



# Family Reunification

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This EMN Synthesis Report aims to summarise and compare, within a European perspective, the findings from nine National Contact Points (**Austria, Estonia, Germany, Greece, Latvia, Romania, Sweden, Netherlands** and the **United Kingdom**) of the European Migration Network (EMN), on family reunification.

In keeping with the EMN's objective, the purpose of this study was to improve the understanding of family reunification within the EU in order to support, in particular, policy-makers concerned with any possible further development of this form of legal migration. It also, to the extent possible, identifies incoherencies in the implementation of Directive 2003/86/EC on Family Reunification. An overview of the available statistical data, given in more detail in each Country Study produced by the participating EMN National Contact Points (NCPs), is also presented.

The EMN NCP Country Study reports upon which this Synthesis Report is based may be obtained directly from the EMN NCPs concerned themselves or by contacting Stephen DAVIES ([Stephen.Davies@ec.europa.eu](mailto:Stephen.Davies@ec.europa.eu)).

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## **Disclaimer**

This Report has been produced by the European Migration Network (EMN), and was completed by the European Commission, in co-operation with the nine EMN National Contact Points participating in this study. This report does not necessarily reflect the opinions and views of the European Commission, or of the EMN National Contact Points, nor are they bound by its conclusions.

## **Explanatory Note**

The nine EMN National Contact Points who participated in this study were from **Austria, Estonia, Germany, Greece, Latvia, Romania, Sweden, Netherlands** and the **United Kingdom**. When reference to "Member States" in this report is made, this is specifically for these Member States.

## Executive Summary

A study on *Family Reunification* was undertaken by nine National Contact Points (**Austria, Estonia, Germany, Greece, Latvia, Romania, Sweden, Netherlands** and **United Kingdom**) of the European Migration Network (EMN). In keeping with the EMN's objective, the purpose was to improve the understanding of family reunification within the EU in order to support, in particular, policy-makers concerned with any possible further development of this form of legal migration. It also, to the extent possible, identifies incoherencies in the implementation of Directive 2003/86/EC ([Annex 1](#)) on Family Reunification. Each EMN National Contact Point produced a *Country Study* outlining the policy, national rules, regulations and practices in family reunification in its Member State, for the reference period 2002 to 2006 and including the implementation of the Directive, where applicable, as well as the relevant and available statistical data. This *Synthesis Report* aims to summarise and compare, within a European perspective, the main findings from these Country Study reports.

The *Introduction* ([Chapter 1](#)) provides the context in which this study was undertaken, including other relevant studies, after which the *Methodology* ([Chapter 2](#)) is outlined. The structure used in Directive 2003/86/EC was broadly followed for the Country Study reports in order to improve comparability, not only between Member States but also with the directive. Consistent with this approach, the same definitions ([Chapter 2.1](#)) as given in the directive are used to the extent possible, with also the addition of a definition for *dependant*. Since differences do exist in definitions used and/or their understanding between Member States, these have to be taken into consideration when comparing, for example, statistical data ([Chapter 5](#)). Given the relatively short period since adoption of the directive, most of the available information came from government Ministries, particularly with regard to legislation and statistics.

An overview of the *development of family reunification policy* ([Chapter 3](#)) since 2002 in each Member State is given. For all Member States participating in this study, except the **United Kingdom** which has exercised its right to opt out but generally follows the guidance of the directive, transposition into national legislation has entered into force, mainly during 2006. In many cases (**Austria, Estonia, Germany, Latvia, Romania, Sweden**) the transposition of other asylum-immigration acquis was completed at the same time. Integration measures, particularly knowledge of the national language, featured prominently in both political and public debates in **Germany** and the **Netherlands** during the process of transposition. **Greece** has not transposed the clauses ([Articles 9 – 12](#)) relating to family reunification of refugees since its legislation separates immigration and asylum. In **Sweden**, a special investigator was appointed with the task of drawing up a position on how the directive should be implemented.

The overview as to *how family reunification policy is implemented* ([Chapter 4](#)) with specific emphasis on the directive, focuses first ([Chapter 4.1](#)) on the sponsor's *spouse* (married or unmarried) and serves also to outline the general steps followed for other dependants. In most cases, an application for family reunification must be submitted by the dependant in their (third) country of origin and the minimum time that a marriage must have existed for, before an application can be made, is typically two years ([Chapter 4.1.1](#)). Polygamous marriages ([Chapter 4.1.1.1](#)) are not recognised by the Member States, although most have no restrictions on permitting residence for children of such marriages. An exception is the **Netherlands**, which does not grant the entry and residence of children of a second or further spouse. It is possible for a sponsor and spouse to enter at the same time ([Chapter 4.1.1.2](#)) in **Austria, Estonia, Germany, Greece, Netherlands** and the **United Kingdom** and for a dependant to take up employment ([Chapter 4.1.1.8](#)) in **Austria, Estonia, Germany, Latvia, Netherlands, Romania, Sweden** and

**United Kingdom**, but this is subject to conditions. All Member States require documentary evidence to verify the existence of a relationship to be provided ([Chapter 4.1.1.3](#)) and a number of measures are in place to prevent *marriages of convenience* ([Chapter 4.1.1.4](#)), with **Estonia** providing an example of how such marriages of convenience are organised. In order to prevent *forced marriages* ([Chapter 4.1.1.5](#)), most Member States impose a minimum age limit of 18 years, so that education may be completed and confidence can be developed to stand up against the pressure of being forcibly married. Despite being an optional "may" clause, all Member States (except **Sweden**) require evidence of material support ([Chapter 4.1.1.6](#)) in order to ensure *inter alia* no reliance on public funds. Integration measures ([Chapter 4.1.1.7](#)) primarily focus on knowledge of the national language, with the **Netherlands** and **United Kingdom**, in most cases, also requiring that sufficient knowledge of their culture and society be demonstrated. The granting of an autonomous residence permit occurs not later than after five years of residence, in order to conform with Directive 2003/109/EC, or if the sponsor dies. If the relationship breaks up before two to three years of residence, then normally there is no right to an autonomous residence permit, unless there are specific individual circumstances (e.g. in cases of a violent marriage). Unmarried same-sex partners ([Chapter 4.1.2](#)) are entitled to family reunification, except in **Greece, Latvia and Romania**.

Whilst the Family Reunification Directive does not apply to reunification of a *third country national* with an *EU Member State national* ([Chapter 4.1.3](#)), nevertheless this represents a significant proportion of all family reunifications ([Chapter 5.1](#)) and a number of legal inconsistencies exist in some Member States. For example, it has been argued that nationals of **Austria** and **Germany** who have not exercised their right to free movement to another Member State, are in a worse legal position (termed "reverse discrimination") than other EU/EEA Member State nationals residing in Austria or Germany. Inter-Member State experiences with the implementation of EU legislation ([Chapter 4.5](#)) highlight how the measures implemented in one Member State can be bypassed, if considered too stringent, by making an application in another Member State, considered more lenient. This is the so-called *Belgian Route*, although the practice can equally apply to any other Member State.

Whether other dependants (and which ones) are accepted by a Member State is also outlined in various chapters. When granting entry to a *sponsor's child* ([Chapter 4.2](#)), the main consideration in the processing of an application ([Chapter 4.2.1](#)) is that the child's rights and interests are foremost. **Austria, Germany, Netherlands, Sweden** and **United Kingdom** undertake, in agreement with the sponsor, DNA testing ([Chapter 4.2.2](#)) when there are doubts or a lack of documentary evidence as to parentage. If the child is aged 12 years or less then there are no integration requirements ([Chapter 4.2.3](#)). However, for **Germany** and the **Netherlands**, children aged between 16 and 18 years are required to meet certain integration requirements (e.g. language). In most Member States, once the legal age of majority is reached, then an autonomous right of residence is granted ([Chapter 4.2.4](#)). For *other dependants* ([Chapter 4.3](#)), notably adult unmarried children and other first-degree relatives, the general approach of most Member States is to allow reunification only in cases where there is particular hardship and/or dependency on their sponsor(s), with no close family ties in the country of origin. Exceptions exist in **Austria** and **Greece** who have no such provision.

For *refugees* ([Chapter 4.4](#)), **Austria, Estonia, Latvia** and **Romania** require that family relationships predate the entry of the refugee ([Chapter 4.4.1](#)) and access is primarily granted to the nuclear family ([Chapter 4.4.2](#)). The requirement for a secure livelihood and sufficient accommodation ([Chapter 4.4.3](#)) is normally waived by all Member States.

Each Country Study provides an overview of the (available) *statistics* in connection to family reunification ([Chapter 5.1](#)). In most cases, only data on the (non-refugee) dependants could be provided and primarily for the years 2005 and 2006. An indicative overview of the scale of family reunification during 2006 ([Table 1](#)) illustrates that children and adult women (primarily spouses), are by far the largest proportion of dependants.

Finally, the *Concluding Remarks* ([Chapter 6](#)) highlight certain elements of family reunification policy and practice, arising from the main findings of the study, and which might be considered in any further development of policy. In this context, an indication of which of the optional "may" clauses have been incorporated by Member States is given ([Table 2](#)). Particular aspects are the relation to reunification of third country nationals with their EU Member State national sponsor, the so-called Belgian route, marriages of convenience and forced marriages, and the need for consistent data to be able to assess better the causal impact of any new legislation.

## **1. INTRODUCTION**

This Synthesis Report aims to summarise and compare, within a European perspective, the findings from nine National Contact Points (**Austria, Estonia, Germany, Greece, Latvia, Romania, Sweden, Netherlands** and the **United Kingdom**) of the European Migration Network (EMN), on the policy, national rules, regulations and practices in family reunification in these Member States, for the reference period 2002 to 2006. In particular, the implementation of Directive 2003/86/EC on Family Reunification is covered, where applicable, as well as the size and composition of this form of legal migration.

The purpose of this study, in keeping with the EMN's objective, was to improve understanding of family reunification within the EU in order to support, in particular, policy-makers concerned with its further development. It also, to the extent possible, identifies incoherencies in the implementation of Directive 2003/86/EC. A detailed description may be found in the respective Country Study reports, and it is strongly recommended to consult these also.

The context in which the study was undertaken is presented next, followed by the methodology used, including definitions. The development of family reunification policy since 2002 is then described, after which an overview is given as to how current policy is implemented, with specific emphasis, where applicable, to Directive 2003/86/EC. As for the Country Study reports, this report broadly follows the structure used in Directive 2003/86/EC in order to improve comparability, not only between Member States but also with the Directive. Experiences in the implementation of EU legislation within the context of family reunification are also outlined. Finally, there is an overview of the statistics on the size and composition of family reunification, followed by concluding remarks. The Directive may be found in [Annex](#) to this Synthesis Report, in order to have the reference text of a particular Article(s) referred to in the following sections.

### **1.1 Context**

In many Member States today, family reunification accounts for a significant (and, for some Member States, increasing) share of legal migration. Discussions on how migrants entering the EU by this route can be 'absorbed' within today's society, has led to a number of policy changes for admitting migrants who want to start a family or join a family member already legally residing in an EU Member State.

[Directive 2003/86/EC](#)<sup>1</sup> on the right to family reunification was used as the framework for the production of the Country Study reports, so as to provide the basis for better comparability between different Member States. In accordance with [Article 20](#) of the Directive, transposition should have taken place not later than 3<sup>rd</sup> October 2005. As of October 2007, [full transposition](#) had been reported by **Austria**, Belgium, Cyprus, Czech Republic, **Estonia**, **Germany**, Finland, France, **Greece**, Hungary, Italy, **Latvia**, Malta, Poland, Portugal, **Romania**, Slovakia, Slovenia, Spain, **Sweden** and the **Netherlands**; with [non-communication](#) on its transposition from Luxembourg; and Bulgaria's and Lithuania's communicated [text under examination](#). Meanwhile Denmark, Ireland and the **United Kingdom** did not participate in the adoption of this Directive and thus are not bound by or subject to its application. However, for the **United Kingdom**, its policies and operations are generally consistent with the Directive.

A number of other studies addressing related aspects also exist or are being conducted. The [ODYSSEUS network](#)<sup>2</sup> has been contracted by the European Commission (DG JLS) to analyse the conformity of national legislation with ten Directives in the sector of asylum and immigration, including on family reunification. The Commission will use these studies as background information in its function to ensure, in accordance with Article 226 of the EC Treaty, that the Community asylum and immigration Directives are fully and correctly transposed in the relevant Member States. A recently published study on the [first year of implementation of the Family Reunification Directive](#)<sup>3</sup> will serve as a reference source for the ODYSSEUS report.

The *International Centre for Migration Policy Development (ICMPD)* study on [Civic Stratification, Gender and Family Migration Policy in Europe](#),<sup>4</sup> which is being undertaken in the period July 2006 to December 2007, is focussed on the human rights aspects of family-related migration, as well as the increasing restrictions on this mode of entry due to tensions related in particular to integration. The project analyses family migration policies in eight European countries from both the “top-down” perspective (legislation and public debates) and the “bottom-up” perspective (analysing the impact of restrictions on the migrants and their families and the responses to this impact).

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<sup>1</sup> Available, in all Member State languages, from

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0086:EN:NOT>.

<sup>2</sup> Details available at <http://www.ulb.ac.be/assoc/odysseus/Technical%20specification%20v5.pdf>.

<sup>3</sup> "[The Family Reunification Directive in EU Member States; the First Year of Implementation](#)" by K.

Groenendijk et al., Centre for Migration Law, Radboud University Nijmegen (ISBN: 978-90-5850-290-2).

<sup>4</sup> See also [http://www.icmpd.org/687.html?&no\\_cache=1&tx\\_icmpd\\_pi1\[article\]=1044&tx\\_icmpd\\_pi1\[page\]=1045](http://www.icmpd.org/687.html?&no_cache=1&tx_icmpd_pi1[article]=1044&tx_icmpd_pi1[page]=1045).

