipment</p> <p>Article 437 – Malicious removal or omission of protection against injury in the workplace</p> <p>Crimes against the State</p> <p>Article 284 CP. Armed insurrection against the powers of the State.</p> <p>Article 285 CP. Devastation, pillaging and slaughter.</p> <p>Article 286 CP. Civil war.</p> <p>Article 306. Armed gangs: formation and participation.</p> <p>Crimes against public safety</p> <p>Article 438. Epidemic.</p> <p>Article 439. Poisoning water or foodstuffs.</p> <p>Crimes against the person</p> <p>Article 605. Kidnapping</p> <p>Crimes against property</p> <p>Article 630. Kidnapping for purposes of robbery or extortion (as per Article 18 of Law 22 May 1975, n. 152)</p> <p>b) having being member of a dissolved fascist organisation, he continues carrying out an activity that may be considered equivalent to those carried out by the dissolved organisation (fascist meaning having antidemocratic objectives);</p> <p>c) carrying out preparatory acts aiming at the reconstitution of a fascist party (with antidemocratic objectives). In particular using</p>

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

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
			<p>Chiunque, al solo scopo di danneggiare la cosa altrui, appicca il fuoco a una cosa propria o altrui è punito, se del fatto sorge pericolo di un incendio, con la reclusione da sei mesi a due anni. Se segue l'incendio, si applicano le disposizioni dell'articolo precedente, ma la pena è ridotta da un terzo alla metà. Se al fuoco appiccato a boschi, selve e foreste, ovvero vivai forestali destinati al rimboschimento, segue incendio, si applicano le pene previste dall'articolo 423-bis.</p> <p>Art. 425 - Circostanze aggravanti Nei casi preveduti dai due articoli precedenti, la pena è aumentata se il fatto è commesso:</p> <p>1) su edifici pubblici o destinati a uso pubblico, su monumenti, cimiteri e loro dipendenze;</p> <p>2) su edifici abitati o destinati a uso di abitazione, su impianti industriali o cantieri, o su miniere, cave, sorgenti, o su acquedotti o altri manufatti destinati a raccogliere e condurre le acque;</p> <p>3) su navi o altri edifici natanti, o su aeromobili;</p> <p>4) su scali ferroviari o marittimi, o aeroscali, magazzini generali o altri depositi di</p>	<p>intention of damaging others' property, starts a fire on his or her own or another's property shall be punished from six months to two years' imprisonment if the act results in a fire hazard.</p> <p>If a fire is caused, the provisions of the previous Article shall apply, but reduced by one third to one half.</p> <p>Article 424 – Damage followed by fire Anyone who, with the sole intention of damaging others' property, starts a fire on his or her own or another's property shall be punished from six months to two years' imprisonment if the act results in a fire hazard.</p> <p>If a fire is caused, the provisions of the previous Article shall apply, but reduced by one third to one half.</p> <p>If the fire given to woods, woods and forests or forest nurseries for reforestation, follows fire, the sanctions under Article 423-bis apply.</p> <p>Article 425 – Aggravating circumstances Under the circumstances identified in Article 423 and 424, the penalty shall be increased if the act is performed:</p> <p>1) in a public building or a building for public use, in a monument, in a cemetery or in their appurtenances;</p> <p>2) in buildings that are inhabited</p>		<p>exaltation or violence; The following activities are considered as reconstitution of a fascist party: an attempt by an association, movement or group of no less than five people to pursue the anti-democratic ends of the fascist party, praising, threatening or using violence as a method of political struggle, promoting suppression of the freedoms guaranteed by the Constitution or denigrating democracy, its institutions and the values of the Resistance, distributing racist propaganda, directing its activities toward praise of the members, principles, acts and methods of the fascist party or conducting external manifestations of a fascist character.</p> <p>d) somebody not covered under (a)-(c) who has been convicted for a series of crimes (see below) and his subsequent behaviour it is believed that he aims at subvert State Order.</p> <p>The crimes committed are those referred to in Law n.895/1967 reproduced in the ToC which are basically crimes related to the detention of weapons, war weapons, chemical explosive materials and related trade or elaboration etc. and in Article 8 and following of Law 49/1974.</p> <p>This is a very good example of how intricate and malicious is the transposition made by Italy. Article 8 and <i>altera</i> of Law 49/1974 is actually</p>

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

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
			<p>merci o derrate, o su ammassi o depositi di materie esplodenti, infiammabili o combustibili; 5) su boschi, selve e foreste.</p> <p>Art. 426 - Inondazione, frana o valanga Chiunque cagiona una inondazione o una frana, ovvero la caduta di una valanga, è punito con la reclusione da cinque a dodici anni.</p> <p>Art. 427 - Danneggiamento seguito da inondazione, frana o valanga Chiunque rompe, deteriora o rende in tutto o in parte inservibili chiuse, sbarramenti, argini, dighe o altre opere destinate alla difesa contro le acque, valanghe o frane, ovvero alla raccolta o alla condotta delle acque, al solo scopo di danneggiamento, è punito, se dal fatto deriva il pericolo di una inondazione o di una frana, ovvero della caduta di una valanga, con la reclusione da uno a cinque anni. Se il disastro si verifica, la pena della reclusione è da tre a dieci anni.</p> <p>Art. 428 - Naufragio, sommersione o disastro a viatorio Chiunque cagiona il naufragio o la sommersione di una nave o di un altro edificio natante, ovvero la caduta di un</p>	<p>or intended for habitation, in industrial buildings or construction sites, or in mines, quarries, springs, aqueducts or other constructions in which water is collected and transported; 3) on ships or other waterborne craft, or in aircraft; 4) in railway stations or shipping terminals, airports, general warehouses or other storage facilities for goods or commodities, or masses or deposits of explosive, inflammable or combustible materials;</p> <p>Article 426 – Floods, landslides and avalanches Anyone guilty of causing a flood, a landslide, or an avalanche, shall be punished from five to twelve years' imprisonment.</p> <p>Article 427 – Damage followed by flood, landslide or avalanche Anyone who breaks, deteriorates or makes wholly or partly unserviceable locks, dams, embankments, dykes or other works for protection against water, avalanche or landslide, or for the collection and conveyance of water, with the sole intention of damaging them, shall be punished from one to five years' imprisonment if the act results in danger of flood, landslide or avalanche. If the disaster occurs, the prison</p>		<p>modifying another Law, 1423/1956 (on measures against persons dangerous to public security and morality). Even then, Article 8 refer to Article 9 of Law 1423/1956 which simply states the sanctions but not the actual crimes that have to be committed to trigger the application of point d) above discussed that will lead to an expulsion measure. When analysing Article 9, the crimes are those listed in Article 1 of Law 1423/1956 which includes:</p> <p>- crimes including offences to physical or moral integrity of minors and public health, safety or tranquillity (and who is habitually dedicated to unlawful dealings, who habitually lives, even in part, on income from criminal activities)</p> <p>[ANALYSIS: based on proportionality and so on]</p> <p>As shown above any crimes may lead to expulsion measure. Points (a) to (c) discussed above could be considered as complying with the principle of proportionality since it is related to a form of organised crime (Mafia) that is one of the main concerns in Italy and is heavily fought against. However, as seen above (d) includes all types of crimes, including those that could be considered petty criminality. Almost anything could therefore be considered as a crime against State Security. Basically, the law (in</p>

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

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
			<p>aeromobile, di altrui proprietà, è punito con la reclusione da cinque a dodici anni.</p> <p>La pena è della reclusione da cinque a quindici anni se il fatto è commesso distruggendo, rimuovendo o facendo mancare le lanterne o altri segnali, ovvero adoperando falsi segnali o altri mezzi fraudolenti.</p> <p>Le disposizioni di questo articolo si applicano anche a chi cagiona il naufragio o la sommersione di una nave o di un altro edificio natante, ovvero la caduta di un aeromobile, di sua proprietà, se dal fatto deriva pericolo per la incolumità pubblica.</p> <p>Art. 429 - Danneggiamento seguito da naufragio</p> <p>Chiunque, al solo scopo di danneggiare una nave, un'edificio natante o un aeromobile, ovvero un apparecchio prescritto per la sicurezza della navigazione, lo deteriora, ovvero lo rende in tutto o in parte inservibile, è punito, se dal fatto deriva pericolo di naufragio, di sommersione o di disastro aereo, con la reclusione da uno a cinque anni.</p> <p>Se dal fatto deriva il naufragio, la sommersione o il disastro, la pena è della reclusione da tre a dieci anni.</p>	<p>term shall be from three to ten years.</p> <p>Article 428 - Shipwreck, sinking or aviation disaster</p> <p>Anyone guilty of causing a shipwreck or the sinking of a ship or other waterborne craft, or the fall of aircraft owned by another, shall be punished to five to twelve years' imprisonment.</p> <p>The prison term shall be from five to fifteen years if the act is committed by destroying, removing or eliminating lanterns or other signals, or by using false signals or other fraudulent means.</p> <p>The provisions of this Article shall also apply to anyone guilty of causing a shipwreck or the sinking of a ship or other waterborne craft, or the fall of aircraft owned by himself, if the act results in a danger to public safety.</p> <p>Article 429 – Damage followed by shipwreck</p> <p>Anyone who, with the sole intention of damaging a ship, other waterborne craft or aircraft, or an item of equipment intended to permit safe navigation, causes deterioration or makes it wholly or partly unserviceable shall be punished to one to five years' imprisonment if the act results in danger of shipwreck, sinking or aviation disaster.</p> <p>If the shipwreck, sinking or aviation disaster occurs, the</p>		<p>particular Law 1423/1956) refers to any type of illegal traffic (which may be drugs but also waste, wild life and any other activity that could be considered as illegal traffic). Of course this is linked to the aim of subverting the State order. However, there is no definition of State order and some of the behaviours listed in Law 1423/1956 imply a very broad understanding of State order. For example, one of the behaviours is to live from the benefits obtained from the commission of crimes. This could easily include thieves whose main living resources come from stealing (thus a crime). Similarly, the law also includes acts against the physical and moral integrity of persons. Again, this shows that State order could be a simply alteration of the public social order in Italy. This is clearly against the ECJ case law³ that in the Case 50/06, ruled that not a simple “perturbation of the social order” as the Court rules in the Case 50/06, “reliance by a national authority on the concept of public policy presupposes, in any event, the existence, in addition to the perturbation of the social order which any infringement of the law involves, of a genuine and sufficiently serious threat to one of the fundamental interests of society”.</p> <p>Moreover, although the convictions for the crimes referred are not (from the literal analysis of the text) a ground of expulsion themselves, it is difficult to know how in practice</p>

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

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
			<p>Art. 430 - Disastro ferroviario Chiunque cagiona un disastro ferroviario è punito con la reclusione da cinque a quindici anni.</p> <p>Art. 431 - Pericolo di disastro ferroviario causato da danneggiamento Chiunque, al solo scopo di danneggiare una strada ferrata ovvero macchine, veicoli, strumenti, apparecchi o altri oggetti che servono all'esercizio di essa, li distrugge in tutto o in parte, li deteriora o li rende altrimenti in tutto o in parte inservibili, è punito, se dal fatto deriva il pericolo di un disastro ferroviario, con la reclusione da due a sei anni. Se dal fatto deriva il disastro, la pena è della reclusione da tre a dieci anni. Per "strade ferrate" la legge penale intende, oltre le strade ferrate ordinarie, ogni altra strada con rotaie metalliche, sulla quale circolino veicoli mossi dal vapore, dalla elettricità o da altro mezzo di trazione meccanica.</p> <p>Art. 432 - Attentati alla sicurezza dei trasporti Chiunque, fuori dei casi preveduti dagli articoli precedenti, pone in pericolo la sicurezza dei pubblici trasporti per terra, per acqua o per aria, è punito con la reclusione da uno a cinque anni. Si applica la reclusione da tre</p>	<p>prison term shall be from three to ten years.</p> <p>Article 430 – Railway disaster Anyone guilty of causing a railway disaster shall be punished from five to fifteen years' imprisonment.</p> <p>Art. 431 – Danger of railway disaster caused by damage Anyone who, with the sole intention of damaging a railway or machines, vehicles, instruments, devices or other objects for the operation of the railway, destroys them entirely or in part, causes deterioration or makes them wholly or partly inoperable shall be punished to two to six years' imprisonment if the act results in the risk of railway disaster. If the railway disaster occurs, the prison term shall be from three to ten years. For the purposes of criminal law, the term "railway" includes not only ordinary railways but all other metal tracks on which vehicles powered by steam, electricity or other mechanical means of traction travel.</p> <p>Article 432 – Attacks on the safety of transportation systems Anyone who, except in the cases identified in the previous Article s, endangers the safety of public transportation by land, sea or air shall be punished to one to five years' imprisonment. Anyone who casts a blunt</p>		<p>those convictions are considered while deciding whether to expel an EU national. In this regard settled case law has confirmed that previous criminal convictions cannot themselves constitute a justification for expulsion on public policy ground.⁴</p> <p>No particular issue arise concerning the grounds specified in point b) and c) such as carrying out and activity equivalent to that carried out by the dissolved fascist organisation and the reconstruction of the fascist party⁵ itself since it is reasonable to consider them as a state security reason having antidemocratic objectives and the use violence.</p> <p>1.2. Facilitate terrorist organisations or activities</p> <p>The “sounds grounds” “reasonable grounds” (<i>fondati motivi</i>) [to believe that the permanence in the territory of the State may in anyway facilitate terrorist organisations or activities], referred by Art. 20.2 as a State security ground for expulsion implies that not just a “suspect” is enough to take an expulsion measure; the behaviour will be assessed restrictively, in accordance with the scope of the Directive’s provision and the ECJ case law.⁶</p> <p>In relation to terrorist activities the court in the case <i>Ministere de l’Interieur v. Olazabal</i>⁷ accepted the</p>

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

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
			<p>mesi a due anni a chi lancia corpi contundenti o proiettili contro veicoli in movimento, destinati a pubblici trasporti per terra, per acqua o per aria.</p> <p>Se dal fatto deriva un disastro, la pena è della reclusione da tre a dieci anni.</p> <p>Art. 433 - Attentati alla sicurezza degli impianti di energia elettrica e del gas, ovvero delle pubbliche comunicazioni</p> <p>Chiunque attenta alla sicurezza delle officine, delle opere, degli apparecchi o di altri mezzi destinati alla produzione o alla trasmissione di energia elettrica o di gas, per la illuminazione o per le industrie, è punito, qualora dal fatto derivi pericolo alla pubblica incolumità, con la reclusione da uno a cinque anni.</p> <p>La stessa pena si applica a chi attenta alla sicurezza delle pubbliche comunicazioni telegrafiche, qualora dal fatto derivi pericolo per la pubblica incolumità.</p> <p>Se dal fatto deriva un disastro, la pena è della reclusione da tre a dieci anni.</p> <p>Art. 434 - Crollo di costruzioni o altri disastri dolosi</p> <p>Chiunque, fuori dei casi preveduti dagli articoli precedenti, commette un fatto diretto</p>	<p>instrument or projectile against a moving vehicle intended for public transportation by land, sea or air shall be punished to three months' to two years' imprisonment.</p> <p>If the act causes a disaster, the prison term shall be three to ten years.</p> <p>Article 433 – Attacks on the safety of electricity, gas and public communications installations</p> <p>Anyone who attacks the safety of workshops, works, devices or equipment for the generation or transmission of electrical energy or natural gas, for lighting or for industries, shall be punished to one to five years' imprisonment if the act endangers public safety.</p> <p>The same sentence shall apply to persons who attack the safety of public telegraph communications, if the attack constitutes a danger to public safety.</p> <p>If the act causes a disaster, the prison term shall be from three to ten years.</p> <p>Article 434 – Collapse of constructions or other malicious disasters</p> <p>Anyone who, except in the cases described in the previous Article s, commits an act aimed at causing collapse of a construction or part thereof or another disaster shall be punished from one to five years'</p>		<p>fact that the person concerned who was a member of the ETA (terrorist organisation) was a threat to public policy.</p> <p>1.3. The open clause</p> <p>On top of that the Italian Law includes an open clause when defining State security grounds since it says "State security grounds are ALSO [...]". This is very ambiguous since it is not clear which should be/are those other grounds (apart from those commented above which are already very general and broad).</p> <p>This implies that the person applying the legislation has an enormous flexibility to include any other crime a State Security issues. This is a crucial issue that renders transposition incorrect.</p> <p>1.4. The recent reform</p> <p>In addition, the recent reform adopted 23 May 2008 as amended by Law n. 125/2008 has modified the Criminal code (Article 235 and 312) to include EU citizens.</p> <p>The two mentioned provisions are establishing an automatic expulsion which is in conflict with the Directive and the ECJ ruling in <i>Calfa and Commission v Netherlands</i>).</p> <p>Amongst the other amendments made</p>

