

Annex A: Disclosure

Request: “What, if any, advice was sought from the EU before the UK implemented this policy of charging for residence cards and permanent residence cards for both EU/EEA nationals, who are exercising their Treaty rights in the UK, and their non-EU/EEA family members”.

Response: On 12 January 2012, the Home Office wrote to DG Justice, in the European Commission and the letter included the following paragraphs which are relevant to your request:

Charging for residence documentation:

The UK is also exploring the possibility of charging for documentation issued to EEA nationals and their family members under the Directive. Currently, the UK Border Agency issues all such documentation free of charge, creating significant financial pressures at a time when budgets are being reduced.

Article 25(2) of the Directive makes clear that Member States shall issue the documents mentioned in paragraph 1 (registration certificates, residence cards, certificates of application and documents certifying permanent residence) “*free of charge or for a charge not exceeding that imposed on nationals for the issuing of similar documents*”. Although the UK does not issue identity cards to UK citizens, we do not consider that point alone prevents us from charging for documentation under the Directive, and we are considering whether any other documents issued to UK citizens (e.g. UK passports) may be considered “similar documents” for the purposes of Article 25(2) of the Directive.

I would be grateful for the Commission’s view on what criteria ought to be applied when determining if a national document is similar to documentation issued under the Directive for the purposes of Article 25(2). In particular, we would be grateful to know whether the UK passport is such a similar document, meaning that the UK could charge for residence documentation under the Directive in line with the standard fee for a UK adult passport.

On 24 February 2012 the European Commission responded to the Home Office and the letter included the following paragraphs relevant to your request:

Regarding charges for residence documents issued to EU citizens and their non-EU family members under Directive 2004/38/EC, Article 25(2) of Directive 2004/38/EC stipulates that such documents should be issued free of charge or for a charge not exceeding that imposed on nationals for the issuing of similar documents.

This provision is expression of the fundamental principle of non-discrimination on the grounds of nationality, as expressed in Article 24(1) of Directive 2004/38/EC and Article 18 of the Treaty on the Functioning of the European Union.

In assessing compliance with EU law of the UK plans to introduce charges which are identical with charges for a UK adult passport², it is fundamental to examine whether the UK adult passports are the appropriate comparator and that there are no other, better, documents.

If that is not the case, the UK policy on passport charges may have been set up to reflect certain aspects which are relevant for passports but may not be relevant for residence documents issued under Directive 2004/38/EC – such as that passports may be issued by the UK embassies abroad, they have more security features, they must be in a harmonised format, they are more voluminous, they have a different period of validity, they are travel documents accepted by all countries or that the charges are set in such a way that the whole service is more or less self-financing.

Compliance of your plans with EU law can be assessed only on the basis of proper justification and in-depth analysis addressing the above issues. Where no appropriate comparable document other than a passport can be identified, the above justification and analysis should also examine an alternative solution – instead of issuing the residence documents free of charge or for a charge for a UK adult passport, which charges would cover the genuine administrative costs the UK authorities incur in issuing these documents³.

² The charge is £77.50 for normal service by post (*aims to return your passport within three weeks - not guaranteed*) http://www.direct.gov.uk/en/TravelAndTransport/Passports/howlongittakesandurgentapplications/DG_174109. In addition, handling charge of £8.17 must be paid to the Post Office.

³ Article 25(2) of Directive 2004/38/EC refers to charges *not exceeding* that imposed on nationals for the issuing of similar documents so it does not oblige Member States to impose charges identical to those imposed on nationals.