The specific characteristics of this EMN study are primarily its focus on how legislation has been implemented and the compilation of available statistics on family reunification migration in Member States.

## **2. METHODOLOGY**

The EMN does not engage in primary research *per se*, but instead draws together and analyses available information and statistical data. Given the relatively short period since adoption of the Directive, it was found that most information was available from government Ministries, particularly with regard to the relevant legislation and statistics, such as the *Bundesamt für Migration und Flüchtlinge* (**Germany**); the *Ministry of Interior (Directorate of Computerization)* and the *National Statistical Service* (**Greece**); the *Office of Citizenship and Migration Affairs* (**Latvia**); the *Immigratie- en Naturalisatie Dienst* (**Netherlands**); the *Romanian Immigration Office* (**Romania**); *Statistics Sweden* and the *Migration Board* (**Sweden**); and the recently established *Border and Immigration Agency* (BIA) plus *UKvisas* (**United Kingdom**). Other sources included published articles and views on family reunification (on the internet, in scientific journals and other media), as well as discussions with national experts. In **Austria**, specific questions on administrative practices were addressed to the provincial governments of Upper Austria and Tyrol. For **Sweden**, a proposal on legislation for consideration (*lagrådsremiss*) and Government Bill 2005/06:72 "[Implementation of the EC Directive on the right for family reunification and some questions on the handling procedure and DNA analyses related to family reunification](#)"<sup>5</sup> gave a comprehensive overview on how this Directive had been implemented. In the case of **Estonia** and **Romania**, owing in part to the relatively limited experience so far in its implementation, the methodology followed was to compare the Directive with the main national acts used for its transposition.

### **2.1 Definitions**

Consistent with using the Directive as a framework for this study in order to improve comparability between the Country Study reports, the following terms are used to the extent possible:

- Nuclear family (source: [Directive 2003/86/EC, recital nr.9](#))

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<sup>5</sup> Available from <http://www.regeringen.se/content/1/c6/05/78/83/c142a48c.pdf>.

- Third country national<sup>6</sup> (source: [Directive 2003/86/EC, Article 2,a](#))
- Refugee (source: [Directive 2003/86/EC, Article 2,b](#))
- Sponsor (source: [Directive 2003/86/EC, Article 2,c](#))
- Family Reunification (source: [Directive 2003/86/EC, Article 2,d](#))
- Residence permit<sup>7</sup> (source: [Directive 2003/86/EC, Article 2,e](#))
- Unaccompanied minor (source: [Directive 2003/86/EC, Article 2,f](#))

Other definitions specific to a Member State are outlined in the respective Country Study. For example, in **Estonia**, there is sometimes no direct equivalent in legislation for many terms in EU Directives, although they are in general use. *Nuclear family*, for example, was only introduced during the 2000 population census and is taken to cover persons living in the same household who are related to each other as partners in marriage or a common-law partnership (with or without children) or as parent and child. Similarly in the **Netherlands** and **Romania**, there is no formal legal definition for the concept *nuclear family*. The **Netherlands** and **Sweden** make a distinction between *family reunification*, taken to mean the reunification of family members with a sponsor legally-residing in either of these Member States and where the family relationship existed before in the country of origin, and *family formation*, which refers to the establishment of a family relationship after the entry of the sponsor into either of these Member States. In **Germany**, "family reunification" and "subsequent immigration" are used largely synonymously, whilst in **Austria**, as also in other Member States, there are different kinds of residence titles; namely a settlement permit (*Niederlassungsbewilligung*), providing for long-term settlement and which for third country nationals is subject to an annual quota (with exceptions), and a residence permit (*Aufenthaltsbewilligung*, formerly *Aufenthaltserlaubnis*), providing for a limited time of residence. A specificity also exists in the **United Kingdom**, where the sponsor (unless a refugee) is required to be *present and settled*, i.e. both settled in the United Kingdom and, at the time that the dependant's application is being considered under the Immigration Rules, is residing in the United Kingdom or is coming with the dependant, or to join the dependant and plans to live with them in the United Kingdom if their application is successful.

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<sup>6</sup> For **Estonia**, **Sweden** and the **Netherlands**, citizens of EEA (Norway, Iceland, Liechtenstein) countries and Switzerland are not considered to be third country nationals.

<sup>7</sup> The **United Kingdom** does not issue Residence Permits *per se*, instead an Entry Clearance Visa, if issued for six months or more to third country nationals given leave to enter, acts as authorisation to reside.

It was also decided to introduce, for the purposes of this study, a definition for Dependant, namely:

*A Dependant is any person who is granted entry and residence by a Member State to stay with their family member (i.e. the person referred to as 'sponsor' in Directive 2003/86/EC) and who has explicitly filed an application for reasons of family reunification.*

This definition excludes (where relevant) persons who:

- applied for Family Reunification and whose application has not yet given rise to a final decision;
- have applied for Family Reunification but whose application has been rejected;
- have not applied for Family Reunification but for another residence permit although they will be staying with a family member (who thus cannot be considered a 'sponsor' as in the Directive);
- were residing in a Member State for reasons of Family Reunification but who received an autonomous residence permit independent of that of the sponsor;
- were residing in a Member State for reasons of Family Reunification but who have lost that right for any reason.

Therefore, the focus of the study is on those persons to whom Member States grant residence for family reunification purposes only. In the Directive, a Member State is obliged<sup>8</sup> to grant entry and residence for reasons of family reunification to a certain group of dependants, i.e. to a spouse and minor children, see [Article 4 \(1\)](#), but not to, see [Article 4\(4\)](#), a further spouse within a polygamous marriage. In between this range, a Member State can make some choices as to whom (i.e. which dependants) they wish to grant residence to. On the one hand, there can be minor restrictions (see, for example, [Article 4 \(1\), 3<sup>rd</sup> subparagraph](#)) in who a Member State wishes to consider as a dependant and a Member State can extend the group of dependants to other categories ([Article 4 \(2\) and \(3\)](#)). On the other hand, a Member State can set particular conditions to be met by the sponsor, as well as by the dependant, as proof of the family tie ([Article 5 \(2\)](#)) (for example, in age, see [Article 4 \(5\) and \(6\)](#), or in living conditions, see [Article 7 \(1\)](#)).

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<sup>8</sup> Subject to compliance with the conditions laid down in Chapter IV and Article 16 of the Directive.

### **3. DEVELOPMENT OF FAMILY REUNIFICATION POLICY SINCE 2002, INCLUDING TRANSPOSITION OF DIRECTIVE 2003/86/EC**

In this section a brief overview of developments in family reunification policy since 2002 in each Member State is given, along with (except for **United Kingdom** which exercised its right to opt out), details of the transposition into national legislation of Directive 2003/86/EC.

The transposition of Directive 2003/86/EC, along with other EU Directives in the domain of asylum and migration, into national law in **Austria** was completed with the adoption of the new Aliens Law Package, comprising of the Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz* (NAG)), the new Aliens' Police Act (*Fremdenpolizeigesetz*, FPG) and the new Asylum Act (*Asylgesetz*, AsylG), which entered into force on 1<sup>st</sup> January 2006. Whilst there was extensive public discussion<sup>9</sup> on these new acts, family reunification of third country nationals attracted little attention, except in relation to the provisions for family reunification of third country national dependants of Austrian nationals. There was criticism, however, of the long waiting periods before a settlement permit is granted, which even those third country nationals who have a right to family reunification experienced, and the reduction of the quota for family reunification (previously 5.460 but reduced to 4.425 in 2006). On the one hand, the new rules for family reunification of third country nationals are, to some extent, considered to be more favourable (e.g. concerning the access of dependants to the labour market now being possible after 12 months, the improved possibilities of receiving an autonomous residence permit). On the other hand, the admission of (third country national) dependants of Austrian nationals has been curtailed, by introducing a distinction according to the use of the right to free movement, and thus considered less favourable than for family reunification of third country nationals.

No significant political debate regarding the transposition of the Family Reunification Directive occurred in **Estonia**, instead family reunification was one part of a wider political debate on the immigration quota and bringing foreign labour to Estonia. A public debate (described later in [Section 4.1.1.4](#)) on marriages of convenience also occurred. Although the right to family reunification is provided for in the *Constitution of the Republic of Estonia* (passed on 28 June 1992), the migration regulating acts were not in accordance with this. The *Aliens Act* was brought into accordance with the *Constitution* only in 2002, when the spouse and child of a citizen of

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<sup>9</sup> Further details may be obtained from the Austria's *Policy Report on Immigration and Integration 2005*, available from <http://www.emn.at/News-index-idx-30-topic-3.phtml>.

Estonia and alien permanently residing in Estonia were exempted from the immigration quota (0.05% of the total population or 675 third country nationals). This change was made to enhance the right of family reunification in Estonia. Directive 2003/86/EC was then transposed into Estonian legislation on 1<sup>st</sup> June 2006 through the *Aliens Act* (which had entered into force in 1993) and the *Act on Granting International Protection to Aliens*, which entered into force on 1<sup>st</sup> July 2006.

Family reunification policy in **Germany** has been developed partially in parallel to the development of European legislation. As a result, part of the European regulations set out in the Family Reunification Directive was already anticipated in German law with the Residence Act (*AufenthG*), which entered into force on 1<sup>st</sup> January 2005, thus requiring only few or minor additional changes in national legislation. Most discussion in connection to family reunification centred on the overall issue of integration, particularly on the necessary knowledge of the German language and an age limit for spouses. Otherwise, the national political debate only marginally touched upon the necessary implementation of the Directive, with instead the Directive providing a background for new regulations, and defined the scope for new provisions. The transposition of the Directive was finally achieved through the introduction of the remaining necessary changes by the Directive Implementation Act (*EU-RLUmsG*), which entered into force on 28<sup>th</sup> August 2007.

Even though the transposition of Directive 2003/86/EC in **Greece** took place in 2006, its main provisions had already been institutionalised earlier. This helped to facilitate the smooth transposition of the Directive whose main principles were generally accepted by the broad political spectrum and NGOs. The issue of family reunification was initially regulated on the basis of *Law 2910/2001* (Articles 28-33). The main relevant provisions of this law were that third country nationals after two years of legal residence in Greece can bring their spouse and minor child(ren), allowing the former to work, and provisioned the access to education for family members. It did not, however, impose any control on the suitability, the condition and safety standards of accommodation. *Immigration Law 3386/2005* then followed, which incorporated further provisions in line with the general guidelines of Directive 2003/86/EC. The Directive was then fully transposed in 2006 with the entry into force of *Presidential Decree 131*, accompanied by *Circular No. 33* (protocol 17684/2006) which specified its implementation, except for Chapter

V: Family Reunification of Refugees (Articles 9 – 12), which has not been transposed because in Greek legislation, immigration is separated from asylum.

No major political or public discussions on family reunification policy, or the content of the Directive and its transposition into national legislation, took place in **Latvia**. The norms of the Directive have been incorporated since May 2003 and are covered by Part IV of the *Immigration Law*, Part II of the *Asylum Law* plus five *Regulations* by the Cabinet of Ministers. No modifications to family reunification policy are anticipated in the near future.

The transposition of the Directive in the **Netherlands** was achieved by adapting existing legislation as laid down in its *Aliens Act* and elaborated in its *Aliens decree* and *Aliens Regulation*, with policy rules set out in the *Aliens Act Implementation Guidelines*. These adaptations entered into force in November 2004. In fact, the impact of the Directive on the development of policy during the period 2002 to 2006 is considered to be relatively minor with legislation adapted only in connection to the family reunification with refugees and only a small number of the optional provisions (the "may" clauses) adopted. More significant during this period was the development and introduction of a new integration regime<sup>10</sup> and the rise of the *Pim Fortuyn List* party, so that only brief attention was given by parliament, NGOs and the media to the Directive and its impact on the Netherlands. Whilst the government is of the opinion that the Directive has been fully transposed, other parties (e.g. academia) do not share this point of view and are of the opinion that Dutch legislation differs on a number of points with the Directive. For example, it is argued that an integration exam prior to entry is not compatible with the (optional) [Article 7\(2\)](#) of the Directive. Also for *family formation*, imposing a minimum age of 21 years and income requirement of 120% of the net minimum wage is considered to be contrary to the Directive. Another related aspect which attracted much social protest<sup>11</sup> was the considerable increase (ranging from 300% to 1000%) in legal fees associated with the application for a residence permit. Certain components have been contested before the court, but many (appeal) cases are dismissed because the sponsor falls outside the scope of application of the Directive.<sup>12</sup> In many cases the judge is then not given the opportunity to decide whether a specific

<sup>10</sup> In particular the *Integration Abroad Act*, which entered into force in March 2006. Details available from <http://www.ind.nl/en/inbedrijf/wonenenwerken/basisexamen15maat.asp>.

<sup>11</sup> See, for example, the [Werkgroep tegen de Legesverhogingen](#) (Working Party against Legal Fees Increases) consisting of several social organisations. Further details at <http://www.legesomlaag.nl/>.

<sup>12</sup> Discussions centred on whether the Directive applied analogously also to Dutch nationals, particularly those of dual nationality (Dutch plus a third-country). For single Dutch nationality, the Chamber has decreed that it does not, whilst for dual nationality it has decreed they should be considered as an EU Member State national, although this is not yet completely settled.

Dutch provision conflicts with the Directive. As a result of this jurisprudence approach, the Directive has only played a very limited role in legal practice so far.

In **Romania**, work on the transposition of the Directive started in 2002. Given that this was in the period in which EU accession negotiations occurred and the relatively limited previous experience in EU asylum and migration acquis, some difficulties were experienced. Eventually, full implementation of the Directive into national legislation was finalised in 2007 through legal acts amending the *Aliens' Act* (also known as the *Government Emergency Ordinance 194/2002*).