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

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
			<p>a cagionare il crollo di una costruzione o di una parte di essa ovvero un altro disastro è punito, se dal fatto deriva pericolo per la pubblica incolumità, con la reclusione da uno a cinque anni.</p> <p>La pena è della reclusione da tre a dodici anni se il crollo o il disastro avviene.</p> <p>Art. 435 - Fabbricazione o detenzione di materie esplodenti Chiunque, al fine di attentare alla pubblica incolumità, fabbrica, acquista o detiene dinamite o altre materie esplodenti, asfissianti, accecanti, tossiche o infiammabili, ovvero sostanze che servono alla composizione o alla fabbricazione di esse, è punito con la reclusione da uno a cinque anni.</p> <p>Art. 436 - Sottrazione, occultamento o guasto di apparecchi a pubblica difesa da infortuni Chiunque, in occasione di un incendio, di una inondazione, di una sommersione, di un naufragio, o di un altro disastro o pubblico infortunio, sottrae, occulta o rende inservibili materiali, apparecchi o altri mezzi destinati all'estinzione dell'incendio o all'opera di difesa, di salvataggio o di soccorso, ovvero in qualsiasi modo impedisce, od ostacola, che l'incendio sia estinto, o che sia</p>	<p>imprisonment if the act results in a danger to public safety.</p> <p>If the collapse or disaster occurs, the prison term shall be from three to twelve years.</p> <p>Article 435 – Manufacture or ownership of explosives Anyone who manufactures, purchases or possesses dynamite or other explosive, asphyxiating, blinding, toxic or inflammable materials or substances included in the composition thereof or which may be used to manufacture them with the aim of attacking public safety shall be punished from one to five years' imprisonment.</p> <p>Article 436 – Removal, concealment or damage to public safety equipment Anyone who removes, conceals or renders unusable any materials, equipment or other items intended for extinguishing fire or for protection, rescue and aid during a fire, flood, sinking, shipwreck or other disaster or danger to public safety or acts in any way to prevent or hinder the extinguishing of a fire or the provision of protection and assistance services shall be punished from two to seven years' imprisonment.</p> <p>Article 437 – Malicious removal or omission of protection against injury in the workplace Anyone who omits to install systems, equipment or signals</p>		<p>by the recent reform there is a paragraph added to Article 61 of the CP on aggravating circumstances. In particular par. 11-bis that has been added creates an aggravating circumstance for persons committing a crime who are illegally in the territory of Italy. This provision can have a significant impact on EU citizens and their family members (For a more detailed analysis of the non conformity problems see CS).</p> <p>The other problem with the Italian transposing provision is the lack of reference to “sufficiently serious threat” when referring to the personal conduct of the individual concerned. The importance of such requirement has also been confirmed by several ECJ case law⁸. This omission renders the transposition of the whole Article 27 as incorrect and incomplete.</p> <p>Another issue that is important to mention when assessing the incorrect transposition of Article 27 of the Directive and that will be discussed under Art. 28(3), is the definition given by the Italian legislation to “imperative public security grounds“. For instance the crimes of the Law 1423/56 (that is crimes consisting of offences to physical and moral integrity of minors, and public security, and public health, safety or tranquillity), are also considered when adopting an expulsion measure</p>

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

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
			<p>prestata opera di difesa o di assistenza, è punito con la reclusione da due a sette anni.</p> <p>Art. 437 - Rimozione od omissione dolosa di cautele contro infortuni sul lavoro</p> <p>Chiunque omette di collocare impianti, apparecchi o segnali destinati a prevenire disastri o infortuni sul lavoro, ovvero li rimuove o li danneggia, è punito con la reclusione da sei mesi a cinque anni.</p> <p>Se dal fatto deriva un disastro o un infortunio, la pena è della reclusione da tre a dieci anni.</p> <p>- Articoli 284,285,286,306,438, 439,605 and 630 del CP:</p> <p>Delitti contro la personalita' della Stato</p> <p>Art. 284. CP Insurrezione armata contro i poteri dello Stato.</p> <p>Chiunque promuove un'insurrezione armata contro i poteri dello Stato è punito con l'ergastolo e, se l'insurrezione avviene, con la morte ⁽¹⁾. Coloro che partecipano all'insurrezione sono puniti con la reclusione da tre a quindici anni; coloro che la dirigono, con la morte.</p> <p>L'insurrezione si considera armata anche se le armi sono soltanto tenute in un luogo di deposito.</p> <p>(1) La pena di morte per i delitti previsti dal codice penale è stata</p>	<p>intended to prevent disasters or injuries in the workplace, or removes or damages them, shall be punished from six months' to five years' imprisonment.</p> <p>If the act causes disaster or injury, the prison term shall be from three to ten years.</p> <p>- Article 284,285,286,306,438, 439,605 and 630 of the CP:</p> <p>Crimes against the State</p> <p>Article 284 CP. Armed insurrection against the powers of the State.</p> <p>Anyone who promotes armed insurrection against the powers of the State shall be punished to life imprisonment and, if the insurrection takes place, to death ⁽¹⁾. Anyone who participates in an insurrection shall be punished to three to fifteen years' imprisonment; those who lead it shall be punished to death.</p> <p>An insurrection is considered armed even if the arms are kept in storage.</p> <p>(1) The death penalty was abolished for offences for which</p>		<p>on imperative public security grounds. And this represents even a bigger issue of incorrectness leading to take measures that are not proportionate.</p> <p>Finally, there is a minor incorrectness since Art. 20 of the transposing act fails to mention "public health" that is however transposed in the relevant Article (Article 20.6 of D.Lgs n. 30/07).</p> <p>It can therefore be concluded that considering the wideness of the circumstances that are relevant for taking an expulsion measure, the authority/person applying the legislation has a flexibility that will allow him to very easily expel EU nationals.</p>

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

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
			<p>abolita dal D.Lgs.Lgt. n. 224/1944.</p> <p>Art. 285. CP Devastazione, saccheggio e strage.</p> <p>Chiunque, allo scopo di attentare alla sicurezza dello Stato commette un fatto diretto a portare la devastazione, il saccheggio o la strage nel territorio dello Stato o in una parte di esso è punito con la morte ⁽¹⁾.</p> <p>(1) La pena di morte per i delitti previsti dal codice penale è stata abolita dal D.Lgs.Lgt. n. 224/1944.</p> <p>Art. 286. CP Guerra civile.</p> <p>Chiunque commette un fatto diretto a suscitare la guerra civile nel territorio dello Stato è punito con l'ergastolo.</p> <p>Se la guerra civile avviene, il colpevole è punito con la morte ⁽¹⁾.</p> <p>(1) La pena di morte per i delitti previsti dal codice penale è stata abolita dal D.Lgs.Lgt. n. 224/1944.</p> <p>Art. 306. Banda armata: formazione e partecipazione.</p> <p>Quando, per commettere uno dei delitti indicati nell'articolo 302, si forma una banda armata, coloro che la promuovono o costituiscono od organizzano, soggiacciono, per ciò solo alla pena della reclusione da cinque a quindici anni.</p> <p>Per il solo fatto di partecipare alla banda armata la pena è della reclusione da tre a nove anni.</p> <p>I capi o i sovventori della banda</p>	<p>it is specified in the criminal code under Legislative Decree no. 224/1944.</p> <p>Article 285 CP. Devastation, pillaging and slaughter.</p> <p>Anyone who attacks the security of the State with attempted devastation, pillaging and slaughter within the territory of the State or a part thereof shall be punished by death ⁽¹⁾.</p> <p>Article 286 CP. Civil war.</p> <p>Anyone who attempts to instigate civil war in the territory of the State shall be punished to life imprisonment.</p> <p>(1) The death penalty was abolished for offences for which it is specified in the criminal code under Legislative Decree no. 224/1944.</p> <p>Article 306. Armed gangs: formation and participation.</p> <p>Anyone who promotes, establishes or organises an armed gang in order to commit one of the offences identified in Article 302 shall be subject to five to fifteen years' imprisonment solely for this crime.</p> <p>The sole fact of participation in an armed gang shall be punishable by three to nine years' imprisonment.</p> <p>The leaders or financiers of the armed gang shall be subject to the same sentence as the promoters thereof.</p> <p>Crimes against public safety</p> <p>Article 438. Epidemic.</p>		

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

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
			<p>armata soggiacciono alla stessa pena stabilita per i promotori.</p> <p>Delitti contro l'incolumita' pubblica</p> <p>Art. 438. Epidemia.</p> <p>Chiunque cagiona un'epidemia mediante la diffusione di germi patogeni è punito con l'ergastolo. Se dal fatto deriva la morte di più persone, si applica la pena di morte. ⁽¹⁾</p> <p>La pena di morte per i delitti previsti dal codice penale è stata abolita dall'art. 1 del D.Lgs.Lgt. 10 agosto 1944, n. 224.</p> <p>Art. 439. Avvelenamento di acque o di sostanze alimentari.</p> <p>Chiunque avvelena acque o sostanze destinate all'alimentazione, prima che siano attinte o distribuite per il consumo, è punito con la reclusione non inferiore a quindici anni.</p> <p>Se dal fatto deriva la morte di alcuno, si applica l'ergastolo; e, nel caso di morte di più persone, si applica la pena di morte. ⁽¹⁾</p> <p>(1) La pena di morte per i delitti previsti dal codice penale è stata abolita dall'art. 1 del D.Lgs.Lgt. 10 agosto 1944, n. 224.</p> <p>Delitti contro la persona</p> <p>Art. 605. Sequestro di persona</p> <p>Chiunque priva taluno della libertà personale è punito con la reclusione da sei mesi a otto anni. La pena è della reclusione da uno a dieci anni, se il fatto è</p>	<p>Causing an epidemic by disseminating pathogenic germs shall be punishable with life imprisonment. If the event results in death of more than one person, the punishment will be death. ⁽¹⁾</p> <p>Article 439. Poisoning water or foodstuffs.</p> <p>Anyone who poisons water or foodstuffs before they are obtained or distributed for consumption shall be punished to no less than fifteen years' imprisonment.</p> <p>If the act results in death of any person, imprisonment shall be for life; if the act results in death of more than one person, it shall be punishable with death. ⁽¹⁾</p> <p>Crimes against the person</p> <p>Article 605. Kidnapping</p> <p>Anyone who deprives a person of their personal freedom shall be punished to six months' to eight years' imprisonment. Imprisonment shall be for one to ten years if the act is committed:</p> <p>1. against a parent or grandparent, child or grandchild, or a spouse; 2. by a public official abusing the powers inherent in his or her position.</p> <p>Crimes against property</p> <p>Article 630. Kidnapping for purposes of robbery or extortion</p> <p>Anyone who unlawfully detains a person in order to obtain undue gains for himself or another person as the price for releasing the hostage shall be punished</p>		

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

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
			<p>compresso:</p> <p>1. in danno di un ascendente, di un discendente, o del coniuge;</p> <p>2. da un pubblico ufficiale, con abuso dei poteri inerenti alle sue funzioni.</p> <p>Delitti contro il patrimonio</p> <p>Art. 630. Sequestro di persona a scopo di rapina o di estorsione.</p> <p>Chiunque sequestra una persona allo scopo di conseguire, per sé o per altri, un ingiusto profitto come prezzo della liberazione, è punito con la reclusione da venticinque a trenta anni.</p> <p>Se dal sequestro deriva comunque la morte, quale conseguenza non voluta dal reo, della persona sequestrata, il colpevole è punito con la reclusione di anni trenta.</p> <p>Se il colpevole cagiona la morte del sequestrato si applica la pena dell'ergastolo.</p> <p>Al concorrente che, dissociandosi dagli altri, si adopera in modo che il soggetto passivo riacquisti la libertà, senza che tale risultato sia conseguenza del prezzo della liberazione, si applicano le pene previste dall'articolo 605. Se tuttavia il soggetto passivo muore, in conseguenza del sequestro, dopo la liberazione, la pena è della reclusione da sei a quindici anni.</p> <p>Nei confronti del concorrente che, dissociandosi dagli altri, si adopera, al di fuori del caso previsto dal comma precedente, per evitare che l'attività delittuosa sia portata a conseguenze ulteriori</p>	<p>from twenty-five to thirty years' imprisonment.</p> <p>If unlawful imprisonment results in death of the hostage, as an unintended consequence, the guilty party shall be punished from thirty years' imprisonment.</p> <p>If the guilty party causes the death of the unlawfully detained person, the punishment will be imprisonment for life.</p> <p>If a person taking part in the kidnapping disassociates himself from the others and acts to restore the freedom of the unlawfully detained person without collecting the ransom, the penalties specified in Article 605 shall apply. If the unlawfully detained person dies after release, as a result of the kidnapping, the sentence shall be six to fifteen years' imprisonment.</p> <p>If a person taking part in the kidnapping disassociates himself from the others and acts, differently from the way specified in the previous paragraph, to prevent further consequences of the crime or in a practical way to help the police or court authorities to collect conclusive evidence permitting the identification or capture of the other parties involved, life imprisonment shall be reduced to a twelve- to twenty-year prison term and other prison terms shall be reduced by one third to two thirds.</p>		

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

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
			<p>ovvero aiuta concretamente l'autorità di polizia o l'autorità giudiziaria nella raccolta di prove decisive per l'individuazione o la cattura dei concorrenti, la pena dell'ergastolo è sostituita da quella della reclusione da dodici a venti anni e le altre pene sono diminuite da un terzo a due terzi. Quando ricorre una circostanza attenuante, alla pena prevista dal secondo comma è sostituita la reclusione da venti a ventiquattro anni; alla pena prevista dal terzo comma è sostituita la reclusione da ventiquattro a trenta anni. Se concorrono più circostanze attenuanti, la pena da applicare per effetto delle diminuzioni non può essere inferiore a dieci anni, nell'ipotesi prevista dal secondo comma, ed a quindici anni, nell'ipotesi prevista dal terzo comma.</p> <p>I limiti di pena previsti nel comma precedente possono essere superati allorché ricorrono le circostanze attenuanti di cui al quinto comma del presente articolo.</p> <p>be considered dedicated to committing crimes that offend or endanger the physical or moral integrity of minors and public health, safety or tranquillity</p> <p>- Legge 1952, n. 645 Articolo 1</p>	<p>If there are attenuating circumstances, the penalty identified in the second paragraph shall be replaced with imprisonment from twenty to twenty-four years; the penalty identified in the third paragraph shall be replaced with imprisonment from twenty-four to thirty years. In the presence of several attenuating circumstances, the penalty applicable as a result of decreasing the sentence may not be less than ten years, under the circumstances envisaged in the second paragraph, or fifteen years, under the circumstances envisaged in the third paragraph. The limits on the penalty set in the previous paragraph may be exceeded in the presence of the attenuating circumstances identified in the fifth paragraph of this Article.</p> <p>- Law of 20 June 1952, n. 645 Article 1</p>		

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

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
			<p>1. Riorganizzazione del disciolto partito fascista.</p> <p>Ai fini della XII disposizione transitoria e finale (comma primo) della Costituzione, si ha riorganizzazione del disciolto partito fascista quando una associazione, un movimento o comunque un gruppo di persone non inferiore a cinque persegue finalità antidemocratiche proprie del partito fascista, esaltando, minacciando o usando la violenza quale metodo di lotta politica o propugnando la soppressione delle libertà garantite dalla Costituzione o denigrando la democrazia, le sue istituzioni e i valori della Resistenza, o svolgendo propaganda razzista, ovvero rivolge la sua attività alla esaltazione di esponenti, principi, fatti e metodi propri del predetto partito o compie manifestazioni esteriori di carattere fascista.</p> <p>Legge del 1967, n.895 Art. 1.</p> <p>Chiunque senza licenza dell'autorità fabbrica o introduce nello Stato o pone in vendita o cede a qualsiasi titolo armi da guerra o tipo guerra, o parti di esse, atte all'impiego, munizioni da guerra, esplosivi di ogni genere, aggressivi chimici o altri congegni micidiali, ovvero ne fa</p>	<p>1. Reorganisation of the dissolved fascist party.</p> <p>For the purposes of the XII temporary and final provision (paragraph one) of the Constitution, the reorganisation of the dissolved fascist party is defined as an attempt by an association, movement or group of no less than five people to pursue the anti-democratic ends of the fascist party, praising, threatening or using violence as a method of political struggle, promoting suppression of the freedoms guaranteed by the Constitution or denigrating democracy, its institutions and the values of the Resistance, distributing racist propaganda, directing its activities toward praise of the members, principles, acts and methods of the fascist party or conducting external manifestations of a fascist character.</p> <p>- Law 2 October 1967, n.895 Article 1.</p> <p>Anyone who manufactures, introduces into the State, sells or transfers weapons of war or parts thereof suitable for use, war ammunition, explosives of all kinds, chemical weapons or other lethal devices without a licence from the authorities or collects them shall be punished</p>		