Following adoption of the Directive by the European Council, the government in **Sweden** appointed a special investigator in December 2003 with the task of drawing up a position on how the Directive should be implemented in Swedish legislation. This was completed in December 2005. The proposed legislative measures were referred to different bodies for consideration, with several of the opinion that the Directive might lead to less favourable rules for four groups: Swedish nationals; other EU- nationals and those from other (non-EU) Nordic countries; stateless persons; and unaccompanied minors. There were also some differences of opinion regarding the examination of the sincerity of relationships that have developed quickly. Some considered that the presumption that a relationship is sincere should be emphasised, whilst the Red Cross felt that, despite the fact that the majority of quickly-developed relationships are sincere, it is necessary to carry out an examination of sincerity to prevent abuse, oppression and forced marriages. In March 2006, the Swedish Parliament approved the government bill implementing the Directive, which was achieved through an amendment to their *Aliens Act*, and which entered into force in April 2006. Council Directives [2003/109/EC](#), on the status of third country nationals who are long term residents, and [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, also entered into force at the same time.

As mentioned previously, the **United Kingdom** chose to opt out of Directive 2003/86/EC. This decision was taken as a result of the impact that the Directive would have on this route of legal migration, which would be incompatible with the United Kingdom's border control policies and in order to retain domestic control over admissions policy in this area. The United Kingdom does,

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however, generally follow the guidance of the Directive and its family reunification policy is largely laid out in the [Immigration Rules, Part 8 – Family Members](#).<sup>13</sup>

#### **4. IMPLEMENTATION OF FAMILY REUNIFICATION POLICY, INCLUDING DIRECTIVE 2003/86/EC**

In this Chapter, an overview as to how family reunification policy is implemented by the Member States, with specific emphasis, when applicable, to the Directive, is given. The first section will focus on the sponsor's spouse (whether married or unmarried) and will serve also to outline the general steps followed for other dependants. Subsequent sections will then focus on specificities of other dependants, with refugees and their dependants in a separate section. Reference to the relevant article(s) in the Directive (see also in [Annex](#)) is given as well.

##### **4.1 Sponsor's Spouse (Article 4(1a))**

[Article 4\(1a\)](#) requires Member States to authorise the entry and residence of "the sponsor's spouse". In addition [Articles 4\(3\)](#) provides a possibility for granting such rights to an unmarried partner, whilst [Article 4\(4\)](#) limits to one, the number of spouses in the event of polygamous marriages. An overview of the policy and practice in the Member States in this regard is now given.

##### **4.1.1 Reunification of third country national with their married third-country spouse**

Entry and residence is normally granted in such cases, with the duration of the residence permit granted to a spouse not exceeding that of their sponsor and typically for up to one or two years initially ([Article 13](#)). Normally it is the dependant that is required to submit the application, not the sponsor, to an embassy or consulate in the (third) country of origin. In exceptional cases, primarily for a third country national who has not previously needed a settlement permit but wishes to change their type of permit, it is possible to file an application in **Austria** itself. Other exceptions exist in **Greece**, where the sponsor initially applies to bring the dependant into the country and the dependant then has to submit an application before the expiration of their (short-term) visa, and in **Romania**, where the sponsor has to submit the application to one of the Romanian Immigration Offices (RIO) within this Member State.

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<sup>13</sup> Available from <http://www.bia.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part8/>.

If the sponsor has been resident for less than two years, then **Germany** requires that the marriage existed at the time of granting the sponsor's residence permit and that the (remaining) duration of the sponsor's stay must be expected to be at least one year. If these conditions are not met, the spouse may still be admitted under discretionary regulations. In **Estonia**, the requirement is that the marriage was entered into before entry and that the sponsor has had permanent residence for at least two years. If the marriage took place within three years prior to entry, then a temporary residence permit not exceeding one year is issued. Above three years of marriage, the residence permit is for up to three years, with an extension also not exceeding three years at a time. For **Latvia**, no distinction is made between a marriage occurring before or after the sponsor's legal entry and residence and there is no requirement ([Article 8](#)) for the sponsor to have legally resided in Latvia for more than two years, except for refugees and asylum applicants.

There is no requirement for the sponsor to have lived in **Sweden** for a specific time either and couples who have already lived together for at least two years in their former (third) country of residence are usually granted a permanent residence immediately. In newly-established relationships, a permanent residence permit can be granted if the relationship is still ongoing after two years.

#### **4.1.1.1 Polygamous marriages ([Article 4\(4\)](#))**

For all Member States, only one spouse is permitted residence in the case of a polygamous marriage ([Article 4\(4\)](#)), with no such restriction on any children from such marriages. Exceptions arise in the **Netherlands**, which does not grant the right to entry and residence of children of a second or further spouse, and (potentially) in **Sweden**. Swedish legislation does not stipulate any limitations for children in polygamous households to receive a resident permit based on family reunification. Although this could result in the other parent applying for a residence permit, which in turn could be interpreted as sanctioning polygamy, the interest of the child in being reunited with their parent(s) is considered the most important aspect and limitations for these children have therefore not been introduced.

#### **4.1.1.2 Entry of sponsor and spouse at same time ([Article 5\(3\)](#))**

This possibility exists in **Austria** for key professionals (defined on the basis of qualifications and minimum income) only, and there is a specific quota for this. The first settlement permit is issued for a period of 18 months and dependants receive a 'restricted settlement permit'

(*Niederlassungsbewilligung beschränkt*), which, in principle, permits access to the labour market. Similarly in **Estonia**, simultaneous entry is possible provided that the spouse has received a residence permit for employment, a residence permit for enterprise or a residence permit to study for a doctorate (PhD). In **Greece**, it is possible only for a third country national who is either a board member, economically independent, wishing to develop an investment activity, athletes and coaches, or members of foreign archaeological schools. Such migrants can then be accompanied by their family members who, after their application, are granted an individual residence permit. The **Netherlands** has a fast-track procedure for companies that regularly hire third country nationals, which permits admission of the entire family together.

For **Germany**, the sponsor would first need to have a national visa and be likely to be granted a residence or settlement permit if this is applied for. The spouse would then also need to apply for a residence permit at the same time. This means that the sponsor does not have to reside in Germany beforehand, provided that the applicants, who still reside abroad, intend to establish a family household upon entry. In the **United Kingdom**, dependants are allowed to enter at the same time as their sponsor, provided that their sponsor is *present and settled*, but has left to accompany them into the country.

#### **4.1.1.3 Documentary evidence of marriage ([Article 5\(2\)](#))**

For all Member States, documentary evidence of the marriage (e.g. certificates of marriage and, if applicable, of divorce plus of birth) has to be provided and, in **Austria**, a translation of the documents as well as their legal (notary) verification can be requested. **Latvia** also requires a health certificate confirming that the dependant is free of certain ailments or illnesses, whilst for the **United Kingdom**, a spouse coming from some [third countries](#)<sup>14</sup> may need to be tested for active tuberculosis. The **Netherlands** too might request that a tuberculosis examination or treatment be undertaken. If the dependant wishes to enter in order to marry the sponsor, then several documents such as a passport or other identification, evidence of the parentage, certificate of no impediment to the marriage, and other documents depending on the laws of their country of origin have to be provided (**Germany, Netherlands, United Kingdom**). In some cases, depending on the country of origin, the documents provided are examined for accurateness and credibility (**Germany, Netherlands, United Kingdom**), and interviews with the partners

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<sup>14</sup> As of July 2007: Bangladesh, Ghana, Kenya, Eritrea, Somalia, Pakistan, Sudan, Tanzania, Thailand, Cambodia and Laos, see <http://www.ukvisas.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1134650059921>.

(sometimes separately) can occur (**Estonia, Germany, Greece, Latvia, Netherlands, Romania, United Kingdom**), particularly if there is suspicion of a *marriage of convenience* ([Article 16\(4\)](#)), and in **Estonia**, house visits and questioning of relatives may also take place.

#### **4.1.1.4 Prevention of marriages of convenience** ([Article 16\(4\)](#))

For **Greece**, ties which involve a third country national dependant and a sponsor who is a Greek (or other EU Member State) national are often suspected as fraudulent or contracted out of convenience. In such cases, the family relation is scrutinised further, in particular through personal interviews. A partnership of convenience is suspected when they do not live together, are unable to communicate, or if one spouse does not know sufficient details of the other. In **Germany**, if a marriage is granted but there are reasons for suspicion, further investigations, in line with the provisions of [Article 16\(4\)](#), after the marriage may occur and, if found to be the case, the residence permit becomes void because no family household was established.

A legal co-operation duty exists in **Austria** for special administration authorities to transfer data to the Aliens' Police. For example, civil registry offices are obliged to inform the Aliens' Police if a foreign national submits an application of marriage, regardless of whether or not there is a concrete suspicion, whilst courts and administrative authorities are obliged to inform the Aliens' Police if there is a concrete suspicion about such an adoption or marriage. In a similar vein, in the **Netherlands**, prior to contracting a marriage (or registered partnership), or the registration of a marriage (or of a registered partnership) which occurred outside the Netherlands in the population register (where one of the partners does not have Dutch nationality), the registrar should first request a declaration from the Chief of Police. The aim of this declaration is to determine whether there is reason to suspect a marriage (or partnership) of convenience before the marriage (or registered partnership) or their registration, e.g. any known previous marriages or relationships. In accordance with the *Aliens Act Implementation Guidelines*, admission on the basis of a relationship requires the submission of a legalised certificate of celibacy and the concerned parties also have to sign a declaration. If, after the issue of a residence permit, suspicions arise as to the nature of the relationship, there are possibilities to investigate further and the residence permit can become void when no family household was established; the same, as described above, as for **Germany**.

A similar approach is followed in the **United Kingdom**, with the abuse of marriage as a route to

entry and settlement being addressed in part by introducing a [Certificate of Approval](#)<sup>15</sup> requirement and allowing foreign nationals to apply only at designated register offices. Once a dependant, applying for entry as a fiancé(e), has successfully satisfied the necessary conditions, they are allowed to stay for six months during which time they are expected to marry, but not allowed to take up employment. Once married, an application for Further Leave to Remain (FLR), for an additional two years and which allows employment, can be made. After this probationary period, an application to settle can then be made. If there is reason to believe that the marriage is not genuine, but there is no evidence to support such doubts, this is flagged in the case file and considered further when and if an application for settlement is made.

An example of how the relevant legislation and procedures can be abused through marriages of convenience, which most likely takes place in other Member States also, was published in **Estonia** by the newspaper [Eesti Ekspress](#).<sup>16</sup> It was shown that an intermediary could introduce a third country national to an unmarried Estonian national living in Estonia. The intermediary would undertake the completion of the necessary documents and organise the marriage, for which the intermediary receives payment. The marriage is then entered into, for an agreed period of five years. The third country national first obtains a temporary residence permit and after five years applies for a permanent one. It was stated that the Estonian national who agrees to such a marriage receives, on average, \$5 000 for undertaking the marriage and may then further receive a monthly “allowance” of between 1 000 to 3 000 EEK (approx. €64 to €190). In the case of a successful transaction, the intermediary then increases the circle of new potential clients for further marriages of convenience through the friends of the (falsely) married partners. An Internet poll, conducted shortly after this article was published, had 59% of the 1 608 respondents declaring that Estonia should not become more open with its immigration policy. According to the data of the Citizenship and Migration Board, approximately twenty marriages of convenience are discovered each year, primarily young persons under 30 years of age who belong to the middle class and are not very wealthy. Most frequently these involve marriages between citizens of Estonia and Russia.

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<sup>15</sup> Further information available from <http://www.bia.homeoffice.gov.uk/visitingtheuk/gettingmarried/certificateofapproval/>.

<sup>16</sup> See <http://www.ekspress.ee/viewdoc/D53DC45F5E8E8F33C22571B6005C1754>.

#### 4.1.1.5 Prevention of forced marriages ([Article 4\(5\)](#))

**Austria, Germany, Greece, Netherlands, Sweden** and the **United Kingdom** address the prevention of forced marriages by *inter alia* requiring that both spouses are at least 18 years old.<sup>17</sup> This age limit also exists in **Latvia** owing more to the fact that marriage is only permitted from the age of 18 years onwards. During discussions of the *Directive Implementation Act* in **Germany** and against the background of a widespread debate about “honour killings” and forced marriages, an increase in the minimum age of spouses to 21 years was discussed. However, no majority for this increase emerged and thus a minimum age of 18 years for both spouses was adopted. The **United Kingdom** is currently considering whether to increase the age limit to 21 years old, in order that education may be completed and also that confidence can be developed to stand up against the pressure of a forced marriage. Similar reasons are cited in the **Netherlands** following the increase to a minimum age of 21 years for *family formation*, which would reduce the chance of being pressured to leave school early (thereby avoiding being insufficiently prepared for access to the labour market and stunting their further social development) and increase the likelihood that joining a (marriage) partner is based on a deliberate and voluntary choice. Conversely, in **Estonia**, [Article 4\(5\)](#) has not been transposed as their migration policy does not (yet) see a need for this.

#### 4.1.1.6 Material support requirement ([Article 7\(1\)](#))

Despite it being a "may" clause, evidence of material support, i.e. sufficient accommodation, income and health insurance cover, to support the dependant and no reliance on public funds, is essentially required in all Member States. **Estonia, Greece, Netherlands** and **Romania** also have a minimum income requirement, whereas in **Germany** and **Latvia** these requirements are waived when the sponsor is highly-skilled, a researcher or self-employed. In **Estonia**, rates in 2007 for reunification with a spouse only, are a minimum monthly income of 1 800EEK (approx. €115), with a minimum income of 10 800EEK (approx. €690) in the preceding six months; in **Greece**, the income cannot be less than the minimum annual income of an unskilled worker (€8 500), increased by 20% for entry of the spouse and 15% for each child; and in **Romania**, a sponsor must prove that they earn at least the minimum wage.

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<sup>17</sup> In **Germany**, this age limit also applies to a third-country spouse joining a German national, and in the **Netherlands**, a minimum age limit of 21 years applies in the case of family formation.

**Sweden** is an exception in that there is no such support requirement. In fact, persons obtaining a residence permit may apply for certain social benefits, since the right to benefits is based on residency or gainful employment. The **United Kingdom** does not currently require healthcare insurance, as this is provided via its publicly-funded National Health Service, but does restrict access of the dependant to other publicly-funded benefits.

An application for family reunification is not rejected in the **Netherlands** due to a lack of health insurance, but such insurance is required once a residence permit is granted. Whilst no requirements are currently imposed regarding suitable accommodation, the lack of stable and regular resources sufficient for maintenance can result in the rejection of an application. In the case of *family reunification*, the sponsor should have an income that is at least equal to the social security standard for the relevant category (single parents or couples and families). For *family formation*, the sponsor should have an independent net income that is at least equal to 120% of the minimum wage. An exemption of these requirements is granted when the sponsor is over 65 years of age or permanently disabled.

#### **4.1.1.7 Integration measures ([Article 7\(2\)](#))**

**Austria** (except for dependants of key professionals), **Germany**, **Latvia** and the **United Kingdom** now require that the spouse has at least a basic knowledge of (one of) the national language(s), whilst **Estonia**,<sup>18</sup> **Greece**, **Romania**, **Sweden** have no requirements regarding integration measures. In **Austria**, the requirement is to pass a German language exam, unless knowledge of German can be proved by other means (e.g. a diploma), and in **Germany**, a residence permit will only be granted to the spouse if they can at least communicate verbally in German at a basic level (a vocabulary of 200 – 300 words is currently expected). This provision is intended to both prevent *forced marriages* and promote integration. Concerning the former, it was argued that relatives of victims of forced marriages might use the lack of German of the spouse to prevent them from leading independent social lives and it was impossible to counteract this danger by obliging migrants to participate in integration courses only after they entered Germany, which by itself might not automatically result in their successful participation. By contrast, the obligation to demonstrate some capability to communicate in German before entry would ensure that the person in question indeed possessed the basic knowledge required.

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<sup>18</sup> Since June 2007, there is now a requirement in **Estonia** that an alien who is part of the permanent population should be able to speak Estonian at least at a basic level.

For the **Netherlands** and **United Kingdom**, integration requirements go beyond language skills. The *Integration Abroad Act* (Wib) in the **Netherlands** requires all third country nationals between 16 and 65 years of age to pass a basic exam on the Dutch language and on their knowledge of Dutch society, in their country of origin before entry. Upon entry, they are then subject to further integration requirements pursuant to the *Integration Act* (Wi). For the **United Kingdom**, the spouse, like for all third country nationals (except for those who fall under certain exemption criteria, e.g. aged 65 years or more), are also now required to pass the [\*Knowledge of Life in the UK\*](#)<sup>19</sup> test and meet the language requirements when applying for settlement. The aim of this is to ensure that migrants have an understanding of life in the United Kingdom and the requisite skills to help them work, contribute to and participate in society.

#### 4.1.1.8 Employment ([Article 14\(2\)](#))

Granting of a residence permit to a dependant in **Austria, Germany, Sweden** can entitle its holder to take up employment. In **Austria**, for the first 12 months, a dependant must also have an employment permit (*Beschäftigungsbewilligung*) or can be self-employed, after which time they must be granted the same access to the labour market as the sponsor. For **Germany, Sweden**, the dependant may take up employment if the sponsor is entitled to pursue an economic activity or, in the case of **Germany**, if marital co-habitation has lawfully existed for at least two years. In **Estonia**, an application for a work permit must be made, which is assessed by the Citizenship and Migration Board (CMB), unless it is for a managerial supervisory position or for short-term (up to six months) employment. Similarly in **Greece**, a dependant who wishes to take up employment should submit an application for this purpose to the authority that granted the residence permit. For the first twelve-month period of residence from the issuing of the initial residence permit for family reunification, the relevant authority decides on the basis of the vacant posts per specialisation. However, any authorisation for work is valid only within the prefecture which provided the relevant residence permit. A work permit also has to be obtained in **Latvia**, but currently there are no restrictions on access to employment for dependants, whereas in **Romania**, a long stay visa issued on the basis of authorisation to work is required. The **Netherlands** has adopted a differentiated system for access to the labour market related to the position on the labour market of the sponsor. Parents, who were granted entry by virtue of the special policy for sole parents, have free access to the labour market, and there are no specific restrictions in cases of self-employment.

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<sup>19</sup> Further information available from <http://www.lifeintheuktest.gov.uk/>.

In the **United Kingdom** a dependant entering as a spouse, civil partner, unmarried or same sex partner is initially allowed to work in the United Kingdom for two years; or indefinitely if granted settlement on entry (ILE). A fiancé(e), who, as previously mentioned in [Section 4.1.1.4](#), is initially granted six months leave to enter, does not have permission to work during this period. Once the marriage has taken place, the spouse will then be allowed to work as part of the conditions of the two year Leave to Remain. Subsequently, if the spouse is then granted settlement (ILR), they will retain their right to work in the United Kingdom.

#### **4.1.1.9 Autonomous residence permit ([Article 15](#))**

Entitlement to an autonomous residence permit independent from the sponsor occurs not later than after five years of residence, in order to conform with [Directive 2003/109/EC](#)<sup>20</sup> on long-term residents. In the **Netherlands**, the rules are considered to be more favourable than the minimum standards of the Directive since, for example, this can be granted, subject to the restriction of continued residence, to a minor after one year, and after three years to other family members. A dependant can receive an autonomous residence title before five years in **Austria**, if they are able to fulfil themselves the general requirements. **Germany** and **Latvia** grant an autonomous right to a settlement permit in case of existing family relationships only. Once an accessory settlement permit has been granted to the spouse, a permanent, autonomous right of residence results, which is independent of family reunification. In the **United Kingdom**, once dependants are granted settlement, they may stay with no restrictions and no time limit and their immigration status is no longer dependent on their relationship with the sponsor.

In **Sweden**, if a newly-established relationship does not last two years, the residence permit can be recalled/rejected, except in cases where the dependant is considered to have special ties to Sweden or if the relationship ceased because the dependant was exposed to abuse or the threat of abuse, primarily from the sponsor. A residence permit in **Estonia** can be revoked within four years of its issue if *inter alia* the marriage is terminated. After this time, the residence permit can then become independent of the sponsor. If marital cohabitation ends (divorce/permanent separation) before the spouse has received a settlement permit in **Germany**, then the spouse is entitled to an autonomous residence permit, independent of the marriage and allowing them to

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<sup>20</sup> Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0109:EN:NOT>. This Directive has been transposed by all Member States participating in this study, except for **Romania** (not yet done)

take up employment, provided that marital cohabitation existed lawfully for at least two years. This is also possible in **Greece**, provided that the marriage has lasted for at least three years prior to the separation, at least one year of which should be spent in Greece. In order to prevent particular hardship, e.g. in case of a violent marriage, the condition in **Germany** that the marriage has to have existed lawfully for at least two years can be waived, in which case, the duration of the autonomous residence permit is initially limited to one year. Likewise in the **Netherlands**, a woman whose marriage or relationship breaks down within three years after their entry, can, on account of special individual circumstances, be granted an autonomous residence permit if she cannot be asked to return to the country of origin for a combination of humanitarian reasons. Demonstrable (sexual) violence in the relationship can also be a sufficient reason in itself.

All Member States will grant an autonomous residence permit if the sponsor dies ([Article 15\(3\)](#)), subject to the sponsor having legally resided for a particular time. In **Greece**, for example, dependants may apply in such cases if they have resided in Greece for at least one year prior to the sponsor's death. In **Germany** there is no hardship clause in the relevant national legislation which addresses, in a comparable way, the second sentence of [Article 15\(3\)](#), the granting of an autonomous residence permit *in the event of particularly difficult circumstances*.

#### **4.1.2 Reunification of third country national with their unmarried (including same-sex) third country partner ([Article 4\(3\)](#))**

Generally, the same procedure(s) as outlined in [Section 4.1.1](#) are followed by most Member States. Exceptions are **Greece**, **Latvia** and **Romania**. For **Latvia**, its *Immigration Law* does not issue residence permits in connection with family reunification to the unmarried partner, being a third country national, with whom the sponsor is in a duly attested stable long-term relationship, or of a third country national who is bound to the sponsor by a registered partnership. The status of registered partners does not equal the status of a spouse in **Latvia** in connection with family reunification and, based on Article 35 of the Civil Law, Latvia does not allow for same-sex marriages. This condition also applies to unmarried minor children, including adopted children, as well as adult unmarried children who are objectively unable to provide for their own needs on account of their state of health. For **Romania**, it is only possible if the sponsor is a Romanian national and they have at least one child.

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and **United Kingdom** (opt out).

#### 4.1.3 Reunification of EU Member State national with their third-country spouse

Whilst the Directive does not apply to reunification with an EU Member State national ([Article 3\(3\)](#)), nevertheless it is worthwhile to highlight that in **Austria** and **Germany** such cases are argued to result in a worse legal position for Austrian/German nationals (termed “reverse discrimination”) than for other EU/EEA citizens in terms of family reunification. While reunification for other EU Member State nationals is regulated by the right of free movement and other EU law, reunification of an Austrian national in Austria or of a German national in Germany with a third country national is subject to national legislation (*Settlement and Residence Act* in **Austria** and *Residence Act* in **Germany**). Since Austrian nationals (residing in **Austria**) do not exercise their right to freedom of movement, their conditions for reunification are more restricted, e.g. concerning the financial means of the sponsor (regular income) and, contrary to other EU/EEA nationals, their dependants are obliged to fulfil the integration requirements. German nationals in **Germany**, however, enjoy more extensive rights of family reunification and have to fulfil less restrictive conditions than third country nationals. Third country national spouses (and other life partners) of a German citizen are granted a residence permit because their German spouse has an absolute right of residence in Germany and would be prevented from marital cohabitation if their foreign partner was not allowed to enter the country.

Similarly, the life partner of other EU Member State nationals residing in Germany, insofar as these life partners are not entitled to freedom of movement themselves, are treated, on an equal basis, as a life partner of a German citizen. There are no requirements, such as providing sufficient living space or a secure livelihood including adequate health insurance cover, and normally the third country spouse is entitled to a settlement permit if they have possessed a residence permit for three years, the co-habitation with the German national continues to exist, there are no grounds for expulsion and they are able to communicate verbally in German at a basic level. Following the entry into force of the *EU-RLUmsG* in August 2007, however, the third country spouse of a German national is now granted a residence permit under the same conditions as for the spouse of a third country national, i.e. both spouses will have to be at least 18 years old, and the joining spouse has to be able to communicate in German at a basic level.

In cases where the German (or other EU) national residing in **Germany** is not gainfully employed, a dependant may be granted entry as long as they cohabit, have health insurance coverage and adequate means of subsistence. Dependants in this case mean the spouse and minor

children, as well as other relatives of the EU Member State national in the ascending and descending line for whom maintenance is provided. In addition, other relatives of the spouse in the ascending line may enter **Germany**, again provided that maintenance is provided for them. For students, the Directive limits the right of reunification to the spouse, the life partner and dependent children, with other relatives admitted only under discretionary regulations to prevent particular hardship. Life partners of EU Member State nationals who are not gainfully employed and of students, are entitled to reunification under the same economic preconditions as other family relatives, but are not entitled to reunification with their own relatives (as are spouses). It is a precondition that the dependant(s) cohabit with their sponsor, although, following a ruling from the European Court of Justice ([Case C-540/03](#)),<sup>21</sup> this does not mean that they have to live regularly together. Also such EU Member State nationals and their families are not subject to integration requirements and are not obliged to participate in an integration course, although they may participate if there are places available.

Within the meaning of its *Citizen of the European Union Act*, a national of **Estonia** is not a citizen of the European Union, resulting in provisions of its *Aliens Act* being applicable for the third country national family members of a national of Estonia. Overall, conditions for entry are much more favourable for family members of an EU Member State (but not Estonian) national, than for a third country national sponsor or dependants of an Estonian national. For example, this is the case in respect to a reduced waiting period, reduced fees, faster processing of applications and removal of minimum income condition.

In the case of the **United Kingdom**, if the sponsor has been a British national for four years or more and has been living together with their spouse outside the United Kingdom for four years or more, then there will be no time limit on the period of stay and the spouse would immediately be granted Indefinite Leave to Enter (ILE). The spouse would, however, need to pass the *Knowledge of Life in the UK* test and meet the language requirements. If not, entry would be granted for an initial period of two years. Similarly, if the sponsor has been a British national for less than four years and has lived with their spouse for less than four years, the spouse would need to apply for two years leave to enter, which must be completed before they may apply for settlement (i.e. Indefinite Leave to Remain, ILR).

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<sup>21</sup> Judgment of the Court dated 27 June 2006, Case C-540/03 (European Parliament v. Council of the European Union), available from <http://curia.europa.eu/en/actu/communiqués/cp06/aff/cp060052en.pdf>.