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

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
			<p>raccolta, è punito con la reclusione da tre a dodici anni e con la multa da lire 800.000 a lire 4.000.000 .</p> <p>Art. 2.</p> <p>Chiunque illegalmente detiene a qualsiasi titolo le armi o parti di esse, le munizioni, gli esplosivi, gli aggressivi chimici e i congegni indicati nell'articolo precedente è punito con la reclusione da uno a otto anni e con la multa da lire 400.000 a lire 3.000.000 (</p> <p>Art. 2 bis (1)</p> <p>1. Chiunque fuori dei casi consentiti da disposizioni di legge o di regolamento addestra taluno o fornisce istruzioni in qualsiasi forma, anche anonima, o per via telematica sulla preparazione o sull'uso di materiali esplosivi, di armi da guerra, di aggressivi chimici o di sostanze batteriologiche nocive o pericolose e di altri congegni micidiali è punito, salvo che il fatto costituisca più grave reato, con la reclusione da uno a sei anni.</p> <p>Art. 3.</p> <p>Chiunque trasgredisce all'ordine, legalmente dato dall'autorità, di consegnare nei termini prescritti le armi o parti di esse, le munizioni, gli esplosivi, gli aggressivi chimici e i congegni indicati nell'articolo 1, da lui detenuti legittimamente sino al momento dell'emanazione dell'ordine, è punito con la reclusione da uno a otto anni e</p>	<p>to three to twelve years' imprisonment and a fine of 800,000 lire to 4,000,000 lire (1) (2).</p> <p>(1) The fine was raised to this amount by Article 113, paragraph four of law no. 689 on November 24 1981. The sanction may not be decriminalised under Article 32, paragraph two of the above-mentioned law 689/1981.</p> <p>(2) Article so replaced by Article 9 of law no. 497 on October 14 1974.</p> <p>Article 2.</p> <p>Anyone who illegally possesses arms or parts thereof, munitions, explosives, chemical weapons or other lethal devices identified in the previous Article shall be punished to one to eight years' imprisonment and a fine of 400,000 lire to 3,000,000 lire (1) (2).</p> <p>(1) The fine was increased to this amount by Article 113, paragraph four of law no. 689 on November 24 1981. The sanction may not be decriminalised under Article 32, paragraph two of the above-mentioned law 689/1981.</p> <p>(2) Article thus replaced by Article 10 of law no. 497 on October 14 1974.</p> <p>Article 2 b (1).</p> <p>1. Anyone who, other than in those cases permitted by provisions of the law or regulations, trains people or</p>		

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

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
			<p>con la multa da lire 400.000 a lire 3.000.000</p> <p>Art. 4.</p> <p>Chiunque illegalmente porta in luogo pubblico o aperto al pubblico le armi o parti di esse, le munizioni, gli esplosivi, gli aggressivi chimici e i congegni indicati nell'articolo 1, è punito con la reclusione da due a dieci anni e con la multa da lire 400.000 a lire 4.000.000</p> <p>La pena è aumentata se il fatto è commesso da due o più persone o in luogo in cui sia concorso o adunanza di persone o di notte in luogo abitato</p> <p>Art. 5.</p> <p>Le pene stabilite negli articoli precedenti possono essere diminuite in misura non eccedente i due terzi quando per la quantità o per la qualità delle armi, delle munizioni, esplosivi o aggressivi chimici, il fatto debba ritenersi di lieve entità. In ogni caso, la reclusione non può essere inferiore a sei mesi.</p> <p>Art. 6.</p> <p>Chiunque, al fine di incutere pubblico timore o di suscitare tumulto o pubblico disordine o di attentare alla sicurezza pubblica, fa esplodere colpi di arma da fuoco o fa scoppiare bombe o altri ordigni o materie esplodenti, è punito, se il fatto non costituisce più grave reato, con la reclusione da uno a otto anni</p> <p>Art. 7.</p> <p>Le pene rispettivamente stabilite</p>	<p>provides instructions in any form, even in anonymous form or via telecommunications, regarding the preparation and use of explosives, weapons of war, chemical weapons, harmful or dangerous bacteriological substances or other lethal devices shall be punished to one to six years' imprisonment, unless their actions constitute a more serious crime.</p> <p>(1) Article added by Article 8 of Decree Law no. 144 on July 27 2005, converted into law.</p> <p>Article 3.</p> <p>Anyone who transgresses the authorities' legally given order to turn in weapons or parts thereof, munitions, explosives, chemical weapons or other lethal devices identified in Article 1 legitimately possessed until the order is issued shall be punished to one to eight years' imprisonment and a fine of 400,000 lire to 3,000,000 lire (1) (2).</p> <p>(1) The fine was increased to this amount by Article 113, paragraph four of law no. 689 on November 24 1981. The sanction may not be decriminalised under Article 32, paragraph two of the above-mentioned law 689/1981.</p> <p>(2) Article thus replaced by Article 11 of law no. 497 on October 14 1974.</p> <p>Article 4.</p> <p>Anyone who illegally takes arms</p>		

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

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
			<p>negli articoli precedenti sono ridotte di un terzo se i fatti ivi previsti si riferiscono alle armi comuni da sparo, o a parti di esse, atte all'impiego, di cui all'articolo 44 del regio decreto 6 maggio 1940, n. 635.</p> <p>Le pene stabilite nel codice penale per le contravvenzioni alle norme concernenti le armi non contemplate dalla presente legge sono triplicate. In ogni caso l'arresto non può essere inferiore a tre mesi</p> <p>Art. 8.</p> <p>Non è punibile chi, entro trenta giorni dall'entrata in vigore della presente legge e prima dell'accertamento del reato, consegna le armi o parti di esse, le munizioni, gli esplosivi e gli altri congegni micidiali illegalmente detenuti, indicati nel precedente art. 1 o nell'art. 695 del Codice penale.</p> <p>Art. 9.</p> <p>Per i reati previsti dalla presente legge si procede a giudizio direttissimo.</p>	<p>or parts thereof, munitions, explosives, chemical weapons or other lethal devices identified in Article 1 into a public place or a place open to the public shall be punished to two to ten years' imprisonment and a fine of 400,000 lire to 4,000,000 lire (1).</p> <p>The sentence shall be increased if the offence is committed by two or more people or in a place in which there are crowds or groups of people or by night in an inhabited place (2).</p> <p>(1) The fine was increased to this amount by Article 113, paragraph four of law no. 689 on November 24 1981. The sanction may not be decriminalised under Article 32, paragraph two of the above-mentioned law 689/1981.</p> <p>(2) Article thus replaced by Article 12 of law no. 497 on October 14 1974.</p> <p>Article 5.</p> <p>The penalties set forth in the previous Articles may be decreased by no more than two thirds if the quantity or quality of the arms, munitions, explosives or aggressive chemicals make the offence less grave. In all cases imprisonment shall be for no less than six months.</p> <p>Article 6.</p> <p>Anyone who shoots a firearm or detonates bombs or other explosives in order to create</p>		

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

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
				<p>panic among the public or to give rise to a riot or public disorder or to attack public safety shall, if the act does not constitute a more serious crime, be punished with imprisonment from one to eight years(1). (1) Article thus replaced by Article 13 of law no. 497 on October 14 1974. Article 7. The sentences established in each of the above Articles shall be reduced by one third if the acts identified in them are performed with ordinary firearms or parts thereof which were approved for use under Article 44 of Royal Decree no. 635 on May 6 1940. The penalties established in the criminal code shall be multiplied by three in the event of violation of the laws concerning firearms not contemplated by this law. In all cases imprisonment shall be for no less than three months. (1) Article thus replaced by Article 14 of law no. 497 on October 14 1974. Article 8. Anyone who turns in illegally held arms or parts thereof, munitions, explosives and other lethal devices identified in Article 1 or in Article 695 of the Criminal Code within thirty days of the entry into force of this law and before they are accused of an offence shall not be punishable.</p>		

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

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
			<p>- Gli Articoli 8 e seguenti della Legge 14 ottobre 1974, n. 497: sono modifiche alle leggi 1423/56 e Law 895/67</p> <p>Art. 8. (Omissis) (1). (1) Sostituisce il primo comma dell'art. 9, l. 27 dicembre 1956, n. 1423. Art. 9. (Omissis) (1). (1) Sostituisce l'art. 1, l. 2 ottobre 1967, n. 895. Art. 10. (Omissis) (1). (1) Sostituisce l'art. 2, l. 2 ottobre 1967, n. 895. Art. 11. (Omissis) (1). (1) Sostituisce l'art. 3, l. 2 ottobre 1967, n. 895. Art. 12. (Omissis) (1). (1) Sostituisce l'art. 4, l. 2 ottobre 1967, n. 895. Art. 13. (Omissis) (1). (1) Sostituisce l'art. 6, l. 2 ottobre 1967, n. 895. Art. 14. (Omissis) (1). (1) Sostituisce l'art. 7, l. 2 ottobre 1967, n. 895. Art. 15. Le disposizioni contenute nel precedente articolo non si</p>	<p>Article 9. Offenders under this law shall be tried summarily (<i>direttissimo</i>).</p> <p>Articles 8 and following of the Law 14 October 1974, n. 497: (These provision concern amendments to Law 1423/56 and Law 895/67)</p> <p>Art. 8. (Omissis) (1). (1) Replacing par. 1 of art. 9, l. of law 27 December 1956, n. 1423. Art. 9. (Omissis) (1). (1) Replacing art. 1, l. 2 October 1967, n. 895. Art. 10. (Omissis) (1). (1) Replacing art. 2, l. 2 October 1967, n. 895. Art. 11. (Omissis) (1). (1) Replacing art. 3, l. 2 October 1967, n. 895. Art. 12. (Omissis) (1). (1) Replacing art. 4, l. 2 October 1967, n. 895. Art. 13. (Omissis) (1). (1) Replacing art. 6, l. 2 October 1967, n. 895. Art. 14. (Omissis) (1). (1) Replacing art. 7, l. 2 October 1967, n. 895. Art. 15. The provisions contained in the</p>		

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

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
			<p>applicano nell'ipotesi di reato di porto d'armi abusivo per mancanza di validità della licenza di porto d'armi anche per uso di caccia conseguente all'omesso pagamento della tassa di concessione governativa.</p> <p>Art. 16.</p> <p>Le norme processuali della presente legge valgono fino all'entrata in vigore del nuovo codice di procedura penale.</p> <p>Legge 27 dicembre 1956, n. 1423</p> <p>ARTICOLO 1</p> <p>I provvedimenti previsti dalla presente legge si applicano a:</p> <p>1) coloro che debba ritenersi, sulla base di elementi di fatto, che sono abitualmente dediti a traffici delittuosi;</p> <p>2) coloro che per la condotta ed il tenore di vita debba ritenersi, sulla base di elementi di fatto, che vivono abitualmente, anche in parte, con i proventi di attività delittuose;</p> <p>3) coloro che per il loro comportamento debba ritenersi, sulla base di elementi di fatto, che sono dediti alla commissione di reati che offendono o mettono in pericolo l'integrità fisica o morale dei minorenni, la sanità, la sicurezza o la tranquillità pubblica (1).</p> <p>(1) Articolo sostituito dall'articolo 2 della legge 3 agosto 1988, n.</p>	<p>previous article do not apply in case of the crime consisting in illegal gun licence because of the lack of validity of the gun licence, also related to the use in hunt, as a consequence of the non payment of the excise government tax</p> <p>Art. 16.</p> <p>The provisions of this law are in force until the entry into force of the new criminal procedural code.</p> <p>Law 27 December 1956, n. 1423</p> <p>ARTICLE 1</p> <p>The provisions of this law shall apply to.</p> <p>1) those who must, on the basis of factual information, be considered habitually dedicated to unlawful dealings;</p> <p>2) those whose lifestyle and behaviour must, on the basis of factual information, be considered a result of habitually living, even in part, on income from criminal activities;</p> <p>3) those whose behaviour must, on the basis of factual information, be considered dedicated to committing crimes that offend or endanger the physical or moral integrity of minors and public health, safety or tranquillity (1).</p> <p>(1) Article replaced by Article 2 of Law no. 327 on August 3</p>		

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

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
			<p>327.</p> <p>ARTICOLO 9</p> <p>1. Il contravventore agli obblighi inerenti alla sorveglianza speciale è punito con l'arresto da tre mesi ad un anno.</p> <p>2. Se l'inosservanza riguarda gli obblighi e le prescrizioni inerenti alla sorveglianza speciale con l'obbligo o il divieto di soggiorno, si applica la pena della reclusione da uno a cinque anni ed è consentito l'arresto anche fuori dei casi di flagranza (1).</p> <p>3. Nell'ipotesi indicata nel comma 2 gli ufficiali ed agenti di polizia giudiziaria possono procedere all'arresto anche fuori dei casi di flagranza.</p> <p>4. Salvo quanto è prescritto da altre disposizioni di legge, il sorvegliato speciale che, per un reato commesso dopo il decreto di sorveglianza speciale, abbia riportato condanna a pena detentiva non inferiore a sei mesi, può essere sottoposto a libertà vigilata per un tempo non inferiore a due anni (2).</p> <p>(1) Comma sostituito dall'articolo 14 del D.L. 27 luglio 2005, n. 144.</p> <p>(2) Articolo modificato dall'articolo 8 della legge 14 ottobre 1974, n. 497, dall'articolo 12 della legge 13 settembre 1982, n. 646, e successivamente sostituito dall'articolo 23 del D.L. 8 giugno 1992, n. 306.</p>	<p>1988</p> <p>ARTICLE 9</p> <p>1. Those who violate the obligations inherent in police supervision shall be punished to three months' to one year's imprisonment.</p> <p>2. Failure to comply with the obligations and prescriptions involved in police supervision with an obligation or prohibition to stay in a certain place shall be punished to one to five years' imprisonment, and arrest shall be permitted even in cases other than <i>in flagrante delicto</i> (1).</p> <p>3. In the case identified in paragraph 2, the judicial police officials and officers may arrest anyone even if not caught <i>in flagrante delicto</i>.</p> <p>4. Unless stated by other provisions of the law, a person under police supervision who is punished to no less than six months' imprisonment for a crime committed after the police supervision order is issued may be put on probation for no less than two years (2).</p> <p>(1) Article replaced by Article 14 of Decree Law no. 144 on July 27 2005.</p> <p>(2) Article amended by Article 8 of law no. 497 on October 14 1974, Article 12 of law no. 646 of September 13 1982, and then replaced by Article 23 of Decree Law no. 306 on June 8 1992.</p>		

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

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
		<i>New Art. 235 CP as amended by Law Decree 92/08(as amended by Law n. 125/08)</i>	<p>Art. 235 (Espulsione od allontanamento dello straniero dallo Stato)</p> <p>Il giudice ordina l'espulsione dello straniero ovvero l'allontanamento dal territorio dello Stato del cittadino appartenente ad uno Stato membro dell'Unione europea, oltre che nei casi espressamente previsti dalla legge, quando lo straniero o il cittadino appartenente ad uno Stato membro dell'Unione europea sia condannato alla reclusione per un tempo superiore ai due anni.</p> <p>Ferme restando le disposizioni in materia di esecuzione delle misure di sicurezza personali, l'espulsione e l'allontanamento dal territorio dello Stato sono eseguiti dal questore secondo le modalita' di cui, rispettivamente, all'articolo 13, comma 4, del testo unico di cui al decreto legislativo 25 luglio 1998, n. 286, e all'articolo 20, comma 11, del decreto legislativo 6 febbraio 2007, n. 30.</p> <p>Il trasgressore dell'ordine di espulsione od allontanamento pronunciato dal giudice è punito con la reclusione da uno a quattro anni»;</p> <p>In tal caso e' obbligatorio l'arresto dell'autore del fatto, anche fuori dei casi di flagranza, e si procede con rito direttissimo»;</p>	<p>Art. 235 (Expulsion of the foreign national from the State)</p> <p>The judge orders the expulsion of the foreigner or the expulsion from the territory of the State of the citizen of a EU Member State, in addition to cases expressly referred to by the law, when the foreigner or the EU citizen has been convicted for more than 2 years of prison.</p> <p>Without prejudice to the provisions on personal security measures, the expulsion and the "allontanamento"(this is the term used for EU citizens)from the territory of the State are executed by the questore according to the procedures referred to in Art. 13.4 of D.Lgs 286/98 and Art. 20.11 of D.Lgs 30/2007.</p> <p>The person no not complying with an expulsion or "allontanamento" order pronounced by the judgeis punished with imprisonment from 1 to 4 years.</p> <p>In this case it is compulsory to arrest the person concerned even outside the cases of flagrancy and it is proceeded with the direttissimo proceeding.</p>		

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

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
		<i>New Art. 312 CP as amended by Law Decree 92/08(as amended by Law n. 125/08)</i>	<p>Art. 312 (Espulsione od allontanamento dello straniero dallo Stato) Il giudice ordina l'espulsione dello straniero ovvero l'allontanamento dal territorio dello Stato del cittadino appartenente ad uno Stato membro dell'Unione europea, oltre che nei casi espressamente previsti dalla legge, quando lo straniero o il cittadino appartenente ad uno Stato membro dell'Unione europea sia condannato ad una pena restrittiva della libertà personale per taluno dei delitti previsti da questo titolo.</p> <p>Ferme restando le disposizioni in materia di esecuzione delle misure di sicurezza personali, l'espulsione e l'allontanamento dal territorio dello Stato sono eseguiti dal questore secondo le modalità di cui, rispettivamente, all'articolo 13, comma 4, del testo unico di cui al decreto legislativo 25 luglio 1998, n. 286, e all'articolo 20, comma 11, del decreto legislativo 6 febbraio 2007, n. 30.</p> <p>Il trasgressore dell'ordine di espulsione od allontanamento pronunciato dal giudice è punito con la reclusione da uno a quattro anni.</p> <p>In tal caso e' obbligatorio l'arresto dell'autore del fatto, anche fuori dei casi di flagranza, e si procede con rito</p>	<p>Art. 312 (Expulsion of the foreign national from the State) The judge orders the expulsion of the foreigner or the expulsion from the territory of the State of the citizen of a EU Member State, in addition to cases expressly referred to by the law, when the foreigner or the EU Member State citizen has been convicted for crimes against the personality of the State and punished with a penalty involving restrictions of freedom for one of the offences of this title.</p> <p>Without prejudice to the provisions on personal security measures, the expulsion and the "allontanamento"(this is the term used for EU citizens)from the territory of the State are executed by the questore according to the procedures referred to in Art. 13.4 of D.Lgs 286/98 and Art. 20.11 of D.Lgs 30/2007.</p> <p>The person not complying with an expulsion or "allontanamento" order pronounced by the judge is punished with imprisonment from 1 to 4 years.</p> <p>In this case it is compulsory to arrest the person concerned even outside the cases of flagrancy and it is proceeded with the direttissimo proceeding.</p>		

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

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
		<i>New Art. 61.1 n. 11 bis CP as introduced by Law Decree 922/08 (as amended by Law n. 125/08)</i>	<i>direttissimo»;</i> Art 61-11bis <i>Se il fatto è commesso da soggetto che si trovi illegalmente sul territorio nazionale.</i>	Art 61-11bis <i>If the fact has been committed by the person who is illegally in the national territory.</i> <i>(the article concerns the aggravating circumstances)</i>		
	These grounds shall not be invoked to serve economic ends.	Art. 20.4 D.Lgs n. 30/07	4. I provvedimenti di allontanamento [...] e non possono essere motivati da ragioni di ordine economico [...]	4. The expulsion decisions [...] and the grounds shall not be invoked to serve economic ends [...]	Y	Effective transposition Article 27.2 second indent of the Directive. Par. 4 correctly transposes the last part of Art. 27.1 of the Directive which indicates that these grounds cannot be invoked to serve economic reasons.
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.	Art. 20.2 D.Lgs n. 30/07	4. I provvedimenti di allontanamento sono adottati nel rispetto del principio di proporzionalità e non possono essere motivati, [...] né da ragioni estranee ai comportamenti individuali dell'interessato [...] L'esistenza di condanne penali non giustifica di per se' l'adozione di tali provvedimenti.	4. Expulsion measures shall comply with the principle of proportionality and shall not be based, [...] nor on grounds extraneous to the personal conduct of the individual concerned, [...] Previous criminal convictions shall not constitute grounds for taking such measures.	Y	Almost literal transposition Although the provision is literally transposed, it should be considered what explained under transposition of Art. 27 (1); so finally expulsion measures do not appear to be proportionate since the circumstances that can lead to expulsion are very broad (see the example above e.g., one of the behaviours taken into consideration is to live from the benefits obtained from the commission of crimes. This could easily include thieves whose main living resources come from stealing (thus a crime). Or the new added provisions amending the Criminal Code that expressly provide that a EU citizen will be expelled if convicted for more than 2 years of prison).
	The personal conduct of the individual	New Art. 20.4, 20.2 and 20.3 of	4. [...] e non possono essere	4. [...] on the personal conduct	N,	Incorrect and incomplete

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

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
	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.	D.Lgs n. 30/07 as replaced by Art. 1.1 c) D.Lgs n. 32/08	motivati [...] né da ragioni estranee ai comportamenti individuali dell'interessato che rappresentino una minaccia concreta e attuale all'ordine pubblico o alla pubblica sicurezza.	of the individual concerned that represent a genuine and present threat to the public policy or public security.	Incorrect and Incomplete	<p>transposition</p> <p>Art. 20.4 does not refer to “sufficiently serious” threat that, as confirmed by to settled ECJ case law⁹ it is an important concept to take into consideration in order to assess the conduct of the individual concerned. In the Italian case, the conduct seems to be assessed more widely as compared to the Directive being possible <i>de facto</i> to order an expulsion for a behaviours/conducts/actions that represent a “threat” but not to the extend (“sufficiently serious”) to be a ground of expulsion. In this regard there is a recent case law of the Italian Court of Cassation¹⁰ that says that expulsion shall not be automatically adopted but after an assessment of the “<i>pericolosità</i>” that is the “dangerousness” of the person concerned. However this is not the same and cannot be considered as enough to fill the gap left by the Italian transposing provision.</p> <p>Also settled ECJ case law confirmed the importance of the requirement of “sufficiently serious threat” stating that “public policy exception, like all derogations from a fundamental principle of the Treaty, must be interpreted restrictively”¹¹. In the Case <i>Commission v Netherlands</i> the ECJ also highlights that “in addition</p>

⁹ See, e.g., Case C-50/06 *Commission v Netherlands* par 43, Case 36/75 *Rutili*, par 28, Case 30/77 *Bouchereau*, par 35, Case C-493/01 *Orfanopoulos*, par 66.

¹⁰ Sent n. 22511 Cassazione Penale Sez. IV, 3 May 2007

¹¹ Case C-348/96, *Calfa* par 23. See also Case C-50/06 *Commission v Netherlands* par 42 and 43.

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

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
						<p>to the perturbation of the social order which any infringement of the law involves, of a genuine and sufficiently serious threat to one of the fundamental interests of society". In this regard transposition is therefore incorrect.</p> <p>The omission renders actually transposition of the whole Article 27 as incorrect and this even though the Italian transposing legislation literally transposes the provisions stating that the measures taken shall be proportional, shall be based on the personal conduct of the person concerned, previous criminal convictions shall not themselves represent a ground of expulsion and although the expulsion measures are notified to the individual concerned in accordance with the Directive (so although some procedural safeguards are guaranteed). However, the grounds that could be actually used to expel a EU citizen do not comply with the principle of proportionality as shown in previous rows.</p> <p>The legislation is therefore contradictory and this confirms what said above under Art. 27 (1) that has been transposed, incorrectly, through a legislation that is very broad.</p> <p>Moreover, instead of referring to "affecting one of the fundamental interests of society" the Italian Decree says "threat to the public policy or public security"; these are not equivalent. In this regard refer to</p>

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

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
						<p>what stated under Art. 27 (1); in particular the definition given to State security is so broad that finally almost “everything” can violate “fundamental interests of society”.</p> <p>Instead of saying “genuine” (“reale” in Italian), the national provision says “concreta” (“concrete” in English); this might not represent a problem since the two term are to be considered as equivalent.</p>
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	Not 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				Y	<p>Effective transposition</p> <p>Not transposed However, Italy is a party of the ECHR and has incorporated its provisions by Law 848 of 1955. Therefore Italy is obliged to readmit nationals.</p>

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

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
	nationality of the holder is in dispute.					
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.	New Art. 20.5 D.Lgs n. 30/07 as replaced by Art. 1.1 c) D.Lgs n. 32/08	5. Nell'adottare un provvedimento di allontanamento si tiene conto della durata del soggiorno in Italia dell'interessato, della sua età, del suo stato di salute, della sua situazione familiare e economica, della sua integrazione sociale e culturale nel territorio nazionale e dell'importanza dei suoi legami con il Paese d'origine.	5. Before taking an expulsion decision, it shall be taken into account considerations such as how long the individual concerned has resided in Italy, his/her age, state of health, family and economic situation, social and cultural integration into the national territory and the extent of his/her links with the country of origin.	Y	Almost literal transposition Actually, since the Italian legislation does not specify the grounds, then for any ground of expulsion the elements indicated in the Directive are taken into account. Therefore in this regard the transposing provision is even more favourable.
	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.	New Art. 20.6 D.Lgs n. 30/07 as replaced by Art. 1.1 c) D.Lgs n. 32/08	6. I titolari del diritto di soggiorno permanente di cui all'articolo 14 possono essere allontanati dal territorio nazionale solo per motivi di sicurezza dello Stato, per motivi imperativi di pubblica sicurezza o per altri gravi motivi di ordine pubblico o di pubblica sicurezza.	6. An expulsion decision against persons having the right of permanent residence according Article 14, cannot be taken, except on grounds of State security; imperative public security; other serious public order or public security grounds.	N, Incorrect	Incorrect transposition The Italian Decree does not specify "Union citizens or their family members, irrespective of nationality" but directly refers to its Art. 14 (on the right of permanent residence) where the reference made by the Directive exist. The transposing Decree refers to a wider range of grounds as compared to the Directive, namely: - State security; - imperative public security; - other serious public order or public security grounds. As derived from the structure of the Italian provisions, State security is considered as serious public policy/public security ground. However, as explained in the analysis of Art. 27(1) the scope of State security covers almost "everything" so finally transposition is incorrect. Because there is no such thing as qualification of seriousness in the

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

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
						Italian transposition in practice.
	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	New Art. 20.7 D.Lgs n. 30/07 as replaced by Art. 1.1 c) D.Lgs n. 32/08 New Art. 20.3 D.Lgs n. 30/07 as replaced by Art. 1.1 c) D.Lgs n. 32/08 - Art. 8 (on compulsory	7. I beneficiari del diritto di soggiorno che hanno soggiornato nel territorio nazionale nei precedenti dieci anni [...] possono essere allontanati solo per motivi di sicurezza dello Stato o per motivi imperativi di pubblica sicurezza, [...] 3. I motivi imperativi di pubblica sicurezza sussistono quando la persona da allontanare abbia tenuto comportamenti che	7. The persons who have the right of residence and who have resided in the national territory for the previous 10 years [...] may only be expelled on State security or imperative public security grounds , [...] 3. Imperative public security grounds are when the conduct of the person concerned represents a concrete, real and	N, Incorrect	Incorrect transposition The Directive only refers to “imperative grounds of public security”, while the transposing Decree also refers to “State security” grounds putting an “ OR ”, so a choice between State security and imperative public security grounds, that the Directive does not leave. From the literal point of view this represents an incorrectness itself (in this regard the Italian provision might seem to be more stringent). This means that Italy might expel e.g. a person residing for 10 years in Italy even only on State security grounds which however, cover a broad range of circumstances. Paragraph 3 of New Art. 20 defines imperative public security grounds that the Directive leaves to the Member States to define.

¹² For full text of Article 8 of the Law, refer to the Annex

Art. 13.5 **bis**. In the cases identified in paragraphs 4* and 5* the chief of police shall notify the judge of peace (giudice di pace) with territorial jurisdiction of the order to accompany the foreign citizen to the border immediately, and in all cases within forty-eight hours of giving the order. Execution of the chief of police's order to leave national territory shall be suspended until a decision is passed validating the order. The validation hearing shall be held in the council chambers, with the essential participation of a defence attorney, who shall be notified in sufficient time. The person involved shall likewise be notified in sufficient time and accompanied to the place where the hearing is held. The provisions of the sixth and seventh sentences of paragraph 8 shall apply where compatible. The judge shall validate the order with motivation within forty-eight hours, having checked compliance with the deadlines and the existence of the requirements stated under this Article and consulted the person concerned, if this person appears in court. While awaiting conclusion of the validation procedure, the expelled foreign citizen shall be detained in facilities for temporary accommodation and assistance as stated in Article 14, unless the proceedings may be completed in the place in which the expulsion order was adopted prior to transfer to one of the available facilities. If validation is granted, the order to accompany the foreign citizen to the border shall become enforceable. If validation is not granted or the deadline for decision is not met, the order issued by the chief of police shall become entirely ineffective. The validation order may be appealed in the court of cassation. The appeal shall not suspend execution of expulsion from national territory. The forty-eight hour deadline within which the justice of the peace must validate the order is calculated from the time at which the order is served to the office of the clerk.

* PAR 4 Expulsion is always performed by the chief of police with **accompaniment to the border** by the police except in the cases identified in paragraph 5.

** PAR 5 In the case of foreign citizens who remain in the territory of the State when their permit to stay expired more than sixty days previously without requesting renewal, the expulsion order contains an order to leave the territory of the State within fifteen days. The chief of police shall immediately accompany the foreign citizen to the border if the prefect finds that there is clear danger that the person will not obey the order.*

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

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
		<p>surrender of the person) of Law n. 69 of 22 April 2005 on provisions to transpose Council Framework Decision 2002/584/JHA of the of 13 June 2002, on the European arrest warrant and the surrender procedures between Member States.</p> <ul style="list-style-type: none"> - Article 444 of CPP on plea bargain - Article 1 of Law n. 1423/1956 on prevention measures against persons dangerous for public security and morality - Article 1 of Law n. 575 /1965 on Provisions against Mafia 	<p>costituiscono una minaccia concreta, effettiva e grave ai diritti fondamentali della persona ovvero all'incolumità pubblica, rendendo urgente l'allontanamento perche' la sua ulteriore permanenza sul territorio è incompatibile con la civile e sicura convivenza. Ai fini dell'adozione del provvedimento, si tiene conto anche di eventuali condanne, pronunciate da un giudice italiano o straniero, per uno o più delitti non colposi, consumati o tentati, contro la vita o l'incolumità della persona, o per uno o più delitti corrispondenti alle fattispecie indicate nell'articolo 8 della legge 22 aprile 2005, n. 69, di eventuali ipotesi di applicazione della pena su richiesta a norma dell'articolo 444 del codice di procedura penale per i medesimi delitti, ovvero dell'appartenenza a taluna delle categorie di cui all'articolo 1 della legge 27 dicembre 1956, n. 1423, e successive modificazioni, o di cui all'articolo 1 della legge 31 maggio 1965, n. 575, e successive modificazioni, nonche' di misure di prevenzione o di provvedimenti di allontanamento disposti da autorità straniere.</p>	<p>serious threat to the fundamental right of the person or to the public safety, so that his/her expulsion becomes urgent because his/her stay in the territory is incompatible with the civil and save coexistence. The expulsion decision is issued taking into account possible convictions given by an Italian or foreign/alien judge for one or more non culpable offences (non colposi: may be translated as non culpable <i>offences/with no intention or non negligent offence</i>), attempted or consummated, against the life or the personal safety of a person, or for one or more offences that correspond to the ones referred to in Article 8 of Law n. 69 of 22 April 2005, of possible cases of sentences' enforcement upon request, according to Article 444 of the criminal procedural code, of possible cases of plea bargain, according to (<i>applicazione della pena su richiesta</i>) Article 444 of the criminal procedural code, foreseen for the same crimes, or the belonging to one of the categories referred to in Article 1 of Law n. 1423 of 27 December 1956 and its further amendments, or referred to in Article 1 of Law n. n. 575 of 31 May 1965 and its further</p>		<p>The Italian provision does not refer to “murder” as a ground of expulsion (that would not be to consider as “imperative ground”): it says that “the expulsion decision is issued (if relevant) taking into account possible convictions (for “old”/previous committed crimes) given by an Italian or foreign/alien judge for one or more non culpable offence [...]” (so not the criminal conviction itself).</p> <p>What is relevant for an expulsion decision to be taken in this context is the “conduct of the person concerned” that has to represent” a concrete, real and serious threat to the fundamental right of the person or to the public safety,[...]”. This is in line with the ECJ settled case law.¹⁴</p> <p>However, the definition also specifies that the expulsion (on imperative public security grounds) is “urgent because the stay of the person concerned in the territory is incompatible with the “civil and save coexistence”. This last sentence is again broad and generic and quite a number of circumstances may be included; in principle even robbery or rape may be considered as an imperative ground for expulsion.</p> <p>Moreover, past convictions issued by an Italian or foreign judge are also taken into account as an element to decide on a expulsion:</p>

¹⁴ See e.g., C-493/01 Orfanopoulos par. 67 [...] the existence of a previous criminal conviction can justify an expulsion only in so far as the circumstances which gave rise to that conviction are evidence of personal conduct constituting a present threat [...]. The same is stated in Case C-50/60 Commission v Netherlands, par 41, and others (Case C-384/96 Calfa..).