## 4.2 Sponsor's child (Article 4(1b-d))

### 4.2.1 Procedural Approach

When issuing a resident permit in **Estonia** to an (unmarried) minor (i.e. aged less than 18 years) child, including if adopted, in order to settle with a parent who permanently resides, the rights and interests of the minor child are first and foremost taken into consideration. A residence permit is not issued if it would damage the rights and interests of the child and if their legal, financial or social status might deteriorate as a result of settling in Estonia. In the case of shared custody, the consent of the party sharing the custody is required. A person who is married, has a separate family, or leads an independent life, is not deemed to be a minor child. Similarly, adult unmarried children are granted residence only if they are unable to provide for their own needs on account of their health.

In **Germany**, the general age limit is 16 years. Children below this age are granted a residence permit if both parents (or the parent possessing the sole right of care and custody) possess a residence permit or settlement permit. A residence permit is granted to minor unmarried children up to the age of 18 years, if the child relocates to Germany with their parents (or with the parent possessing the sole right of care and custody), and if both parents (or the parent possessing the sole right of care and custody) hold a residence permit or settlement permit. Residence may also be granted to adult married, divorced or widowed children in order to avoid hardship when it serves to establish or ensure a stable and long-term family care. The *Residence Act* also has provisions for parents joining their minor or adult children, adult children joining their parents, or minor children joining close adult relatives when there is not a comparable family relationship abroad. For example, grandchildren may join their grandparents if they are orphans or if their parents are demonstrably unable to care for them.

**Greece** permits the entry of unmarried child(ren), under 18 years old, including those who have been legally adopted in Greece or by a judgement that is *ex officio* executable or has been pronounced executable or its *res judicata* has been recognised in Greece. Entry is not granted, however, to adult unmarried children who are objectively unable to provide for their own needs. In a similar vein, Immigration Law in **Latvia** also does not issue residence permits in cases of an unmarried spouse or partner, nor their unmarried minor children, including adopted children, or to adult unmarried children who are objectively unable to provide for their own needs on account

of their health. In the **Netherlands**, children (below 18 years) belong to the nuclear family and in principle have a right to family reunification, by virtue of the *Aliens Decree*. The *Aliens Act Implementation Guidelines* provide that children who are in the legal custody of the spouse or (registered) partner of the sponsor and who belonged to the family of the spouse or (registered) partner in the country of origin, may be granted a permit.

With regard to the verification of documents, **Greece** requires the sponsor, in the case of divorce or polygamy, to submit a document issued by the competent authority of the child's country of residence, officially certified and translated in Greek to verify the assignment of custody to the sponsor. In the case of an adopted child(ren), the sponsor should also submit the relevant adoption document(s). In **Sweden**, children who have one parent still in their home (third) country must, when the parents have joint custody, have the consent of the parent who remains in the home (third) country.

Subject to specific conditions, the general approach in the **United Kingdom** is that if both of the child's parents are *present and settled* in the UK, or if one parent already *present and settled* in the country has sole responsibility for the applicant, then the minor child will normally be allowed to stay permanently from the date that they arrive, by being granted Indefinite Leave to Enter (ILE). This also applies to a step-parent where the natural father or mother is dead and either the father or mother of an illegitimate child. A child cannot normally come to live in the United Kingdom if one parent is living abroad, unless the parent in the United Kingdom has sole responsibility for the child, or if there are special reasons why the child should be allowed to join the parent in the United Kingdom.

With regard to adopted children, it is now an offence for prospective adoptive parents to bring children into the **United Kingdom** to adopt them, unless they have met all the legal requirements of the *Adoption Acts & Regulations*. A foreign adoption order will be recognised if: (a) it was made in a country that is included in the Adoption (Designation of Overseas Adoptions) Order 1973 (such a country is known as a 'designated' country<sup>22</sup>), or (b) it was made in a Hague Convention country<sup>23</sup> and made specifically under the terms of the Hague Convention on inter-country adoption. If the minor child was adopted in a designated country, or under the terms of

<sup>22</sup> List available from [http://www.dhsspsni.gov.uk/index/hss/child\\_care/adoption/adoption\\_designated\\_list.htm](http://www.dhsspsni.gov.uk/index/hss/child_care/adoption/adoption_designated_list.htm).

<sup>23</sup> List available from [http://www.dhsspsni.gov.uk/index/hss/child\\_care/adoption/adoption\\_hague\\_countries.htm](http://www.dhsspsni.gov.uk/index/hss/child_care/adoption/adoption_hague_countries.htm).

the Hague Convention in a Hague Convention country, and adoptive parents are *present and settled* in the United Kingdom, or if the sponsor alone is responsible for the child, the child will normally be allowed to settle (being granted ILE) from the date of arrival. If the minor child has not been adopted in a designated country, they will normally be allowed to stay in the United Kingdom for 24 months so the adoption process can continue through the national courts.

#### 4.2.2 DNA Testing

In **Germany** evidence on the basis of DNA testing is used in particular cases where birth certificates do not exist or are often falsified (e.g. Iraq, Nigeria, Sudan, Afghanistan). It requires the agreement of the applicant, and they have to cover the costs themselves. DNA sampling in **Austria** and the **Netherlands** is only used to establish the biological relation between parent(s) and children if there is a lack of credible documentary evidence. For **Austria**, this is permitted upon request of the applicant (and at the applicant's expense), whilst in the **Netherlands**, it is done on a voluntary basis and the costs are covered by the government. Similarly, in cases where it is not possible to establish a relationship between a parent and an under-age child, the Migration Board in **Sweden** offers a DNA analysis paid for by the state. Legislative provisions related to DNA analyses came into force on 1<sup>st</sup> July 2006. The rationale being that it is considered important that children do not end up with persons who are not their parents and thereby come to any harm or are abandoned. If it is clear that no relationship exists, such an analysis is normally not undertaken.

DNA testing in the country where an application is made (country of origin or other country where the dependant is legally residing) is also undertaken of applicants applying to enter the **United Kingdom**, funded and administered by *UKvisas* and provided free of charge to first time settlement applicants. Such tests are undertaken only with the agreement of the applicant(s) and sponsor, under the authority of an official of *UKVisas*, and are not compulsory. Clear rules have been established for the steps to follow depending on the outcome of such tests, including having due sensitivity (e.g. in cases where the child is not related to the father (sponsor) and/or where the child may be illegitimate).

No other Member States<sup>24</sup> currently provide for DNA testing for family reunification purposes in

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<sup>24</sup> In October 2007, France's Senate approved a law allowing voluntary DNA tests for would-be immigrants seeking to enter France for family reunification purposes, see <http://www.senat.fr/dossierleg/pjl06-461.html>.

this way.

#### 4.2.3 Integration Measures ([Article 4\(1\) last paragraph](#))

For all Member States, no specific integration measures are required for children aged 12 years or less, nor, in **Greece, Estonia, Latvia, Romania** or **Sweden**, for children over 12 years of age arriving independently. In the **United Kingdom**, children do not have to meet the language and *Knowledge of Life in the UK* requirement. For **Germany** and the **Netherlands**, however, there is an integration requirement for children who are older than 16, but younger than 18 years. In **Germany**, children in this age bracket are granted a residence permit if they have a command of the German language or if their education and way of life to date suggest that they will be able to integrate into the German way of life. This provision is complemented by a discretionary regulation to prevent special hardship on a case-by-case basis, taking into consideration the child's well-being and family situation. Whilst the *Aliens Act* or the *Aliens Decree* in the **Netherlands** does not explicitly contain a provision in which the right to family reunification of children aged 12 years or more depends on compliance with the integration requirement, the *Integration Abroad Act* (Wib) does apply to 16- and 17-year old children who do not attend full-time education.

#### 4.2.4 Granting of autonomous right of residence ([Article 15](#))

Once a child reaches the legal age of majority in **Estonia, Germany, Greece, Romania** and **Sweden**, their residence or settlement permit becomes an independent right of residence in its own right, which is not related to family reunification. In **Germany**, a child holding a residence permit for the purpose of family reunification will be granted an autonomous, unlimited right of residence (settlement permit) if they have held a residence permit for five years at the date of their 16<sup>th</sup> birthday. This also applies to adults who entered Germany as a child, have held a residence permit for five years, possess an adequate knowledge of German and have a secure livelihood or are undergoing vocational training or if they had a right to return. If the family relationship breaks down before the child receives an independent right of residence, they may be granted a residence permit if the parent(s) responsible for their upbringing holds a residence or settlement permit and the child lives in a family household with the parent, or if the right to return is applied accordingly.

Special protection extends to both adolescents and minors who have grown up in **Germany** and possess a residence or settlement permit in connection to [Article 17](#) (withdrawal/refusal of residence permit or removal order). In such cases, a discretionary decision is taken, even if the preconditions for a regular or mandatory expulsion are in place. If the parent(s) responsible for their upbringing are lawfully residing in Germany, then expulsion of a minor is only possible if the conditions for a mandatory expulsion are in place. Nevertheless a discretionary decision has to be reached which takes into account the minor's protection. Conversely, **Austria** has not explicitly transposed Article 17 into national legislation, since it is considered that provisions regarding the respect for private and family life already existed before the Directive came into force and relate to Article 8 of the [European Convention for Human Rights](#) (ECHR).<sup>25</sup> Any appeals ([Article 18](#)) against the withdrawal/refusal of residence permit or removal order does not permit, in **Austria**, the sponsor to act as a party in the procedure. In fact, it is argued<sup>26</sup> that Article 18 of the Family Reunification Directive also does not permit this, in contradiction to Article 8 of the ECHR.

#### **4.3 Other dependants ([Article 4\(2a and b\)](#))**

The Directive also foresees the possibility for Member States to decide themselves whether to allow reunification of first-degree relatives and/or adult unmarried children. This section outlines more specifically whether this is granted and, if so, who these other dependants actually are. The general approach of all Member States (except **Austria, Greece**) is to allow reunification only in cases where there is particular hardship and/or dependency on their sponsor(s) with no close family ties in the country of origin. In **Austria**, only members of the nuclear family, comprising the spouse and unmarried minor children (up to the age of 18 years) can be admitted for the purpose of family reunification.

In **Estonia**, a temporary residence permit may be issued to a parent or grandparent if they need care which is not possible elsewhere, as long as there is sufficient income, from either themselves and/or their sponsor(s), to support living and cover health insurance in Estonia. The same conditions apply for a person under guardianship. For **Germany**, other dependents may be granted a residence permit if necessary to avoid particular hardship and the reunification should

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<sup>25</sup> The ECHR, available from <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=005&CL=ENG>, is constitutional law in **Austria**.

<sup>26</sup> See "[The Family Reunification Directive in EU Member States; the First Year of Implementation](#)" by K. Groenendijk et al., Centre for Migration Law, Radboud University Nijmegen (ISBN: 978-90-5850-290-2).

serve to establish or ensure a stable and long-term family. Given that the definition of “family” under German law is broader than that of the Directive, as well as grandparents or grandchildren, uncles, aunts, cousins or brothers and sisters can also be granted residence for family reunification, as long as there is not a comparable family relationship elsewhere and maintenance is provided for them, but not from public funds. Similarly for adult married, divorced or widowed children.

In the **Netherlands**, such "extended family reunification" covers adult children, as well as a single parent aged 65 years or more, and in cases where abandonment would constitute disproportionate hardship. For the former, this is only possible if the adult child is fully dependent upon the family and if there are one or more individual circumstances that would lead to disproportionate hardship. It has been argued by some academics,<sup>27</sup> that the national provisions regarding the admission of parents and adult children are not in full agreement with the Directive. The issue that is raised is whether a Member State is allowed to not apply an optional provision to a certain aspect in the Directive, but subsequently introduce its own rules in respect of the same aspect. Whilst the government considers this is possible, this is contested by leading legal experts on migration.

Similar conditions exist in the **United Kingdom** for a widowed parent or grandparent aged 65 years or over, or for parents or grandparents arriving together (at least one of whom is 65 or over). Below this age, a parent or grandparent might be granted entry if they are living in the most exceptional compassionate circumstances, or if they are completely or mainly financially dependent on their children or grandchildren living and settled in the United Kingdom and they have no other close relatives in their country of origin; as well as having access to sufficient finances and accommodation without having to rely on public funds. The same conditions apply to a sister, brother, aunt, uncle or any other relative of a *present and settled* sponsor provided also that they are living alone in their country of origin. All successful applications are granted Indefinite Leave to Enter (ILE) and normally do not need to satisfy the integration requirements, unless they later apply for citizenship. In order to prevent *Chain Migration*, where those who settled in the United Kingdom on a family reunification basis can themselves immediately sponsor further family members, it will not be possible to do this in the future until they

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<sup>27</sup> See Commentaar Europees Migratierecht (“*Comments on European Migration Law*”) by Boeles, Guèvremont and Lodder, 2006, available from [http://www.sdu.nl/catalogus/Sdu\\_Juridisch/COMEMRHW.jsp](http://www.sdu.nl/catalogus/Sdu_Juridisch/COMEMRHW.jsp).

themselves have been settled for five years or have citizenship.

**Greece** does not grant entry and residence to a first-degree relative in the direct ascending line. Normally this is the case also in **Latvia**, unless it is to meet international legal norms and/or national interests or for humanitarian reasons, i.e. when they depend upon the sponsor (and/or the sponsor's spouse) and do not enjoy proper family support in their country of origin. Similarly, family members other than those in the nuclear family may be granted a residence permit in **Sweden** if they belong to the same household as the sponsor and if there is a dependency relationship between relatives which already existed in the country of origin. To consider this further, a special investigator was appointed with the task of presenting different alternatives for revised regulations and to investigate the possibilities of implementing a requirement of financial support.<sup>28</sup>

#### 4.4 Refugees (Articles 9 to 12 inclusive)

This section outlines the approach followed by the Member States in regard to refugees. In terms of procedures, these are described only where these differ from those previously given in, for example, [Section 4.1](#). For all Member States, the requirement for residence of one or two years ([Article 3\(1\)](#)) does not apply.