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

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
			<p>TESTI RICHIAMATI DALL' Art. 20.3 D.Lgs n. 30/07</p> <p>- Articolo 8 legge n. 69/2005¹² - Articolo 444 CPP</p> <p>1. L'imputato e il pubblico ministero possono chiedere al giudice l'applicazione, nella specie e nella misura indicata, di una sanzione sostitutiva o di una pena pecuniaria, diminuita fino a un terzo, ovvero di una pena detentiva quando questa, tenuto conto delle circostanze e diminuita fino a un terzo, non supera cinque anni soli o congiunti a pena pecuniaria.</p> <p>1-bis. Sono esclusi dall'applicazione del comma 1 i procedimenti per i delitti di cui all'articolo 51, commi 3-bis e 3-quater, i procedimenti per i delitti di cui agli articoli 600-bis, primo e terzo comma, 600-quater, primo, secondo, terzo e quinto comma, 600-quater, secondo comma, 600-quater.1, relativamente alla condotta di produzione o commercio di materiale pornografico, 600-quinquies, nonché 609-bis, 609-ter, 609-quater e 609-octies del codice penale, nonché quelli contro coloro che siano stati dichiarati</p>	<p>amendments, as well as prevention measures given by foreign/alien authorities or expulsion measures given by foreign/alien authorities.</p> <p>PROVISIONS REFERERD TO BY Art. 20.3 D.Lgs n. 30/07</p> <p>- Article 8 of Law n. 69 of 22 April 2005, - Article 444 CPP</p> <p>1. The accused and the public prosecutor may ask the judge to apply, in the cases and to the extent indicated, a substitute sanction or pecuniary penalty decreased by up to one third, or a detention if, taking into account the circumstances and decreased by up to one third, the detention does not exceed five years either alone or in conjunction with the pecuniary sanctions.</p> <p>1-b. Paragraph 1 shall not apply to proceedings for the offences identified in Article 51, paragraphs 3-bis and 3-quater, proceedings for the offences identified in Article s 600-bis, paragraphs one and three, 600-quater, paragraphs one, two, three and five, 600-quater, paragraph two, 600-quater.1, on the production or sale of pornographic material, 600-quinquies, and 609-bis, 609-ter, 609-quater and 609-octies of the criminal code, and those against</p>		<p>- convictions for one or more non culpable offences, attempted or consummated, against the life/personal safety of a person, or -for one or more offences that correspond to the ones referred to in Article 8 of Law n. 69/2005 (so basically participating in an association having the objective of committing crimes, do acts of threat against public safety...) - of possible cases of sentences' enforcement upon request, according to Article 444 of CPP (plea bargain. This is a conviction judgment – the proceeding has been however shortened under certain circumstances) ; - or the belonging to one of the categories referred to in Article 1 of Law n. 1423/1956 on measures against persons dangerous to public security and morality (crimes consisting of offences to physical and moral integrity of minors, and public security, and public health, safety or tranquillity - or referred to in Article 1 of Law n. n. 575/1965 namely to persons suspected to belong to mafia or similar organisations - as well as prevention measures given by foreign authorities or expulsion measures given by foreign authorities.</p> <p>As per transposition of Article 27(1), the Italian legislation refers to a series of crimes that are not all reasonable to consider so</p>

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

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
			<p>delinquenti abituali, professionali e per tendenza, o recidivi ai sensi dell'articolo 99, quarto comma, del codice penale, qualora la pena superi due anni soli o congiunti a pena pecuniaria.</p> <p>2. Se vi è il consenso anche della parte che non ha formulato la richiesta e non deve essere pronunciata sentenza di proscioglimento a norma dell'articolo 129, il giudice, sulla base degli atti, se ritiene corrette la qualificazione giuridica del fatto, l'applicazione e la comparazione delle circostanze prospettate dalle parti, nonché congrua la pena indicata, ne dispone con sentenza l'applicazione enunciando nel dispositivo che vi è stata la richiesta delle parti. Se vi è costituzione di parte civile, il giudice non decide sulla relativa domanda; l'imputato è tuttavia condannato al pagamento delle spese sostenute dalla parte civile, salvo che ricorrano giusti motivi per la compensazione totale o parziale. Non si applica la disposizione dell'articolo 75, comma 3.</p> <p>3. La parte, nel formulare la richiesta, può subordinarne l'efficacia, alla concessione della sospensione condizionale della pena. In questo caso il giudice, se ritiene che la sospensione condizionale non può essere concessa, rigetta la richiesta.</p>	<p>all those who have been declared habitual offenders, professional offenders or offenders by tendency, or repeat offenders under Article 99, paragraph four of the criminal code, if the penalty exceeds two years alone or in conjunction with the pecuniary sentence.</p> <p>2. In the event of consent by the party that did not make the request, if no acquittal need be pronounced under Article 129, the judge may, on the basis of the documentation of the case, if he considers the legal qualification of the act, application and comparison of circumstances set forth by the parties to be correct and the sentence to be appropriate, order application by stating that it has been requested by the parties. If a civil case has been launched, the judge shall not make a decision regarding the application; the accused shall in any case be punished to pay the expenses incurred by the party launching the civil case unless there is just reason for total or partial compensation. The provisions of Article 75, paragraph 3 shall not apply.</p> <p>3. In making the request, the party may make its efficacy subject to concession of conditional suspension of the sentence. In this case the judge will reject the request if he considers it impossible to grant</p>		<p>“important”- “imperative”- to be able to justify an expulsion decision. For instance the crimes indicated in Art. 1 Law n. 1423/1956.</p> <p>The situation is therefore again ambiguous and intricate and not straight forward to assess. But it is the expert' opinion for all the above that the transposition is incorrect because not proportional.</p> <p><i>Art. 20.3 D.Lgs n. 30/07 will be replaced if if the draft Legislative decree amending and supplementing D.Lgs n. 30/07 is finally adopted.</i></p>

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

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
			<p>Art. 1 Legge 27 dicembre 1956, n. 1423 Misure di prevenzione nei confronti delle persone pericolose per la sicurezza e per la pubblica moralità.(1) [(1) Vedi, ora, l'art. 1, L. 3 agosto 1988, n. 327, che ha soppresso l'istituto della diffida del questore della presente legge.]</p> <p>Art. 1.</p> <p>I provvedimenti previsti dalla presente legge si applicano a:</p> <p>1) coloro che debba ritenersi, sulla base di elementi di fatto, che sono abitualmente dediti a traffici delittuosi;</p> <p>2) coloro che per la condotta ed il tenore di vita debba ritenersi, sulla base di elementi di fatto, che vivono abitualmente, anche in parte, con i proventi di attività delittuose;</p> <p>3) coloro che per il loro comportamento debba ritenersi, sulla base di elementi di fatto, che sono dediti alla commissione di reati che offendono o mettono in pericolo l'integrità fisica o morale dei minorenni, la sanità, la sicurezza o la tranquillità pubblica (1).</p> <p>(1) Articolo sostituito dall'articolo 2 della legge 3 agosto 1988, n. 327.</p> <p>Art. 1 Legge 31 maggio 1965 n. 575 Disposizioni contro la mafia.</p> <p>Art 1</p> <p>1. La presente legge si applica agli indiziati di appartenere ad</p>	<p>conditional suspension.</p> <p>- Article 1 of Law n. 1423 of 27 December 1956</p> <p>The provisions of this Law shall apply:</p> <p>1) when on the basis of factual elements it is believed that the persons concerned, are habitual to criminal traffic/trade;</p> <p>2) when on the basis of factual elements it is believed that the persons concerned, for the behaviour they have and the standard of living, they normally live, even if only partly, with criminal activities' gains;</p> <p>3) when on the basis of factual elements it is believed that the persons concerned, for the behaviour they have, they are involved in criminal activities that offend or threat moral or physical integrity, the healthcare, public security or peace.</p> <p>- Art. 1 of Law n. 575 of 31 May 1965</p> <p>The present Law shall apply to persons suspected to belong to associations of mafia style, to</p>		

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

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
		<p>New Art. 20.11 D.Lgs n. 30/07 as replaced by Art. 1.1 c) D.Lgs n. 32/08</p> <p><i>Art. 9 Law Decree 92/08</i></p>	<p>associazioni di tipo mafioso, alla camorra o ad altre associazioni, comunque localmente denominate, che perseguono finalità o agiscono con metodi corrispondenti a quelli delle associazioni di tipo mafioso.</p> <p>11. Il provvedimento di allontanamento per motivi di sicurezza dello Stato e per motivi imperativi di pubblica sicurezza è immediatamente eseguito dal questore e si applicano le disposizioni di cui all'articolo 13, comma 5-bis, del decreto legislativo 25 luglio 1998, n. 286</p>	<p>camorra or to other associations, however locally called, that have objectives equal to the associations of mafia style or act with methods that correspond to that of the associations of mafia style</p> <p>11. The expulsion decision on State security and imperative public security grounds is immediately executed by the <i>Questore</i> and the provisions of Article 13.5bis¹³ of Legislative Decree of 25 July 1998, n. 286 apply.</p>		<p>According to Article 13.5bis of Legislative Decree n. 286/1998, the enforcement of the expulsion measure is suspended until the decision validating of the judge. The person concerned is kept in Detention centres for the immigrants (<i>centri di permanenza temporanea</i>). After the validation of the measure concerning the accompanying to the border becomes executive. The person concerned may appeal the measure of validation before the court of cassation; so there is a certain procedural guarantee that is recognised although the fact of being kept in the mentioned centres represents a privation of the liberty of the person concerned. This provision is therefore not in compliance with the scope of the Directive.</p> <p>(to bear in mind that in the hearing of validation of the judge (<i>giudice di pace</i>) always assess the legitimacy of the requirements for the expulsion).</p> <p>Law Decree 92/08 has changed the names of the Detention centres for the immigrants (<i>centri di permanenza temporanea e assistenza</i>). They are</p>

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

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
						<p>now called “<i>centro di identificazione ed espulsione</i>”, that is “Identification and expulsion centres”. This does not change the assessment since in any case they represent a privation of the liberty of the person concerned.</p> <p><i>Art. 20.11 D.Lgs n. 30/07 will be amended if the draft Legislative decree amending and supplementing D.Lgs n. 30/07 is finally adopted.</i></p>
	(b) are a minor, except if the expulsion is necessary for the best interests of the child, as provided for in the United Nations Convention on the Rights of the Child of 20 November 1989.	New Art. 20.7 D.Lgs n. 30/07 as replaced by Art. 1.1 c) D.Lgs n. 32/08	[...] o che siano minorenni possono essere allontanati solo per motivi di sicurezza dello Stato o per motivi imperativi di pubblica sicurezza salvo l'allontanamento sia necessario nell'interesse stesso del minore, secondo quanto contemplato dalla Convenzione sui diritti del fanciullo del 20 novembre 1989, ratificata con legge 27 maggio 1991, n. 176.	[...] or are a minor, may only be expelled on grounds of security of the State or imperative public security that threaten the security of the State except if the expulsion is necessary for the best interests of the minor, as provided for in the United Nations Convention on the Rights of the Child of 20 November 1989.	N, Incorrect	<p>Incorrect transposition</p> <p>The Directive only refers to “imperative grounds of public security”, while the transposing Decree also refer to “State security” grounds. In this regard refer to the comment made under Article 28 (3).</p>
Art. 29.1	<p>Public health</p> <p>1. The only diseases justifying measures restricting freedom of movement shall be the diseases with epidemic potential as defined by the relevant instruments of the World Health Organisation and other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to nationals of the host Member State.</p>	New Art. 20.8 D.Lgs n. 30/07 as replaced by Art. 1.1 c) D.Lgs n. 32/08	8. Le malattie o le infermità che possono giustificare limitazioni alla libertà di circolazione sul territorio nazionale sono solo quelle con potenziale epidemico individuate dall'Organizzazione mondiale della sanità, nonché altre malattie infettive o parassitarie contagiose, sempreche' siano oggetto di disposizioni di protezione che si applicano ai cittadini italiani. [...]	8. The diseases or illnesses/infirmities justifying measures restricting freedom of movement in the national territory shall be the diseases with epidemic potential as defined by the relevant instruments of the World Health Organisation and other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to Italian citizens [...].	Y	<p>Almost literal transposition</p> <p>The transposing Decree also refers to illnesses/infirmities. This however, cannot be considered as a problem because according to the dictionary “infirmity” is defined as a disease (person who is ill); moreover the Italian provision specifies, as the Directive, that those diseases and illnesses [...] are those defined by the World Health Organisation [...] and that therefore have an “epidemic potential”[...].</p>
Art.29.2	2. Diseases occurring after a three-month period from the date of arrival shall not	New Art. 20.8 .Lgs n. 30/07 as replaced by Art. 1.1 c) D.Lgs n.	[...] Le malattie che insorgono successivamente all'ingresso nel	[...] Diseases occurring the date of arrival shall not constitute	Y	Effective transposition

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

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
	constitute grounds for expulsion from the territory.	32/08	territorio nazionale non possono giustificare l'allontanamento.	grounds for expulsion.		The Italian Decree fails to specify the period of three-month. This implies that diseases occurring even before the three-month period from the date of arrival cannot constitute a ground for expulsion from the territory. In this regard the transposing provision is more favourable.
Art.29.3	3. Where there are serious indications that it is necessary, Member States may, within three months of the date of arrival, 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.				NT	Not transposed
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>	<p>New Art. 20.9.Lgs n. 30/07 as replaced by Art. 1.1 c) D.Lgs n. 32/08</p> <p>New Art. 20.17 as introduced by Art. 1.1 c) D.Lgs n. 32/08</p>	<p>9. Il Ministro dell'interno adotta i provvedimenti di allontanamento [per motivi imperativi di pubblica sicurezza dei soggetti di cui al comma 7, nonche' i provvedimenti di allontanamento per motivi di ordine pubblico o di sicurezza dello Stato. Negli altri casi, i provvedimenti di allontanamento sono adottati dal prefetto del luogo di residenza o dimora del destinatario.</p> <p>17. I provvedimenti di allontanamento di cui al presente articolo sono adottati tenendo conto anche delle segnalazioni motivate del sindaco del luogo di residenza o di dimora del destinatario del provvedimento.</p>	<p>9. The Ministry of Interior adopts the expulsion measures based on imperative public security grounds of the persons referred to in paragraph 7 and it also adopts the expulsion measures based on public order or security of the State grounds. In the other cases, the expulsion measures are adopted by the <i>Prefetto</i> of the place of residence or <i>dimora</i>/address of the person concerned.</p> <p>17. Expulsion measures referred to in this Article are adopted taking also into account the grounded recommendations of the Major of the place of residence or of the <i>dimora</i>/address of the person concerned.</p>	Y	<p>Effective transposition</p> <p>Although the Italian Decree uses a different wording, the substance of the provision corresponds to the Directive.</p> <p>Art. 20.9 and 20.17 describe the procedure for the adoption of the expulsion measures.</p> <p>The obligation that the notification must be in written is not expressly mentioned since in Italy when it is referred to notification this can only be in written, so it is implied. (Also refer to Articles 137-147 of the CPC regarding notifications).</p> <p>The Italian provision seems to be sufficiently detailed so to let comprehend the content and</p>

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

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
		<p>New Art. 20.10 .Lgs n. 30/07 as replaced by Art. 1.1 c) D.Lgs n. 32/08</p> <p>New Art. 20 <i>ter</i> as introduced by Art. 1.1 d) D.Lgs n. 32/08</p>	<p>10. I provvedimenti di allontanamento [...] Se il destinatario non comprende la lingua italiana, il provvedimento è accompagnato da una traduzione del suo contenuto, anche mediante appositi formulari, sufficientemente dettagliati, redatti in una lingua a lui comprensibile o, se cio' non e' possibile per indisponibilità di personale idoneo alla traduzione del provvedimento in tale lingua, comunque in una delle lingue francese, inglese, spagnola o tedesca, secondo la preferenza indicata dall'interessato. Il provvedimento e' notificato all'interessato [...]</p> <p>(Art.20-ter Autorità giudiziaria competente per la convalida dei provvedimenti del questore)</p> <p>1. Ai fini della convalida dei provvedimenti emessi dal questore ai sensi degli articoli 20 e 20-bis, e' competente il tribunale ordinario in composizione monocratica;</p>	<p>10. [...] If the person concerned does not comprehend the Italian language, then the expulsion measure is accompanied by a translation of its content, also using suitable models, sufficiently detailed, written in a language that the person concerned is able to comprehend or if this is not possible for lack of translation's personnel, in any event in French, English, Spanish or German, according the preference indicated by the person concerned. The persons concerned shall be notified the expulsion measure.</p> <p>(Art. 20-ter Competent judicial authority for the validation of the measures adopted by the questore)</p> <p>1. The ordinary court composed by one judge (monocratic) shall be competent for the validation of the measures given by the <i>questore</i> according to Articles 20 and 20-bis;</p>		<p>implications of the measures.</p> <p>From the practical point of view, lawyers working on a daily basis on these issues, namely on expulsion of foreign nationals, have reported that the expulsion measure and all procedural documents are always translated or a translator is always present even when the person concerned understands very well Italian. This is an important guarantee.</p> <p>These are additional procedural norms added by the Italian Decree. (Also refer to Art. 30(3) of the Directive and in particular to Art.20-bis of the national legislation on pending criminal proceeding on the person concerned with expulsion measure).</p>
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.	New Art. 20.10 D.Lgs n. 30/07 as replaced by Art. 1.1 c) D.Lgs n. 32/08	10. I provvedimenti di allontanamento sono motivati , salvo che vi ostino motivi attinenti alla sicurezza dello Stato. [...]	10. The expulsion measures explain the grounds of the decision, unless this is contrary to the interests of State security. [...]	N, Incorrect and Incomplete	<p>Incorrect and incomplete transposition</p> <p>New Art. 20.10 of D.Lgs n. 30/07 fails to specify that the grounds shall be precise and explained in full. This represents a gap and at the same time an issue of incorrect transposition of</p>

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

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
						the provision.
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.	New Art. 20.10 D.Lgs n. 30/07 as replaced by Art. 1.1 c) D.Lgs n. 32/08	[...] Il provvedimento e' notificato all'interessato e riporta le modalità di impugnazione e, salvo quanto previsto al comma 11, indica il termine stabilito per lasciare il territorio nazionale che non puo' essere inferiore ad un mese dalla data della notifica e, nei casi di comprovata urgenza, puo' essere ridotto a dieci giorni. Il provvedimento indica anche la durata del divieto di reingresso che non puo' essere superiore a dieci anni nei casi di allontanamento per i motivi di sicurezza dello Stato e a cinque anni negli altri casi.	[...] The persons concerned shall be notified the expulsion measure that shall also specify the appeal procedures and, except for what provided in par. 11, it shall specify the time allowed for the person to leave the national territory that cannot be less than one month from the date of notification, and in substantiated cases of urgency, the time can be reduced of ten days. The measure shall also specify the duration of the ban to entry that cannot be more than ten years when the expulsion is based on grounds of State security and five years in the other cases.	N, Incorrect	<p>Incorrect transposition.</p> <p>In general, the Directive has a more uniform structure as compared to the transposing provision.</p> <p>New Art. 20.10 of D.Lgs n. 30/07 does not mention the “the time limit for the appeal”; In Italy, all measures must indicate a time limit since the lack of mentioning the time limit is seen in Italy as a breach of the right of defence.</p> <p>Contrary to what said in the Directive, the transposing Decree refers to expulsions that are immediately enforced (in the case of State security or imperative public security grounds - par. 11 of Art. 20.10). For these expulsions there is therefore no time limit Parr 11 of Art. 20 of the Italian Decree says that in case of State security or imperative public security grounds – the expulsions measures are immediately enforced. Therefore the provision requiring the time allowed for the person to leave the territory of the Member State is obviously not inserted. The time limit “no less than a month and 10 days for urgent cases” are foreseen for measures other than the ones referred to in par. 11 of Art. 20.10: the case of State</p>

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

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
		New Art. 20 <i>bis</i> as introduced by Art. 1.1 d) D.Lgs n. 32/08	<p>(Art.20-bis Procedimento penale pendente a carico del destinatario del provvedimento di allontanamento)</p> <p>1. Qualora il destinatario del provvedimento di allontanamento di cui all'articolo 20, commi 11 e 12, sia sottoposto a procedimento penale, si applicano le disposizioni di cui all'articolo 13, commi 3, 3-bis, 3-ter, 3-quater e quinquies, del decreto legislativo 25 luglio 1998, n. 286.</p> <p>2. Il nulla osta di cui all'articolo 13, comma 3, del decreto</p>	<p>(Art.20-bis Pending criminal proceeding on the person concerned with expulsion measure)</p> <p>1. When the person concerned with the expulsion measure referred to in Art. 20.11 and 20.12, is subject to a criminal proceeding, provisions of Art. 13 par. 3, 3-bis, 3-ter, 3-quater e quinquies, of Legislative Decree 25 July 1998, n. 286 shall apply.</p> <p>2. The authorisation referred to in Art. 13.3 of Legislative Decree 25 July 1998, n. 286, is</p>		<p>security or imperative public security grounds.</p> <p>In this sense the Italian provision appears to be incorrect since Italy seems to require less condition to take an immediate expulsion decision. (Directive says “duly substantiated cases of urgency” while The Italian Decree refers simply to “case of State security or imperative public security grounds”. As explained when analysing Art. 27 those can be anything.</p> <p>The Italian provisions also specifies the duration of the ban (5 years and 10 years). The Directive does not refer to the duration of the ban but this does not create problems of compatibility with the text of the Directive because it actually provides legal certainty.</p> <p>Art.20-bis sets several procedural rules by referring to the provisions of D.Lgs n. 286/98 that will apply when the expulsion measure of a person who is subject to a criminal proceeding is based on:</p> <ul style="list-style-type: none"> - State security - imperative public security grounds <p>The expulsion is always taken by a decree that contains the reasons of it and that is immediately executive. The Decree however, can be challenged or appealed by the interested person.</p> <p>If it is needed for procedural reasons,</p>

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

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
			<p>legislativo 25 luglio 1998, n. 286, si intende concesso qualora l'autorità giudiziaria non provveda entro quarantotto ore dalla data di ricevimento della richiesta.</p> <p>3. Non si dà luogo alla sentenza di cui all'articolo 13, comma 3-quater, del citato decreto legislativo n. 286 del 1998, qualora si proceda per i reati di cui all'articolo 380 del codice di procedura penale.</p> <p>4. Quando il procedimento penale pendente sia relativo ai reati di cui all'articolo 380 del codice di procedura penale, si può procedere all'allontanamento solo nell'ipotesi in cui il soggetto non sia sottoposto a misura cautelare detentiva per qualsiasi causa.</p> <p>5. In deroga alle disposizioni sul divieto di reingresso, il destinatario del provvedimento di allontanamento, sottoposto ad un procedimento penale ovvero parte offesa nello stesso, può essere autorizzato a rientrare nel territorio dello Stato, dopo l'esecuzione del provvedimento, per il tempo strettamente necessario all'esercizio del diritto</p>	<p>considered as granted when the judicial authority does not act within 48 hours from the date of receiving the request. 3.</p> <p>3. The judgment referred to in Art. 13.3- quarter of the mentioned Legislative Decree 25 July 1998, n. 286 is not given if a proceeding is started for crimes referred to in Art. 380 of the Criminal procedural Code.</p> <p>4. When the pending criminal proceeding relates crimes referred to in Art. 380 of the Criminal Procedural Code, then the expulsion is only possible when the person concerned is not subject to a precautionary detentive measure for any reason.</p> <p>5. By way of derogation from the provisions concerning the ban on re-entry in the territory, the person concerned with the expulsion measure, who is subject to a criminal proceeding or offended party in the same proceeding, may be authorised to enter the territory of the State, after the enforcement of the measure, for the time that is</p>		<p>then the <i>Questore</i> shall obtain an authorisation from the judicial authority before expelling the person concerned (Art. 13.3 D.Lgs n. 286/98); in case of arrest <i>flagrante delicto</i> the authorisation is given when confirming the arrest (precisely after the validation of the judge) (13.3. bis D.Lgs n. 286/98).</p> <p>Par. 3 Art. 20 <i>bis</i> provides that a judgment stating “not to proceed” is not given when a proceeding is started for crimes referred to in Art. 380 CPP, e.g., arrest <i>flagrante delicto</i> for crimes against the State, against public safety, etc...</p> <p>The crimes referred to in Art. 380 CPP, are considered as particularly serious since they require an immediate arrest of the person concerned (e.g., crimes against the personality of the State, the crime of devastation and pillaging, crimes against the public safety, the crime of enslavement, crimes committed for the purposes of terrorism or subversion of the constitutional order, etc.).</p> <p>Par.5 Art. 20 <i>bis</i> recognises the right of the person concerned with the expulsion measure and who is subject to a criminal proceeding or offended party in the same proceeding, to enter the territory of the State for the time that is strictly necessary to exercise the right of defence. This is an important safeguard that is recognised.</p>

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

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
			<p>di difesa, al solo fine di partecipare al giudizio o di compiere atti per i quali e' necessaria la sua presenza. Salvo che la presenza dell'interessato possa procurare gravi turbative o grave pericolo all'ordine pubblico o alla sicurezza pubblica, l'autorizzazione e' rilasciata dal questore, anche per il tramite di una rappresentanza diplomatica o consolare, su documentata richiesta del destinatario del provvedimento di allontanamento, o del suo difensore.</p> <p>TESTI RICHIAMATI DALL Art. Art. 20 <i>bis</i></p> <p>-Art. 13 par. 3, 3-bis, 3-ter, 3-quater e quinquies, of Legislative Decree 25 July 1998, n. 286 Art. 13 Espulsione amministrativa [...]</p> <p>3. L'espulsione é disposta in ogni caso con decreto motivato immediatamente esecutivo, anche se sottoposto a gravame o impugnativa da parte dell'interessato. Quando lo straniero é sottoposto a procedimento penale e non si trova in stato di custodia cautelare in carcere, il questore, prima di eseguire l'espulsione, richiede il nulla osta all'autorità giudiziaria, che può negarlo solo in presenza</p>	<p>strictly necessary to exercise the right of defence., and on the only purpose to participate to the judgment or to do acts for which his/her presence is necessary. Unless the presence of the interested party may cause serious disturbance/troubles or serious danger to the public order or public security, the authorisation is given by the <i>questore</i>, also through a consular or diplomatic representation, following a request of the person concerned with the expulsion measure, or of his/her defending counsel.</p> <p>PROVISIONS REFERRED TO BY Art. New Art. 20 <i>bis</i></p> <p>-Art. 13 par. 3, 3-bis, 3-ter, 3-quater e quinquies, of Legislative Decree 25 July 1998, n. 286 Art. 13 Administrative expulsion [...]</p> <p>3. Expulsion is always ordered with a motivated, immediately executive decree, even if subject to encumbrances or challenges by the party involved. If a foreign citizen is subject to criminal proceedings and is not held in custody, the chief of police (<i>questore</i>) will, before expelling the foreign citizen, request a waiver from the court authority, which will</p>		

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

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
			<p>di inderogabili esigenze processuali valutate in relazione all'accertamento della responsabilità di eventuali concorrenti nel reato o imputati in procedimenti per reati connessi, e all'interesse della persona offesa. In tal caso l'esecuzione del provvedimento é sospesa fino a quando l'autorità giudiziaria comunica la cessazione delle esigenze processuali. Il questore, ottenuto il nulla osta, provvede all'espulsione con le modalità di cui al comma 4. Il nulla osta si intende concesso qualora l'autorità giudiziaria non provveda entro quindici giorni dalla data di ricevimento della richiesta. In attesa della decisione sulla richiesta di nulla osta, il questore può adottare la misura del trattenimento presso un centro di permanenza temporanea, ai sensi dell'art. 14.</p> <p>3 bis. Nel caso di arresto in flagranza o di fermo, il giudice rilascia il nulla osta all'atto della convalida, salvo che applichi la misura della custodia cautelare in carcere ai sensi dell'art. 391, comma 5, del codice di procedura penale, o che ricorra una delle ragioni per le quali il nulla osta può essere negato ai sensi del comma 3.</p> <p>3 ter. Le disposizioni di cui al comma 3 si applicano anche allo straniero sottoposto a procedimento penale, dopo che sia stata revocata o dichiarata estinta</p>	<p>only deny it if there is an essential need to ascertain the responsibility of any other parties involved in the offence or accused of related offences in court and in relation to the interests of the victim.</p> <p>In this case execution of the order is suspended until the court authorities state that the person concerned is no longer needed in relation to the court case. Having obtained a waiver, the chief of police will proceed with expulsion as stated under paragraph 4. The waiver shall be considered granted if the judicial authorities do not issue it within fifteen days of receiving a request to do so. While awaiting a decision regarding the request for a waiver, the chief of police may adopt the measure of detention in a temporary holding centre pursuant to Article 14.</p> <p>3 bis. In the event of arrest in flagrancy or provisional arrest, the judge will issue a waiver upon validation, unless the measure of precautionary custody is applied pursuant to Article 391, paragraph 5 of the code of criminal proceedings or there are grounds for denial of waiver under paragraph 3.</p> <p>3 ter. The provisions of paragraph 3 shall also apply to foreign citizens subjected to criminal proceedings after precautionary custody of the</p>		

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

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
			<p>per qualsiasi ragione la misura della custodia cautelare in carcere applicata nei suoi confronti. Il giudice, con lo stesso provvedimento con il quale revoca o dichiara l'estinzione della misura, decide sul rilascio del nulla osta all'esecuzione dell'espulsione. Il provvedimento é immediatamente comunicato al questore.</p> <p>3 quater. Nei casi previsti dai commi 3, 3-bis e 3-ter, il giudice, acquisita la prova dell'avvenuta espulsione, se non é ancora stato emesso il provvedimento che dispone il giudizio, pronuncia sentenza di non luogo a procedere. E' sempre disposta la confisca delle cose indicate nel secondo comma dell'art. 240 del codice penale. Si applicano le disposizioni di cui ai commi 13, 13-bis, 13-ter e 14.</p> <p>3 quinquies. Se lo straniero espulso rientra illegalmente nel territorio dello Stato prima del termine previsto dal comma 14 ovvero, se di durata superiore, prima del termine di prescrizione del reato più grave per il quale si era proceduto nei suoi confronti, si applica l'art. 345 del codice di procedura penale. Se lo straniero era stato scarcerato per decorrenza dei termini di durata massima della custodia cautelare, quest'ultima é ripristinata a norma dell'art. 307 del codice di procedura penale.</p>	<p>person in prison has been revoked or declared extinguished for any reason. In the order in which the measure is revoked or declared extinguished, the judge shall also decide whether to issue a waiver for execution of expulsion. The order shall be served to the chief of police immediately.</p> <p>3 quater. Under the circumstances described in paragraphs 3, 3-bis and 3-ter, the judge will, having acquired proof that expulsion has occurred, issue an order not to proceed if no order has yet been issued regarding the sentence. Confiscation of the items indicated in paragraph two of Article 240 of the Criminal Code shall still apply. The provisions of Article s 13, 13-bis, 13-ter and 14 will apply.</p> <p>3 quinquies. If a foreigner who has been expelled returns to the territory of the State illegally before the deadline specified in paragraph 14 or before the term specified for the most serious offence with which the foreigner is charged, if longer, the provisions of Article 345 of the Code of Criminal Procedure shall apply. If the foreign citizen was released from prison due to spending the maximum term of detention in custody, this term shall be restored under Article 307 of the Code of Criminal Procedure.</p>		