##### 4.4.1 Requirement for family relationship to predate entry ([Article 9\(2\)](#))

Whilst a "may" clause, **Austria**, **Estonia**, **Latvia** and **Romania** require that family relationships predate the entry of a refugee. For example, that a marriage was entered into before arrival. By default this is also the case in the **Netherlands** owing to its distinction between *family formation* and *family reunification* explained in [Section 2.1](#). The **United Kingdom** too allows entry for family reunification purposes only for pre-existing families. Consequently, in these Member States, any applications for reunification with dependants for a family established after entry, are subject to the usual conditions and procedures as for other third country national sponsors.

Conversely, in **Germany**, the previous period of residence of the sponsor, the date of marriage, or the presence of both parents in Germany are unimportant. Although **Greece** has not transposed

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<sup>28</sup> The final report, [Family reunification, SOU 2005:103](#) available from <http://www.sweden.gov.se/content/1/c6/05/41/23/d660bf4b.pdf>, was submitted in December 2005 and has been undergoing consultation since Spring 2006.

the relevant Articles 9 to 12 from the Directive, it too makes no distinction as to whether the family relationship predates the refugee's entry. This is also the situation in **Sweden**.

#### 4.4.2 Permitted dependants ([Article 10](#))

In **Austria**, family reunification of the nuclear family only is possible, which in turn means that, in the case of unaccompanied minors, a legal guardian or any other family member is not entitled, as they are not considered to be part of the nuclear family. For **Estonia**, family members of a refugee are taken to be their spouse; the refugee's and/or spouse's unmarried minor child, including adopted or under guardianship; their unmarried adult child, if this child is unable to cope independently owing to health reasons or a disability; and a parent or grandparent dependent on the refugee and/or their spouse if such support does not exist in the country of origin. For an unaccompanied minor refugee, reunification is permitted with their parent or guardian or, if they have no parents or they can not be found, with any other family member as long as this does not contradict the rights and interests of the minor. [Article 10\(2\)](#) of the Directive, which foresees granting entry to additional family members, other than those listed above, has not been transposed into Estonian legislation. A similar approach is followed in **Latvia**, except for a parent or grandparent, and an unaccompanied child has the right to give shelter to their mother and/or father (including adoptive parents) coming from abroad, on condition that the family existed prior to entry.

In **Germany**, refugees are considered to have a more favourable legal position than any other third country national since, for example, the spouse and/or minor unmarried child of a refugee are almost unconditionally entitled to a residence permit. However, in line with other groups, both spouses have to be aged 18 years or more and, unless the marriage existed before entry of the sponsor into Germany, the spouse will have to be able to at least communicate verbally, at a basic level, in German. With regard to other family members ([Article 10\(2\)](#)), the same policy as outlined previously in [Section 4.3](#) is followed. Refugees in the **Netherlands** are also considered to have more favourable conditions, with their dependants not having, for example, to pass the integration examination abroad.

A prerequisite in the **Netherlands**, however, is that family members have the same nationality as the refugee and entered the Netherlands together with the sponsor, or joined the sponsor within three months after the granting of a temporary residence permit to the sponsor. Family members,

who can derive rights from these provisions, are the spouse and minor children and the partner and the major children insofar as they really belong to the family, i.e. they are dependent on the sponsor. An application for a residence permit following the same procedure as for all other third country sponsors can be lodged if the criterion of entry within three months is not satisfied, if the family members have a different nationality, or if it concerns family members other than the aforementioned. The application of this latter provision in practice is, however, very limited. With regard to unaccompanied minor refugees, family reunification can take place with first-degree relatives in the direct ascending line. The optional provision to grant entry to a legal guardian or other family members, if the refugee does not have any relatives in the direct ascending line, has not been implemented.

**Greece**, in line with its [\*Presidential Decree 61/1999\*](#),<sup>29</sup> broadens entitled family members to include the refugee's or their spouse's parents, provided that the parents were living with the refugee and were supported by the refugee prior to arrival in Greece. Similarly in **Sweden**, family members outside of the nuclear family may be granted a residence permit, if they were part of the household previously and dependent on the sponsor for their living, regardless of whether the sponsor was a refugee or not. The **United Kingdom** permits the spouse, civil partner, unmarried or same sex partner and minor children who formed part of the family unit prior to entry of the refugee. Other members of the family (e.g. elderly parents) may be allowed to come if there are compelling, compassionate circumstances, e.g. that the dependent was genuinely reliant on the sponsor in their country of origin. This is also the case for the parents or siblings of a child granted refugee status.

#### 4.4.3 Derogation of material support requirement ([Article 12](#))

The requirement for a secure livelihood and sufficient accommodation is normally waived by all Member States if an application for reunification is made within three months of refugee status being granted. In **Germany**, for example, these material support conditions are waived, on a discretionary basis, as long as the application for reunification is made within the three month period and it is impossible to reunify the family in a third country with which the sponsor and their family members have special links. By way of derogation it is possible for the sponsor to submit the application whilst living in Germany. If the three month period elapses, however, and

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<sup>29</sup> See <http://legislationline.org/legislation.php?lid=1791&tid=129> for English translation.

referring to the optional "may" clause of [Article 12\(1\) 3<sup>rd</sup> paragraph](#), then the usual preconditions as outlined previously in [Section 4.1.1.6 \(Article 7\)](#) apply. This is also the case for the **Netherlands**, with an exemption of the requirement to take the integration abroad examination.

The **United Kingdom** does not require the sponsor to meet the usual maintenance and accommodation requirements, but does require that the sponsor and dependant(s) show an intention to live together permanently. Refugees with limited leave to stay and their family members who join them in the United Kingdom will be required to pass the *Knowledge of Life in the UK* test, and meet language requirements, in order to be eligible for settlement. These requirements do not have to be met for entry into the United Kingdom unless the applicant is entering under a route where settlement would be granted on arrival. The main difference is that refugees do not have to be *present and settled* in the United Kingdom in order for their family members to qualify to join them.

#### **4.5 Inter-Member State experiences with implementation of EU legislation**

The **Netherlands** highlights a practice which can circumvent its own (more strict) national conditions for family reunification or family formation, which has been termed *the Belgian route*, although the practice can equally apply to any other Member State.<sup>30</sup> A sponsor (who could either be a Dutch, other EU or long-term resident third country national) who wishes to bring a third country national dependant to a Member State other than the **Netherlands**, could apply for family reunification in accordance with the Directive and how it has been transposed in that particular Member State. The rules and conditions within this other Member State might be more lenient on several points than the Dutch Aliens legislation. For example, there may be a more limited resources requirement, fewer integration requirements and/or less stringent conditions with regard to the required documents. Ultimately, the sponsor could return to the Netherlands and, under Community law, would be entitled to bring their dependant(s) with them, for whom no, for example, integration requirements would apply. This route for reunification is sometimes recommended by legal advice centres or interest groups and guidelines are posted on the website of [Stichting Buitenlandse Partner](#).<sup>31</sup> For example, there is a suggestion to request family reunification in an EU-10 or EU-2 Member State as it is considered to be easier.

<sup>30</sup> A project funded by the European Community's ARGO programme entitled "*Co-operation in the combat against abuse or improper use of administrative procedures of other EU Member States*" investigates further this phenomenon, see [http://ec.europa.eu/justice\\_home/funding/2004\\_2007/argo/doc/projects\\_selected\\_details\\_2006\\_en.pdf](http://ec.europa.eu/justice_home/funding/2004_2007/argo/doc/projects_selected_details_2006_en.pdf).

<sup>31</sup> See [www.buitenlandsepartner.nl](http://www.buitenlandsepartner.nl) and in particular the "Forum".

That this is permissible under EU legislation has been highlighted by the **United Kingdom**, following a ruling from the European Court of Justice in the case of *Surinder Singh*,<sup>32</sup> which stipulated that an EU Member State national who moves with their non-EU/EEA family members to another Member State to exercise a Treaty right in an economic capacity, will, on return to their home Member State, be entitled to bring their non-EU/EEA family members to join them under EC law, provided that the UK national has worked or been self-established in the non-UK EU/EEA Member State. For example, this would apply to a UK national who has lived and worked in Germany with his/her non-EU/EEA national spouse and then returns to the United Kingdom with their family provided that they can demonstrate lawful residence in the non-UK EU/EEA Member State.

This circumvention of the conditions in the **Netherlands** for family reunification or family formation has been discussed several times in the Senate and House of Representatives. It has also been considered by the European Court of Justice in the so-called *Akrich case*.<sup>33</sup> In the opinion of the Dutch government, it is the national migration law of the Member State in which reunification occurs that applies and not the Community law on the right to free movement of persons. However, the European Commission does not subscribe to this interpretation of the *Akrich* decision. Despite a further ruling, the situation still remains unsettled and, for the time being, the government of the **Netherlands** does not want to introduce any integration requirement on third country dependants entering via this route.

## **5. SIZE AND COMPOSITION OF FAMILY REUNIFICATION**

Each Country Study provides an overview of the (available) statistics in connection to family reunification. In this section, an overview of the main findings in each Member State are given, followed by a comparative compilation in order to give an indication or illustration of the (relative) magnitude of family reunification migration in a particular Member State and how it compares to others. The aim was to provide statistics on the total number of applications made, granted and refused, comparing this to the overall immigration, and to provide specific details

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<sup>32</sup> See in particular Sections 1.1 and 1.3 of the document available from <http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/ecis/chapter1.pdf?view=Binary>.

<sup>33</sup> HvJ EG 2003, case C-109/01, *Akrich*, I-09607, available from [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/c\\_275/c\\_27520031115en00090009.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/c_275/c_27520031115en00090009.pdf).

(nationality, gender, type and age) for both the dependants and sponsor. Whilst it was possible to provide at least some data in this respect on the dependant, this was not normally the case for the sponsor. In fact, only **Romania** could provide information on the nationality of the sponsor also, whilst **Germany** and **Latvia** could provide some information relating to whether the sponsor was a third country or EU-national. Data on refugee family reunification is also limited, with, for example, the **Netherlands** not recording such data, but it is available in the **United Kingdom**.

### **5.1 Family reunification statistics in the Member States**

For **Estonia**, the majority of temporary residence permits are issued for settling with a spouse or close relative, most of whom have Russian or Ukrainian nationality. In 2003 an increase was observed for these nationalities as a result of the entering into force of the *Aliens Act*, which then excluded them from the national immigration quota, instead they were registered as entering via family reunification. Likewise in **Latvia**, it is mainly nationals of (in descending order) Russia, Ukraine and Belarus entering for family reunification purposes and primarily spouses.

The general trend in **Austria** in the total number of first-time issued residence permits, to both sponsors and their dependants, has been declining during the reference period 2002-2006. In 2002, a total of 65 967 permits were issued, which peaked at 69 969 in 2003 and then steadily decreased to 22 966 in 2006. The most evident reason for this significant decline is the adoption of the Aliens' Law Package in 2005, in particular the *Settlement and Residence Act*. In 2006, of the 16 200 residence entitlements granted, 15 539 (or 96%) were issued as settlement permits to third country national dependants. The sponsors for 9 739 of these settlement permits were nationals of Austria plus other EU/EEA and Swiss nationals (not having exercised their right to free movement), and, for the remaining 5 800, the sponsors were third-country nationals. Third country national dependants, the majority of whom are women entering as spouses, primarily come from Serbia, Turkey, Bosnia-Herzegovina, Croatia and Macedonia. If one considers 'key professionals' only, then the main countries of origin are Korea, India, Russia and U.S.A.

The number of visas granted for the purpose of family reunification in **Germany** reached a peak of 85 305 in 2002 and has since then been steadily declining, falling from this peak by 41% in 2006. The majority of dependants are from Turkey, followed by Russia, Serbia and Montenegro and Thailand. There is also a relatively large number from Japan and the U.S.A. For Turkey, it is primarily for wives to join their third country national husbands, whilst for Russia and Thailand,

it is for wives to join their German national husband. Since 2000, the number of reunifications with German spouses has exceeded that of reunifications with third country nationals in absolute terms. Overall, the share of spouses who joined their German husbands or wives in total family reunification rose from 27.9% in 1996 to 45.1% in 2006. During the same period the share of spouses who joined their foreign husbands or wives in total subsequent immigration declined from about 50% to roughly one-third. This development is partially due to higher naturalisation figures and reunification of dependants with ethnic German resettlers. Since 2003, wives who joined their German husbands have been the largest group of subsequent immigrants, with a share of 28% in 2006. Wives who joined their third country national husband accounted for 26.2%. The share of children in total family reunification migration remained roughly constant between 1996 and 2006, hovering between 20% and 25%, a disproportionate share coming from Brazil and Ukraine.

Current trends in **Greece** estimate that there would be approximately 20 000 applications for family reunification per year, although it has been observed that after a regularisation programme, there is an increase in such applications. Nationals of Albania are by far the largest group of dependants, representing, on average, 84% of the total, whilst there are increasing numbers from India, Egypt and Syria. Most dependants are women, typically 80%, which is considered to be primarily a result of wives joining their husbands who previously entered to take up employment. An exception is for elderly (over 66 years) Albanian men, most of whom entered in 2002.

A significant decrease in the number of applications occurred in the **Netherlands** in 2006 in comparison to 2005. There is an indication that this is primarily as a result of the entering into force of the *Integration Abroad Act* in March 2006, although a sufficient period of time is required to fully verify this and there has been an overall decrease in total immigration in recent years. Another factor may be the increase in the age requirement to 21 years or more for *family formation*, which saw applications in the age category 18-21 years fall to almost zero in 2006. For the two years in which reliable data are available (2005 and 2006 only), most residence permits are granted for family reunification purposes (54% in 2005 and 62% in 2006). For both *family reunification* and *family formation*, nationals of Turkey and Morocco constitute by far the highest numbers, although there are also significant numbers from Surinam and the U.S.A., and most

dependants (>60%) are women. A marked increase in 'unknown' nationalities, which are mainly children, particularly below the age of 12 years, who wish to join their parents, is also observed.

Most sponsors applying for family reunification in **Romania** in 2005 and 2006 came from the Middle East and Asia, as well as Russia. Nationals from Turkey, China and Iraq made up 53% of the total applications (1 076) in 2006. It is the same situation when one looks at the nationalities of the dependants, although they are mainly females (>65% of the total), whilst the sponsors are predominantly male (>90%). Almost 50% of dependants were children with, for example, 506 applications for family reunification submitted in 2006. Currently, family reunification represents some 10.7% of the total immigration into Romania, although it is observed to be increasing.

Some 96 445 dependants from third countries immigrated into **Sweden** for family reunification purposes (family ties in a broad sense including reunification, family formation, common household and adoption) during the period 2002-2006, which represents 56% of the total immigration of third country nationals. The most common nationalities were from Iraq and Thailand, followed by Turkey, Serbia and Montenegro and China. The number of decisions (also including the broad category of family ties) peaked in 2003 (30 451) and in 2006 (32 182), which is primarily related to the granting of asylum to Iraqi nationals and, for the latter year, also to the introduction of a temporary asylum law. During the period 2002 – 2006, approximately 60% of all dependants were adult women. Among the dependants from Thailand and China, 80% were women, of which for China, half were children. A significant fraction (75%) of dependants from Russia were also women.

The total number of applications for family reunification entry clearance in the **United Kingdom** decreased by 12% from 22 061 in 2004 to 19 355 in 2006, whilst the number of refusals increased both in number and proportion (from 2 450 (12%) in 2004 to 3 704 (19%) in 2006). It is likely that this is owing to a combination of factors such as the improvement in DNA testing and a decrease in asylum applicants. Women entering as spouses (including unmarried and civil partners) made up the most significant proportion of dependants, representing some 45% of the total grants of settlement over the period 2002 to 2006, followed by husbands (including unmarried and civil partners) at 26% and children (15%), the remaining 14% consisting of parents, grandparents, other and unspecified dependants. Most dependants are nationals of India, Somalia and Pakistan, although, like for **Germany** and the **Netherlands**, there is an increasing

number of U.S.A. nationals which, in 2006, was 1 484, more than India (1 373). The ties with Commonwealth countries and the existing diaspora accounts for a significant fraction of the dependants' countries of origin and, in the case of Somali, this is related to asylum applicants. A significant increase in asylum-related grants occurred in 2004 and 2005 as a result of the launch of the *Family ILR Exercise*<sup>34</sup> and the change in immigration rules in 2003.

## **5.2 Comparative overview of family reunification**

Whilst it is not the purpose of this Synthesis Report to present again the available data, it is worthwhile to provide in the following Table 1 an indicative overview of the scale of the family reunification during 2006. Owing to incompleteness of the data for some Member States for the whole period 2002 to 2006 it is not possible to highlight trends at EU-level. However, some general comparative observations on these data are given.

Whilst no clear trends can be seen in the total number of applications for family reunification between Member States, in comparison to the total population of a Member State, **Sweden**, followed by **Latvia** and the **Netherlands**, have the largest proportion of family reunification applications per head of population, with the lowest being for **Romania**. With regard to the composition of the dependants, children and adult women who, as indicated in the previous section, are primarily spouses, are by far the largest proportion for all Member States for which data are available. This reflects the classic pattern of third country national men initially migrating to the EU and then, once established, being reunited with their family. Looking at the main third country nationality of the dependants, they primarily mirror the structure of the historically grown migrant populations (e.g. former guest workers, refugees, colonial migration), the main ones being Turkey, the Balkan states and from the Middle East.

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<sup>34</sup> Launched in October 2003 in order to allow certain asylum-seeking families who had been in the United Kingdom for four or more years to obtain settlement. See <http://www.homeoffice.gov.uk/about-us/freedom-of-information/released-information/foi-archive-immigration/3555-Family-Indefinite-Leave-?view=Html>.

Year: 2006

Category <sup>0</sup>	Austria <sup>1</sup>	Estonia <sup>2</sup>	Germany <sup>3</sup>	Greece <sup>4</sup>	Latvia <sup>5</sup>	Netherlands <sup>6</sup>	Romania <sup>7</sup>	Sweden <sup>8</sup>	United Kingdom <sup>9</sup>
Applications [as % of Total Immigration applications]	N/A	1 327 (29.6%)	50 300 <sup>a</sup>	12 678	4 536 (30%)	32 067 (20 737) (40%)	1 076 (10.7%)	29 420 (43%) <sup>a</sup>	19 355 (19%)
Refused	N/A	142 <sup>a</sup>	N/A	123	<10	3 869 <sup>a</sup>	182	7 370 <sup>b</sup>	3 704
<b>Dependant</b>									
Adult Men	568	N/A	12 334	161	N/A	4 381 (1 235)	88	6 474	N/A <sup>a</sup>
Adult Women	1 843	N/A	27 251	5 162	N/A	10 958 (3 685)	482	10 585	N/A <sup>a</sup>
Children	3 561	N/A	10 175	7 355 (4 080 male)	N/A	12 353 (12 324)	506	5 564 (2 742 male)	9 529 (4 069 for asylum)
Main third country nationality of dependants	Serbia (1 745)	Russia (1 211) <sup>b</sup>	Turkey <sup>b</sup> (10 195)	Albania (10 092)	Russia (2 318)	Turkey (3 673) [2 011]	Turkey (273)	Iraq (2 500)	Pakistan (2 567)
	Turkey (1 535)	Unknown (412) <sup>b</sup>	Serbia & Montenegro (5 106)	Bulgaria (532)	Ukraine (768)	Morocco (3 355) [2 205]	China (194)	Thailand (2 207)	Somalia (2 198)
	Bosnia- Herzegovina (719)	Ukraine (269) <sup>b</sup>	Russia <sup>b</sup> (4 771)	India (410)	Belarus (536)	Unknown (1 913) [1 887]	Iraq (103)	Turkey (1 174)	U.S.A. (1 484)
	Croatia (567)	U.S.A. (51) <sup>b</sup>	U.S.A (2 178)	Romania (272)	Israel (125)	U.S.A (1 121) [862]	Lebanon (57)	Serbia & Montenegro (1 440)	India (1 373)
	Macedonia (293)	Armenia (47) <sup>b</sup>	Thailand <sup>b</sup> (1 970)	Syria (190)	Armenia (92)	Surinam (1 033) [409]	Syria (43)	China (905)	Bulgaria (1 129)

**Table 1: Overview of family reunification statistics for the reference year 2006**

Notes:

0. Applications refers to the number of applications made in the year 2006, with the % figure in brackets indicating how this compares to the Total Immigration Applications in the same year. The rest of the data in the Table are, unless otherwise stated below, for *positive decisions made*, with Dependants nominally referring to third-country nationals but, in some cases, this may include also other EU-27 nationals. For Adults this includes entry to join a spouse and, in some cases, adult other dependants, e.g. grandparents. The vast majority of adults were in the Age range 21 to 65 years for all Member States. Children refer to persons below 18 years of age nominally to join their parent(s) or as unaccompanied minors.
1. **Austria:** Data presented on basis of Settlement Permits (including quota-free settlement permits), which provide for long-term settlement. The Austrian Ministry of Interior publishes applications for residence titles broken down by the categories "first applications"; "applications for renewals" and "applications to change the type of the permit". These data do not distinguish the purpose of permit (e.g. "family reunification"; "key professionals"; etc.). The breakdown into adult/children are estimations, as the break down into age groups did not allow for exact calculations.
  2. **Estonia:** Data provided by Citizenship and Migration Board Development Department. <sup>a</sup> This is an estimate as decisions made from 2005 are included and it does not include decisions made in 2007 for applications made in 2006 because there is three month period from application to decision; <sup>b</sup> These data include both reunification with a spouse and with a close relative (not spouse).
  3. **Germany:** Data presented on basis on Visa Statistics, i.e. only counts persons granted a Visa. <sup>a</sup> The total number of visas granted includes 16 888 spouses joining their non-EU Member State national partner plus 22 697 spouses joining their German partner. <sup>b</sup> With regard to nationalities, for Turkey there were more women (4 123) who joined their non-EU Member State national partner than men (2 774) joining their German national partner. By contrast, for Russia and Thailand, the number of women (2 194 and 2 146 respectively) joining their German national partner far outweighs that of any other family members.
  4. **Greece:** The number of applications for Initial Residence Permit data are used.
  5. **Latvia:** Figures presented are based on Temporary Residence Permits issued in 2006.
  6. **Netherlands:** Total figures include both *family formation* and *family reunification*, with number for the latter also given in brackets. There were in total 21 753 (11 491 for reunification) regular residence permits issued for family members to join a non-EU Member State national sponsor and 4 027 (3 866 for reunification) to join an EU Member State national. <sup>a</sup> A further 1 282 were withdrawn, dismissed or not considered.
  7. **Romania:** Data provided from Integrated System for Migration, Asylum and Visas. Exists for 2005 and 2006 only.
  8. **Sweden:** The 29 420 applications were for *family ties*, which includes 77% (approx. 22 653) for family formation and reunification, and the remainder being for applications based on household community and adoptions. <sup>a</sup> The % figure is calculated on basis of immigration for the purpose of family ties; <sup>b</sup> In 2006 a total of 32 182 decisions were made, of which 7 370 were rejections, indicating a "refusal rate" of 23%.
  9. **United Kingdom:** Entry Clearance data are used. <sup>a</sup> Whilst not possible to provide this from Entry Clearance data, for all applications (including children) 11 743 (or 60.7%) were Female and 7 607 (39.3%) were male. On the basis of Grants of settlement, in 2006, at least 45.5% were adult women and at least 26% were adult men. There exists a further 13% (for parents, grandparents, unspecified) for which a breakdown by gender is not possible.

## **6. CONCLUDING REMARKS**

In this Chapter, certain elements of family reunification policy and practice, arising from the main findings of the study and which might be considered in any further development of family reunification policy, are highlighted.

Those Member States who have transposed the directive into national legislation, generally did not require major changes to their national legislation, primarily because the development at national level occurred before and/or in parallel to the development of the directive, thereby already ensuring, to some extent, consistency with the directive during its negotiation. For the EU-10+2 Member States, this can also be seen in the context of acquiring the asylum-immigration acquis as part of the accession process. Even in the case where the directive was not incorporated into national legislation, its policies and operations are generally consistent. In some cases, other changes in national legislation, indirectly linked with family reunification (e.g. integration measures, raising of age limit) also occurred at the same time. Subsequently it could be argued that the relatively rapid and widespread transposition of the directive occurred because it was not too dissimilar from existing or planned national legislation. In turn, the parallel development of national legislation determined, to some extent, the negotiating stance taken by Member States during the directive's passage to adoption.

Whilst, on the whole, the obligatory "shall" clauses in the directive have been transposed, there are different approaches between the Member States in connection to the optional "may" clauses. [Table 2](#) provides an indicative overview on which Member States have adopted such "may" clauses, although there are differences in the manner in which they have been adopted, as outlined in the previous chapter(s) and Country Study reports. The purpose of the table, therefore, is only to provide some indication as to which Member States have incorporated, in some way, an optional "may" clause. Note that **Greece** has not transposed the clauses relating to refugees (Articles 9 to 12 inclusive) and that the **United Kingdom** exercised its right to opt out of this directive. The currently open issue under debate in the **Netherlands** as to the legality of not incorporating a "may" clause but instead introducing alternative, but related, legislation is also worth highlighting.