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

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
			<p>Art. 380. CPP Arresto obbligatorio in flagranza.</p> <p>1. Gli ufficiali e gli agenti di polizia giudiziaria procedono all'arresto di chiunque è colto in flagranza di un delitto non colposo, consumato o tentato, per il quale la legge stabilisce la pena dell'ergastolo o della reclusione non inferiore nel minimo a cinque anni e nel massimo a venti anni.</p> <p>2. Anche fuori dei casi previsti dal comma 1, gli ufficiali e gli agenti di polizia giudiziaria procedono all'arresto di chiunque è colto in flagranza di uno dei seguenti delitti non colposi, consumati o tentati:</p> <p>a) delitti contro la personalità dello Stato previsti nel titolo I del libro II del codice penale per i quali è stabilita la pena della reclusione non inferiore nel minimo a cinque anni o nel massimo a dieci anni;</p> <p>b) delitto di devastazione e saccheggio previsto dall'articolo 419 del codice penale;</p> <p>c) delitti contro l'incolumità pubblica previsti nel titolo VI del libro II del codice penale per i quali è stabilita la pena della reclusione non inferiore nel minimo a tre anni o nel massimo a dieci anni;</p> <p>d) delitto di riduzione in schiavitù previsto dall'articolo 600, delitto di prostituzione minorile previsto dall'articolo</p>	<p>Art. 380. CPP Obligatory arrest in flagrante delicto.</p> <p>1. The judicial police officials and officers shall arrest anyone who is caught <i>in flagrante delicto</i> in a non-negligible crime, whether committed or attempted, for which the law lays down a penalty of life imprisonment or five to twenty years' imprisonment.</p> <p>2. Other than in the cases identified in paragraph 1, the judicial police officials and officers shall arrest anyone who is caught <i>in flagrante delicto</i> in one of the following non-negligible crimes, whether committed or attempted:</p> <p>a) crimes against the personality of the State identified under Heading I of Book II of the Criminal Code for which the penalty is imprisonment for no less than five and no more than ten years;</p> <p>b) the crime of devastation and pillaging under Article 419 of the criminal code;</p> <p>a) crimes against the public safety identified under Heading VI of Book II of the Criminal Code for which the penalty is imprisonment for no less than three and no more than ten years;</p> <p>d) the crime of enslavement under Article 600, the crime of under-aged prostitution under Article 600-bis, paragraph one,</p>		

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

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
			<p>600-bis, primo comma, delitto di pornografia minorile previsto dall'articolo 600-ter, commi primo e secondo, anche se relativo al materiale pornografico di cui all'articolo 600-quater.1, e delitto di iniziative turistiche volte allo sfruttamento della prostituzione minorile previsto dall'articolo 600-quinquies del codice penale;</p> <p>e) delitto di furto, quando ricorre la circostanza aggravante prevista dall'articolo 4 della legge 8 agosto 1977, n. 533 [armi] quella prevista dall'articolo 625, primo comma, numero 2), prima ipotesi, del codice penale, salvo che, in quest'ultimo caso, ricorra la circostanza attenuante di cui all'articolo 62, primo comma, numero 4), del codice penale;</p> <p>e-bis) delitti di furto previsti dall'articolo 624-bis del codice penale, salvo che ricorra la circostanza attenuante di cui all'articolo 62, primo comma, numero 4), del codice penale;</p> <p>f) delitto di rapina previsto dall'articolo 628 del codice penale e di estorsione previsto dall'articolo 629 del codice penale;</p> <p>g) delitti di illegale fabbricazione, introduzione nello Stato, messa in vendita, cessione, detenzione e porto in luogo pubblico o aperto al pubblico di armi da guerra o tipo guerra o parti di esse, di esplosivi, di armi clandestine nonché di più armi comuni da</p>	<p>the crime of under-aged pornography under Article 600-ter, paragraphs one and two, even if in relation to pornographic material of the type identified in Article 600-quater.1, and the crime of organising tourism aimed at exploiting under-aged prostitution under Article 600-quinquies of the criminal code;</p> <p>e) the crime of theft, in the presence of the aggravating circumstance identified in Article 4 of law no. 533 of August 8 1977 or that identified in Article 625, paragraph, number 2), first instance, of the criminal code, unless, in the latter case, the attenuating circumstance identified in Article 62, paragraph, number 4) of the criminal code applies;</p> <p>e-bis) crimes of theft identified under Article 624-bis of the criminal code, except in the presence of the attenuating circumstance identified in Article 62, paragraph one, number 4) of the criminal code;</p> <p>b) the crime of robbery under Article 628 of the criminal code and extortion under Article 629 of the criminal code;</p> <p>g) the crimes of illegal manufacture, introduction into the State, sale, transfer, possession and bearing in a public place or a place open to the public weapons of war or</p>		

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

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
			<p>sparo escluse quelle previste dall'articolo 2, comma terzo, della legge 18 aprile 1975, n. 110;</p> <p>h) delitti concernenti sostanze stupefacenti o psicotrope puniti a norma dell'art. 73 del testo unico approvato con D.P.R. 9 ottobre 1990, n. 309,[<i>Produzione e traffico illecito di sostanze stupefacenti o psicotrope</i>] salvo che ricorra la circostanza prevista dal comma 5 del medesimo articolo;</p> <p>i) delitti commessi per finalità di terrorismo o di eversione dell'ordine costituzionale per i quali la legge stabilisce la pena della reclusione non inferiore nel minimo a quattro anni o nel massimo a dieci anni;</p> <p>l) delitti di promozione, costituzione, direzione e organizzazione delle associazioni segrete previste dall'articolo 1 della legge 25 gennaio 1982, n. 17 , delle associazioni di carattere militare previste dall'articolo 1 della legge 17 aprile 1956, n. 561, delle associazioni, dei movimenti o dei gruppi previsti dagli articoli 1 e 2, della legge 20 giugno 1952, n. 645, delle organizzazioni, associazioni, movimenti o gruppi di cui all'art. 3, comma 3, della L. 13 ottobre 1975, n. 654;</p> <p>l-bis) delitti di partecipazione, promozione, direzione e organizzazione della associazione di tipo mafioso prevista dall'articolo 416-bis del codice penale;</p>	<p>similar weapons or parts thereof, explosives, illegal weapons and ordinary firearms other than those identified in Article 2, paragraph three of law no. 110 of April 18 1975;</p> <p>h) crimes regarding narcotics and psychotropic drugs punishable under Article 73 of the sole text approved by Presidential Decree no. 309 on October 9 1990 [Production and illegal trafficking in narcotics and psychotropic substances] except in the presence of the circumstances envisaged in paragraph 5 of the same Article ;</p> <p>i) crimes committed for the purposes of terrorism or subversion of the constitutional order for which the law establishes a sentence of imprisonment for no less than four and no more than ten years;</p> <p>l) crimes of promotion, constitution, direction and organisation of secret associations of the type identified in Article 1 of law no. 17 of January 25 1982, of military associations of the type identified in Article 1 of law no. 561 of April 17 1956, of the associations, movements or groups identified in Articles 1 and 2 of law no. 645 of June 20 1952, and of organisations, associations, movements or groups of the kind identified in Article 3, paragraph 3 of Law no. 654 of October 13 1975;</p>		

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

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
			<p>m) delitti di promozione, direzione, costituzione e organizzazione della associazione per delinquere prevista dall'articolo 416 commi 1 e 3 del codice penale, se l'associazione è diretta alla commissione di più delitti fra quelli previsti dal comma 1 o dalle lettere a), b), c), d), f), g), i) del presente comma.</p> <p>3. Se si tratta di delitto perseguibile a querela, l'arresto in flagranza è eseguito se la querela viene proposta, anche con dichiarazione resa oralmente all'ufficiale o all'agente di polizia giudiziaria presente nel luogo. Se l'avente diritto dichiara di rimettere la querela, l'arrestato è posto immediatamente in libertà.</p>	<p>l-bis) crimes of participation, promotion, direction and organisation of mafia associations of the type identified in Article 416-bis of the criminal code;</p> <p>m) crimes of promotion, direction, establishment and organisation of criminal association under Article 416 paragraphs 1 and 3 of the criminal code, if the association's aim is committing crimes included among those identified in paragraph 1 or letters a), b), c), d), f), g), i) of this paragraph.</p> <p>3. In the case of crimes which are prosecutable upon filing of a complaint, arrest may be conducted <i>in flagrante</i> if the complaint is filed, even in the form of an oral statement to the police officer or agent present on the scene. If the entitled party declares that he or she withdraws the complaint, the person arrested will be freed 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>	New Art. 22.1 and 22.2 D.Lgs n. 30/07 as replaced by Art. 1.1 e) D.Lgs n. 32/08	<p>Art. 22 (Ricorsi contro i provvedimenti di allontanamento)</p> <p>1. Avverso il provvedimento di allontanamento per motivi di sicurezza dello Stato di cui all'articolo 20, commi 1 e 2, e per motivi di ordine pubblico puo' essere presentato ricorso al Tribunale amministrativo regionale del Lazio, sede di Roma.</p>	<p>Art. 22 (Appeals against expulsion measures)</p> <p>1. The measure referred to in Article 20.1 and 20.2 based on grounds of State security and public order, can be appealed/challenged before the Regional Administrative Court of Lazio, with seat in Rome.</p>	Y	<p>Effective transposition</p> <p>Effective transposition although the transposing Decree does not refer to "public health" grounds meaning that an appeal on public health grounds is not possible. This is because in Italy expulsions on grounds of public health do not seem to be possible.</p>

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

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
		Art. 8 D.Lgs n. 30/07	<p>2. Avverso il provvedimento di allontanamento per motivi di pubblica sicurezza, per motivi imperativi di pubblica sicurezza e per i motivi di cui all'articolo 21 puo' essere presentato ricorso entro venti giorni dalla notifica, a pena di inammissibilità, al tribunale ordinario in composizione monocratica in cui ha sede l'autorità che lo ha adottato. La parte puo' stare in giudizio personalmente.</p> <p>3. I ricorsi di cui ai commi 1 e 2, sottoscritti personalmente dall'interessato, possono essere presentati anche per il tramite di una rappresentanza diplomatica o consolare italiana; in tale caso l'autenticazione della sottoscrizione e l'inoltro all'autorità giudiziaria italiana sono effettuati dai funzionari della rappresentanza. La procura speciale al patrocinante legale è rilasciata avanti all'autorità consolare, presso cui sono eseguite le comunicazioni relative al procedimento.</p> <p>Art. 8 (Ricorsi avverso il mancato riconoscimento del diritto di soggiorno) 1. Avverso il provvedimento di rifiuto e revoca del diritto di cui agli articoli 6 e 7, e' ammesso ricorso al tribunale in composizione monocratica del</p>	<p>2. The appeal against the expulsion measure based on public security, imperative public security and on Article 21's grounds shall be appealed/challenged within 20 days from the notification of the measure of expulsion (otherwise it becomes inadmissible) before the ordinary court in (monocratic composition) of the place where the authority that has issued it has its seat.</p> <p>3. The appeal might also be brought an Italian diplomatic or consular representation; in this case the functionaries of the diplomatic representation certify the authenticity of the subscription and send the documents concerned to the Italian judicial authority. The special power of attorney is given before consular authority. The mentioned authorities also deal with communications concerning the proceeding.</p> <p>Art. 8 (Appeal against non recognition of the right of residence) 1. The measures refusing or revokes the rights provided for in Article 6 and 7, can be appealed before the monocratic Court of the place where the</p>		Art. 8: This provision refers to redress procedures against the non recognition of the right of residence.

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

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
			luogo ove dimora il richiedente, il quale provvede, sentito l'interessato, nei modi di cui agli articoli 737 e seguenti del codice di procedura civile.	person concerned resides (<i>dimora</i>); the Court decides according to the procedures referred to in Articles 737 and following of the civil procedural code, after having heard the person concerned.		(Refer also to the comment inserted above in correspondence with Article 27(1) of the Directive, concerning the more specific grounds of expulsion of the Italian Decree).
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, 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).	New Art. 22.4 D.Lgs n. 30/07 as replaced by Art. 1.1 e) D.Lgs n. 32/08	4. I ricorsi di cui ai commi 1 e 2 possono essere accompagnati da una istanza di sospensione dell'esecutorietà del provvedimento di allontanamento. Fino all'esito dell'istanza di cui al presente comma, l'efficacia del provvedimento impugnato resta sospesa, salvo che il provvedimento di allontanamento si basi su una precedente decisione giudiziale ovvero sia fondato su motivi di sicurezza dello Stato o su motivi imperativi di pubblica sicurezza.	4. The appeal referred to in paragraphs 1 and 2 may be accompanied by an application for an interim order to suspend enforcement of the expulsion measure. Until the decision on the interim order has been taken, the efficacy if the appealed measure is suspended, except when the expulsion is based upon a previous judicial decision or is based on grounds of State security or imperative public security.	N, Incorrect	Incorrect transposition The transposing provision fails to refer to “where the persons concerned have had previous access to judicial review”. In this regard the Italian Decree is more favourable. Also, the reference to paragraphs 1 and 2 is incorrect as a consequence of the incorrectness described above in correspondence of Art. 31.1 of the Directive: the transposing provision fails to refer to “any decision” that can undergo an appeal or review as it not includes public health grounds But the provision appears to be more favourable since expulsion is not possible on public health grounds. The Directive only refers to “imperative grounds of public security”, while the transposing Decree also refer to “ State security” grounds. As already explained, State security grounds are very broad and therefore is a risk that the expulsion decision will never be suspended. <i>Art. 22.4 D.Lgs n. 30/07 will be replaced if the draft Legislative decree amending and supplementing D.Lgs n. 30/07 is finally adopted.</i>

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

[illegible]

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

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
		New Art. 22. D.Lgs n. 30/07 as replaced by Art. 1.1 e) D.Lgs n. 32/08	<p>di procedura civile. Qualora i tempi del procedimento dovessero superare il termine entro il quale l'interessato deve lasciare il territorio nazionale ed e' stata presentata istanza di sospensione ai sensi del comma 4, il giudice decide con priorità sulla stessa prima della scadenza del termine fissato per l'allontanamento.</p> <p>7. Nel caso in cui il ricorso e' respinto, l'interessato presente sul territorio dello Stato deve lasciare immediatamente il territorio nazionale.</p>	<p>appeals referred to in paragraph 2. When the proceeding exceed the period of time within which the person concerned shall leave the national territory and an application for an interim order of suspension has been made, according paragraph 4, the judge decide by priority on that application before the deadline for expulsion.</p> <p>7. If the appeal is rejected the concerned person who is in the territory of the State shall immediately leave the national territory.</p>		<p>defence in person.</p> <p>If this person has made a request for suspension of the enforcement of the expulsion that has been accepted, this person is not obliged to leave the territory and can therefore participate to the proceeding.</p> <p>If the request for suspension of the enforcement of the expulsion is denied, then the person concerned must leave the territory but upon a request to the <i>Questore</i> can reenter the territory in order to participate to the appeal proceeding, "except when his/her appearance may cause serious troubles or serious threat to public order and security".</p> <p>These are procedural norms.</p> <p>This provision in part also refer to the personal appearance of the individual concerned in the hearing, giving the time limits for the judge to decide in the merit of the application for an interim order of suspension and the immediate expulsion of the individual concerned (who is in the territory of the State) when the appeal is denied.</p> <p><i>Art. 22.5 D.Lgs n. 30/07 will be amended if the draft Legislative decree amending and supplementing D.Lgs n. 30/07 is finally adopted.</i></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</p>	New Art. 20.13 D.Lgs n. 30/07 as replaced by Art. 1.1 c) D.Lgs n. 32/08	13. Il destinatario del provvedimento di allontanamento può presentare domanda di revoca del divieto di reingresso dopo che,	13. The persons concerned may submit an application for lifting of the exclusion order after at least half of the duration of the	N, Incorrect	<p>Incorrect transposition</p> <p>More stringent transposition since referring to "at least half of the</p>

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

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
	application for lifting of the exclusion order after a reasonable period, depending on the circumstances, and in any event after three years from 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.		dall'esecuzione del provvedimento, sia decorsa almeno la metà della durata del divieto, e in ogni caso decorsi tre anni. Nella domanda devono essere adottati gli argomenti intesi a dimostrare l'avvenuto oggettivo mutamento delle circostanze che hanno motivato la decisione di vietare il reingresso nel territorio nazionale. [...]	ban or in any event after three years from enforcement of the final exclusion order. The application shall put forward arguments to establish that there has been a material change in the circumstances which justified the decision ordering their exclusion from the national territory. [...]		duration of the ban "limit does not imposed by the Directive, which refers to a change in circumstances, which could occur before that half elapsed.
	The Member State concerned shall reach a decision on this application within six months of its submission.	New Art. 20.13 D.Lgs n. 30/07 as replaced by Art. 1.1 c) D.Lgs n. 32/08	[...] Sulla domanda, entro sei mesi dalla sua presentazione, decide con atto motivato l'autorità che ha emanato il provvedimento di allontanamento. [...]	[...] The Authority that given the expulsion measure shall reach a decision on this application within six months of its submission, by an act giving the grounds of it. [...]	Y	Correct transposition
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.	New Art. 20.13 D.Lgs n. 30/07 as replaced by Art. 1.1 c) D.Lgs n. 32/08	[...] Durante l'esame della domanda l'interessato non ha diritto di ingresso nel territorio nazionale.	[...] The persons concerned shall have no right of entry to the territory of the Member State concerned while their application is being considered.	Y	Almost literal transposition
Art.33.1	Expulsion as a penalty or legal consequence 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.				NT	Not transposed Exclusion order as penalty can be imposed only when the crime is a breach of the provisions on immigration. So if a non Italian citizen commits another kind of crime but he /she is legally in the national territory then he/she cannot be expelled but is subject to the same sanctions provided for Italian citizens. However, it is preferable to assess a non transposition since, as already commented in correspondence to Art.

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

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
						28 (1) to the Directive, there is no expulsion when the crime committed is serious (as murder etc). However in practice, in relation to non EU citizens, for less serious crimes the judge often takes expulsion measures. It needs to be checked in practice if this does not apply to EU citizens.
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	Not transposed If the first part does not apply, then no need to transpose this one since it refers to limits according to first paragraph.
Art.34	Publicity 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.	Art. 25.1 D.Lgs n. 30/07	Art. 25 (Norme finali e abrogazioni) 1. Le amministrazioni competenti provvederanno, senza nuovi o maggiori oneri a carico della finanza pubblica, a diffondere tramite i propri siti internet i contenuti del presente decreto. [...]	Art. 25 (Final provisions and repeals) 1. The competent authorities shall disseminate through their internet websites the content of this decree, with no new or additional burden for the public finance . [...]	Y	Effective transposition
Art.35	Abuse of rights 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.				NT	Not transposed It seems that Italy until 2002 has not regulated this issue (Cons Stato 22 May 2002, n. 1225: convenience marriage does not impede the right to have the Italian nationality for the foreigner national). There may be more cases in the next future. <i>There is a project of Law that has been discussed at the Italian Council</i>

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

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
						<i>of Ministers on 21 May 2008 and that intends to change the provision on marriages of convenience amending Art. 5 Law 91/1992. In particular it will be more difficult to obtain the Italian nationality by marriage.</i>
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>	<p>New Art. 20.12 D.Lgs n. 30/07 as replaced by Art. 1.1 c) D.Lgs n. 32/08</p> <p>New Art. 21.4 D.Lgs n. 30/07 as replaced by Art. 1.1 e) D.Lgs n. 32/08</p> <p>New Art. 20.14 D.Lgs n. 30/07 as replaced by Art. 1.1 c) D.Lgs n. 32/08</p>	<p>12. Nei casi di cui al comma 10, se il destinatario del provvedimento di allontanamento si trattiene oltre il termine fissato, il questore dispone l'esecuzione immediata del provvedimento di allontanamento dell'interessato dal territorio nazionale. Si applicano, per la convalida del provvedimento del questore, le disposizioni del comma 11.</p> <p>4. Qualora il cittadino dell'Unione o il suo familiare allontanato sia individuato sul territorio dello Stato oltre il termine fissato nel provvedimento di allontanamento, senza aver provveduto alla presentazione dell'attestazione di cui al comma 3, e' punito con l'arresto da un mese a sei mesi e con l'ammenda da 200 a 2.000 euro.</p> <p>14. Il destinatario del provvedimento di allontanamento, che rientra nel territorio nazionale in violazione del divieto di reingresso è punito con la</p>	<p>12. In the cases referred to in paragraph 10, if The person concerned with the expulsion decision remain in the territory of the State for longer than what provided for in the expulsion measure the <i>Questore</i> gives immediate execution/enforces to the expulsion measure from the national territory. Provisions of paragraph 11 apply to the validation of the measure adopted by the <i>Questore</i>.</p> <p>4. If the Union citizen or his/her family member expelled is located in the territory of the State for longer than what provided for in the expulsion measure, without having produced the certificate referred to in paragraph 3, is punished by arrest from one to six months and by a fine from 200 to 2.000 Euro.</p> <p>14. The person concerned with the expulsion decision, who enters the national territory, breaching the ban on entry, is punished by imprisonment until</p>	Y	<p>Effective transposition</p> <p>Only sanctions against breach of ban on entry have been applied in Italy.</p> <p>New Art. 20.12 foresees the sanction of expulsion if the person concerned with the expulsion decision remain in the territory of the State.</p> <p>As for the second part of the Directive's provision, Italy cannot have notified these sanctions by the 30 April 2006 since the Directive has only been transposed on 11 April 2007.</p> <p>It goes beyond the scope of this study to determine whether the sanctions mentioned in the national transposing provision constitute an effective, and proportional penalties. We assume conformity of transposition. However, looking at the possible range of sanctions provided, it is possible to conclude that they are <i>reasonable</i>.</p> <p><i>Art. 20.14 D.Lgs n. 30/07 will be amended if the draft Legislative decree amending and supplementing</i></p>

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

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
			<p>reclusione fino a due anni nell'ipotesi di allontanamento per motivi di sicurezza dello Stato, ovvero fino ad un anno, nelle altre ipotesi. Il giudice può sostituire la pena della reclusione con la misura dell'allontanamento immediato con divieto di reingresso nel territorio nazionale, per un periodo da cinque a dieci anni. L'allontanamento è immediatamente eseguito dal questore, anche se la sentenza non è definitiva.</p>	<p>two years in the case of expulsion on State security grounds or imprisonment until one year in the other cases. The judge may replace imprisonment by the measure of immediate expulsion with the ban on re-entry in the national territory for a period from five to ten years. The expulsion is immediately enforced by the <i>Questore</i> even though the judgment is not yet final.</p>		<p><i>D.Lgs n. 30/07 is finally adopted.</i></p>
		New Art. 20.15 D.Lgs n. 30/07 as replaced by Art. 1.1 c) D.Lgs n. 32/08	15. Si applica la pena della reclusione fino a tre anni, in caso di reingresso nel territorio nazionale in violazione della misura dell'allontanamento disposta ai sensi del comma 14, secondo periodo.	15. The person concerned with the expulsion decision is punished by imprisonment until three years, if he/she has breached the expulsion order given according to paragraph 14, second indent.		<p><i>Art. 20.15 D.Lgs n. 30/07 will be amended if the draft Legislative decree amending and supplementing D.Lgs n. 30/07 is finally adopted.</i></p>
		New Art. 20.16 D.Lgs n. 30/07 as replaced by Art. 1.1 c) D.Lgs n. 32/08	16. Nei casi di cui ai commi 14 e 15 si procede con rito direttissimo. In caso di condanna, salvo che il giudice provveda ai sensi del comma 14, secondo periodo, è sempre adottato un nuovo provvedimento di allontanamento immediatamente esecutivo, al quale si applicano le norme del comma 11.	16. In the cases referred to in paragraphs 14 and 15 it is proceed by a “ <i>direttissimo</i> ” proceeding. In case of conviction, except when the judge acts in accordance with paragraph 14, second indent, a new immediately enforceable expulsion measure is adopted; provisions of paragraph 11 shall apply.		<p><i>Direttissimo</i> proceeding (is a sort of summary procedure) allows for a quick procedure in specific cases i.e., when the person concerned is arrested in flagrante or the person confesses the commission of a crime.</p>
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</p>	Art. 23 D.Lgs n. 30/07	<p>Art. 23 (Applicabilità ai soggetti non aventi la cittadinanza italiana che siano familiari di cittadini italiani)</p> <p>1. Le disposizioni del presente</p>	<p>Art. 23 (The Decree applies to persons with no Italian nationality who are family member of an Italian citizen)</p> <p>1.The provisions of this</p>	Y	<p>Effective transposition</p> <p>The Italian Decree expressly says that its provisions shall apply if more favourable as compared to other</p>

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

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
	Member State which would be more favourable to the persons covered by this Directive.		decreto legislativo, se più favorevoli, si applicano ai familiari di cittadini italiani non aventi la cittadinanza italiana.	legislative decree, if more favourable, are applied to family members of Italian citizens who do not have the Italian nationality.		existing provisions. As mentioned in the ToC sent to the Commission by the Italian Ministry of Interior Affairs, the transposing Decree has integrally replaced the previous provisions on residence and movement of Union citizens. Moreover, for the principle <i>lex specialis derogates lex generalis</i> , if more favourable provisions on specific sectors would exist then those latter provisions would apply.
Art.38	1. Articles 10 and 11 of Regulation (EEC) No 1612/68 shall be repealed with effect from 30 April 2006. 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. 3. References made to the repealed provisions and Directives shall be construed as being made to this Directive.	Art. 25.2 D.Lgs n. 30/07	2. Alla data di entrata in vigore del presente decreto sono o restano abrogati il decreto del Presidente della Repubblica 30 dicembre 1965, n. 1656, il decreto legislativo 18 gennaio 2002, n. 52, il decreto del Presidente della Repubblica 18 gennaio 2002, n. 53, il decreto del Presidente della Repubblica 18 gennaio 2002, n. 54. 3. Il comma 4 dell'articolo 30 del decreto legislativo 25 luglio 1998, n. 286, e' abrogato.	2. At the date of entry into force of this decree, Presidential Decree of 30 December 1965, n. 1656, Legislative Decree 18 January 2002, n. 52, Presidential Decree 18 January 2002, n. 53, Presidential Decree 18 January 2002, n. 54, are or remain repealed 3. Paragraph 4 of Article 30 of Legislative Decree of 25 July 1998, n. 286, is repealed.		It has not been checked every single transposing Act of the mentioned Directives.
Art.39	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.					

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

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
Art.40	Transposition 1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 April 2006.				N	Late transposition: the Decree came into force on 11 April 2007, almost one year after the date indicated in the Directive. Following two different Law Decrees that were supposed to be converted into Law within 60 days from their adoption and were finally not converted, a new Legislative Decree has been adopted on the 6 February 2008 that entered into force on 2 March 2008.
	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.				Y	This provision can be considered as transposed, since the transposing Decree expressly refers to the transposition of Directive 2004/38/EC.
	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	The Commission has received the text of the main transposing Act (i.e., Legislative Decree 30/2007) and of further amendments; however, those latter (in particular Law Decree 181/2007) have not been finally approved by the Parliament. The last adopted Law Decree n. 249/2007 was not communicated and it has not finally been converted into Law by the Italian Parliament. A table showing how the provisions of this Directive correspond to the national provisions adopted has been prepared; however, the table is not updated with the newly adopted legislation.

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

Art. 8 f Law n. 69 of 22 April 2005 Article 8 (Obligatory extradition).

1. Extradition shall be implemented on the basis of the European arrest warrant, whether or not the accused is doubly incriminated, for the following acts, provided that, any aggravating circumstances excluded, the maximum sentence or security measures depriving the accused of personal liberty is three years or more:

- a) participation in an association of three or more people aimed at committing a series of crimes; b) performing acts threatening the public safety or acts of violence against people or property to the damage of a State, institution or international organisation with the purpose of subverting the constitutional order of a State or destroying or weakening national or supra-national political, economic or social structures;
- c) forcing or inducing one or more people, by violence, threat, deception or abuse of authority, to enter, stay in or leave the territory of a State, or move within the territory of a State, in order to subject them to slavery, forced labour, begging or exploitation of sexual services; d) inducing a child to prostitution or performing acts aimed at sexual exploitation or aiding and abetting of sexual exploitation of a child; performing acts aimed at exploitation of a child in order to produce pornographic material by any means; selling, distributing, disclosing or advertising pornographic material portraying a minor; e) selling, offering, transferring, distributing, marketing, purchasing, transporting, exporting, importing or procuring for others any substance considered narcotic or psychotropic under the law of European countries;
- f) marketing, purchasing, transporting, exporting or importing arms, munitions and explosives in violation of current legislation;
- g) receiving, accepting a promise of, giving or promising money or other profits in relation to performing or abstinence from performing an act involved in a public office;
- h) performing any act or intentional omission in relation to the use or presentation of false, inaccurate or incomplete declarations or documents leading to unlawful receiving or holding of funds or illegitimate subtraction of resources appearing in the budget of a State, in the overall budget of the European Communities or in budgets managed by the European Communities or on their behalf; performing any act or intentional omission regarding the misappropriation of such funds for purposes other than those for which they were initially granted; performing the same acts or omissions against a private person, a legal entity or a public institution; i) replacing or transferring money, goods or other utilities resulting from a crime, or conducting other transactions in relation to them, hindering identification of their illicit origin; l) counterfeiting national or foreign currency that is legal tender in the State or outside it or altering legal tender in any way so that it appears to be of greater value;
- m) commit, with the intention of procuring a profit for oneself or others or causing damage to others, an act aimed at entering or staying in a computer system or telecommunications system protected by security measures without authorisation, or damaging or destroying information or telecommunications systems, data, information or programmes contained in them or pertaining to them;
- n) endangering the environment with unauthorised dumping of hydrocarbons, waste oil or sludge from water treatment, releasing hazardous substances into the atmosphere, onto the ground or in water, treatment, transportation, storage or elimination of hazardous wastes, releasing wastes into the soil or water or illegally operating a landfill; possessing, capturing and dealing in protected animal and plant species;
- o) performing, with the aim of obtaining profit, acts directed at procuring illegal entry into the territory of a State of a person who is not a citizen of that State and is not entitled to permanent residency;
- p) intentionally causing the death of a man or personal injury of the same degree of severity as that identified in Article 583 of the criminal code;
- q) illegally procuring human organs or tissues or dealing in them in order to make a profit; r) depriving a person of personal liberty or holding a person in one's power by threatening death or injury or continuing to hold a person hostage in order to force a third party, whether it be a State, an international organisation among governments, a physical person or legal entity or a group of physical persons to perform any act or abstain from performing any act, subjecting the release of the person held to this act or omission;
- s) publicly inciting violence as an expression of racial hatred directed at a group of people, or a member of a group of people, because of the colour of their skin, their race, professed religion, or national or ethnic origin; promoting crimes against humanity inspired by racism or xenophobia;
- t) taking over possession of others' moveable property, removing it from its owner in order to gain a profit from it for oneself or for others, using arms or as a result of the activity of an organised group;
- u) unlawfully dealing in objects of cultural value, including antiques and works of art; v) inducing someone to commit an error, by artifice or deceit, to procure an unjust profit for oneself or others at another's expense;
- z) demanding by threat, use of force or any other form of intimidation, goods or promises or signature of any document containing or resulting in an obligation, alienation or receipt; aa) imitating or duplicating commercial products without authorisation in order to make a profit; bb) falsifying administrative deeds and trafficking in false documents;
- cc) falsifying documents of payment;
- dd) illegally trafficking hormonal substances and other growth factors; ee) illegally trafficking nuclear and radioactive materials;
- ff) purchasing, receiving or concealing stolen vehicles, or collaborating in any way in their purchase, reception and concealment in order to procure a profit for oneself or others;
- gg) forcing someone to perform or be subjected to sexual acts with violence or threats or by abuse of authority; hh) causing a fire that endangers public safety;
- ii) committing crimes falling under the jurisdiction of the International Criminal Court;
- ll) taking over possession of a ship or aircraft;
- mm) illegally and intentionally causing damage to state structures, other public structures, public transportation systems or other infrastructures which result in or could result in significant economic loss.

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

2. The Italian judicial authorities shall determine the definition of crimes for which extradition is required under the law of the member State issuing the law, if it corresponds to the instance envisaged in paragraph 1.
3. If the act is not considered a crime under Italian law, an Italian citizen shall not be extradited if he or she was unaware, without fault, of the criminal law in the member state issuing the law on the basis of which the European arrest warrant was issued.