Even though the Directive does not apply to reunification with an EU Member State national ([Article 3\(3\)](#)), nevertheless this has been shown to be an increasingly important aspect for some

"May" Article	Adopted by	Not adopted
<a href="#">4(2a)</a> : first-degree relatives	<b>Austria, Estonia, Germany, Romania, Sweden</b>	<b>Greece, Latvia, Netherlands</b>
<a href="#">4(2b)</a> : adult unmarried children	When dependent on family: <b>Austria, Estonia, Germany, Greece, Latvia, Romania, Sweden</b>	<b>Netherlands</b>
<a href="#">4(3)</a> : unmarried other dependants	<b>Austria, Estonia, Germany, Netherlands, Sweden</b>	<b>Greece, Latvia, Romania</b>
<a href="#">4(4, 2<sup>nd</sup> para)</a> : minor child of further spouse	<b>Austria, Estonia, Germany, Greece, Latvia, Romania, Sweden</b>	<b>Netherlands</b>
<a href="#">4(5)</a> : forced marriages	<b>Austria, Germany, Greece, Latvia, Netherlands</b>	<b>Estonia, Romania, Sweden,</b>
<a href="#">4(6)</a> : age limit for child	None	<b>Austria, Estonia, Germany, Greece, Latvia, Romania, Netherlands, Sweden</b>
<a href="#">5(3)</a> : application	<b>Austria, Germany, Latvia, Netherlands, Estonia, Greece</b> (primarily for highly-qualified sponsors), <b>Sweden</b>	<b>Romania</b>
<a href="#">6(1)</a> : rejection	<b>Austria, Estonia, Germany, Greece, Latvia, Romania, Netherlands, Sweden</b>	None
<a href="#">6(2)</a> : withdrawal	<b>Austria, Estonia, Germany, Greece, Latvia, Romania, Netherlands, Sweden</b>	None
<a href="#">7(1)</a> : material support	<b>Austria, Estonia, Germany, Greece, Latvia, Romania, Netherlands</b>	<b>Sweden</b> For other Member States, for certain categories (e.g. highly-qualified, refugees)
<a href="#">7(2)</a> : integration	<b>Austria, Germany, Estonia</b> (as of June 2007), <b>Latvia, Netherlands</b>	<b>Greece, Romania, Sweden</b>
<a href="#">8</a> : period of residence	<b>Austria, Estonia, Germany, Greece, Romania, Netherlands</b>	<b>Latvia, Sweden</b>
<a href="#">9(2)</a> : predated relationships	<b>Austria, Germany, Netherlands</b>	<b>Estonia, Greece, Latvia, Romania, Sweden</b>
<a href="#">10(2)</a> : other dependants	<b>Estonia, Germany, Latvia, Romania, Sweden</b>	<b>Austria, Greece, Netherlands</b>
<a href="#">10(3b)</a> : unaccompanied minor's dependant(s)	<b>Austria, Estonia, Germany, Latvia, Romania, Sweden</b>	<b>Greece, Netherlands</b>
<a href="#">12(1, 2<sup>nd</sup> para)</a> : provision of evidence	<b>Netherlands</b>	<b>Austria, Estonia, Germany, Greece, Latvia, Romania, Sweden</b>
<a href="#">12(1, 3<sup>rd</sup> para)</a> : submission within 3 months	<b>Germany, Netherlands</b>	<b>Austria, Estonia, Greece, Latvia, Romania, Sweden</b>
<a href="#">14(2)</a> : access to employment	<b>Austria, Estonia, Germany, Greece, Latvia, Romania, Netherlands, Sweden</b> ( <i>de facto</i> as covered by existing regulations)	None
<a href="#">14(3)</a> : dependant restrictions	<b>Austria, Estonia, Germany, Greece, Latvia, Romania, Netherlands, Sweden</b> ( <i>de facto</i> as covered by existing regulations)	None
<a href="#">15(1, 2<sup>nd</sup> para)</a> : relationship breakdown	Exceptional cases only: <b>Austria, Estonia, Germany, Greece, Latvia, Netherlands, Romania, Sweden</b>	None
<a href="#">15(2)</a> : autonomous residence permit	After five years: <b>Austria, Estonia, Germany, Greece, Latvia, Romania, Netherlands, Sweden</b>	None
<a href="#">15(3)</a> : widowhood, divorce, etc.	<b>Austria, Estonia, Germany, Greece, Latvia</b> (exceptional cases only), <b>Romania, Netherlands, Sweden</b>	<b>Germany</b> (2 <sup>nd</sup> sentence of Article referring to first-degree relatives in ascending and descending line)
<a href="#">16(1)</a> : rejection	<b>Austria, Estonia, Germany, Greece, Latvia, Romania, Netherlands, Sweden</b>	None
<a href="#">16(2)</a> : rejection in cases of falsification	<b>Austria, Estonia, Germany, Greece, Latvia, Romania, Netherlands, Sweden</b>	None
<a href="#">16(3)</a> : withdrawal	<b>Austria, Estonia, Germany, Greece, Latvia, Romania, Netherlands, Sweden</b>	None
<a href="#">16(4)</a> : checks	<b>Austria, Estonia, Germany, Greece, Latvia, Romania, Sweden, Netherlands</b>	None

**Table 2: Indicative overview of whether the eight Member States, covered by this study and who have transposed the Family Reunification Directive 2003/86/EC, have incorporated also the optional "may" clauses**

Member States. In some cases, the number of third country nationals entering the EU for reunification with an EU Member State national is the same as or higher than the number of third country nationals reunifying in the EU with their third country national sponsor. Inconsistencies in the requirements for entry have also been demonstrated which, in the worst case, results in a national of a particular Member State being at a disadvantage when compared to other EU/EEA or third country nationals.

Another aspect highlighted is the practice for arranging a marriage of convenience, which demonstrates how legislation can be bypassed. Regarding forced marriages, it is inherently difficult to demonstrate the direct effect that enforcing a minimum age limit has on reducing them. At this stage, therefore, it is too early to conclude whether having a minimum age limit by itself has had a positive impact. At least it can be stated that in the **Netherlands**, the increase of the minimum age to 21 years has had its expected direct effect of dramatically reducing *family formation* involving spouses in the 18 to 21 years range. An evaluation in due course of this policy change could then give some indication as to whether or not it contributed to reducing forced marriages. At EU level, the use of the so-called *Belgian Route*, highlights how the different practices between Member States can be used to advantage by a sponsor (including an EU/EEA and/or third country national) wishing to facilitate access to a dependant, whether for legitimate purposes or not.

Finally, the available statistical data quantifies, to the extent possible, the scale of this legal migration route, which does represent a significant proportion in each Member State. Despite this, however, no clear trends at EU level can be observed in the development of family reunification, in part owing to the lack of extensive data over a number of years, including data on the sponsor. In most cases, only data on the (non-refugee) dependants could be provided and primarily for the years 2005 and 2006, with children and adult women (primarily spouses) making up by far the largest proportion of dependants. In terms of nationality of the dependants, this tends to mirror the structure of the historical migrant populations (e.g. former guest workers, refugees, colonial migration), the main countries of nationality being Turkey, the Balkan states and from the Middle East. Clearly, in order to understand better the impact and/or causal connection that the introduction of any legislation might have, more consistent data are required, in order *inter alia* to permit better comparison between Member States.

## **Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification**

*Official Journal L 251 , 03/10/2003 P. 0012 - 0018*

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(a) thereof,

Having regard to the proposal from the Commission(1),

Having regard to the opinion of the European Parliament(2),

Having regard to the opinion of the European Economic and Social Committee(3),

Having regard to the opinion of the Committee of the Regions(4),

Whereas:

(1) With a view to the progressive establishment of an area of freedom, security and justice, the Treaty establishing the European Community provides both for the adoption of measures aimed at ensuring the free movement of persons, in conjunction with flanking measures relating to external border controls, asylum and immigration, and for the adoption of measures relating to asylum, immigration and safeguarding the rights of third country nationals.

(2) Measures concerning family reunification should be adopted in conformity with the obligation to protect the family and respect family life enshrined in many instruments of international law. This Directive respects the fundamental rights and observes the principles recognised in particular in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the Charter of Fundamental Rights of the European Union.

(3) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, acknowledged the need for harmonisation of national legislation on the conditions for admission and residence of third country nationals. In this context, it has in particular stated that the European Union should ensure fair treatment of third country nationals residing lawfully on the territory of the Member States and that a more vigorous integration policy should aim at granting them rights and obligations comparable to those of citizens of the European Union. The European Council accordingly asked the Council rapidly to adopt the legal instruments on the basis of Commission proposals. The need for achieving the objectives defined at Tampere have been reaffirmed by the Laeken European Council on 14 and 15 December 2001.

(4) Family reunification is a necessary way of making family life possible. It helps to create sociocultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in the Treaty.

(5) Member States should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.

(6) To protect the family and establish or preserve family life, the material conditions for exercising the right to family reunification should be determined on the basis of common criteria.

(7) Member States should be able to apply this Directive also when the family enters together.

(8) Special attention should be paid to the situation of refugees on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there. More favourable conditions should therefore be laid down for the exercise of their right to family reunification.

(9) Family reunification should apply in any case to members of the nuclear family, that is to say the spouse and the minor children.

(10) It is for the Member States to decide whether they wish to authorise family reunification for relatives in the direct ascending line, adult unmarried children, unmarried or registered partners as well as, in the event of a polygamous marriage, minor children of a further spouse and the sponsor. Where a Member State authorises family reunification of these persons, this is without prejudice of the possibility, for Member States which do not recognise the existence of family ties in the cases covered by this provision, of not granting to the said persons the treatment of family members with regard to the right to reside in another Member State, as defined by the relevant EC legislation.

(11) The right to family reunification should be exercised in proper compliance with the values and principles recognised by the Member States, in particular with respect to the rights of women and of children; such compliance justifies the possible taking of restrictive measures against applications for family reunification of polygamous households.

(12) The possibility of limiting the right to family reunification of children over the age of 12, whose primary residence is not with the sponsor, is intended to reflect the children's capacity for integration at early ages and shall ensure that they acquire the necessary education and language skills in school.

(13) A set of rules governing the procedure for examination of applications for family reunification and for entry and residence of family members should be laid down. Those procedures should be effective and manageable, taking account of the normal workload of the Member States' administrations, as well as transparent and fair, in order to offer appropriate legal certainty to those concerned.

(14) Family reunification may be refused on duly justified grounds. In particular, the person who wishes to be granted family reunification should not constitute a threat to public policy or public security. The notion of public policy may cover a conviction for committing a serious crime. In this context it has to be noted that the notion of public policy and public security covers also cases in which a third country national belongs to an association which supports terrorism, supports such an association or has extremist aspirations.

(15) The integration of family members should be promoted. For that purpose, they should be granted a status independent of that of the sponsor, in particular in cases of breakup of marriages and partnerships, and access to education, employment and vocational training on the same terms as the person with whom they are reunited, under the relevant conditions.

(16) Since the objectives of the proposed action, namely the establishment of a right to family reunification for third country nationals to be exercised in accordance with common rules, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved by the Community, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(17) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community and without prejudice to Article 4 of the said Protocol these Member States are not participating in the adoption of this Directive and are not bound by or subject to its application.

(18) In accordance with Article 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of this Directive, and is not bound by it or subject to its application,

HAS ADOPTED THIS DIRECTIVE:

## **CHAPTER I General provisions**

### **Article 1**

The purpose of this Directive is to determine the conditions for the exercise of the right to family reunification by third country nationals residing lawfully in the territory of the Member States.

### **Article 2**

For the purposes of this Directive:

(a) "third country national" means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;

(b) "refugee" means any third country national or stateless person enjoying refugee status within the meaning of the Geneva Convention relating to the status of refugees of 28 July 1951, as amended by the Protocol signed in New York on 31 January 1967;

(c) "sponsor" means a third country national residing lawfully in a Member State and applying or whose family members apply for family reunification to be joined with him/her;

(d) "family reunification" means the entry into and residence in a Member State by family members of a third country national residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident's entry;

(e) "residence permit" means any authorisation issued by the authorities of a Member State allowing a third country national to stay legally in its territory, in accordance with the provisions of Article 1(2)(a) of Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third country nationals(5);

(f) "unaccompanied minor" means third country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they entered the territory of the Member States.

### Article 3

1. This Directive shall apply where the sponsor is holding a residence permit issued by a Member State for a period of validity of one year or more who has reasonable prospects of obtaining the right of permanent residence, if the members of his or her family are third country nationals of whatever status.

2. This Directive shall not apply where the sponsor is:

- (a) applying for recognition of refugee status whose application has not yet given rise to a final decision;
- (b) authorised to reside in a Member State on the basis of temporary protection or applying for authorisation to reside on that basis and awaiting a decision on his status;
- (c) authorised to reside in a Member State on the basis of a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States or applying for authorisation to reside on that basis and awaiting a decision on his status.

3. This Directive shall not apply to members of the family of a Union citizen.

4. This Directive is without prejudice to more favourable provisions of:

- (a) bilateral and multilateral agreements between the Community or the Community and its Member States, on the one hand, and third countries, on the other;
- (b) the European Social Charter of 18 October 1961, the amended European Social Charter of 3 May 1987 and the European Convention on the legal status of migrant workers of 24 November 1977.

5. This Directive shall not affect the possibility for the Member States to adopt or maintain more favourable provisions.

## CHAPTER II Family members

### Article 4

1. The Member States shall authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, as well as in Article 16, of the following family members:

- (a) the sponsor's spouse;
- (b) the minor children of the sponsor and of his/her spouse, including children adopted in accordance with a decision taken by the competent authority in the Member State concerned or a decision which is automatically enforceable due to international obligations of that Member State or must be recognised in accordance with international obligations;
- (c) the minor children including adopted children of the sponsor where the sponsor has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement;
- (d) the minor children including adopted children of the spouse where the spouse has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement.

The minor children referred to in this Article must be below the age of majority set by the law of the Member State concerned and must not be married.

By way of derogation, where a child is aged over 12 years and arrives independently from the rest of his/her family, the Member State may, before authorising entry and residence under this Directive, verify whether he or she meets a condition for integration provided for by its existing legislation on the date of implementation of this Directive.

2. The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the following family members:

(a) first-degree relatives in the direct ascending line of the sponsor or his or her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin;

(b) the adult unmarried children of the sponsor or his or her spouse, where they are objectively unable to provide for their own needs on account of their state of health.

3. The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the unmarried partner, being a third country national, with whom the sponsor is in a duly attested stable long-term relationship, or of a third country national who is bound to the sponsor by a registered partnership in accordance with Article 5(2), and of the unmarried minor children, including adopted children, as well as the adult unmarried children who are objectively unable to provide for their own needs on account of their state of health, of such persons.

Member States may decide that registered partners are to be treated equally as spouses with respect to family reunification.

4. In the event of a polygamous marriage, where the sponsor already has a spouse living with him in the territory of a Member State, the Member State concerned shall not authorise the family reunification of a further spouse.

By way of derogation from paragraph 1(c), Member States may limit the family reunification of minor children of a further spouse and the sponsor.

5. In order to ensure better integration and to prevent forced marriages Member States may require the sponsor and his/her spouse to be of a minimum age, and at maximum 21 years, before the spouse is able to join him/her.

6. By way of derogation, Member States may request that the applications concerning family reunification of minor children have to be submitted before the age of 15, as provided for by its existing legislation on the date of the implementation of this Directive. If the application is submitted after the age of 15, the Member States which decide to apply this derogation shall authorise the entry and residence of such children on grounds other than family reunification.

### **CHAPTER III Submission and examination of the application**

#### **Article 5**

1. Member States shall determine whether, in order to exercise the right to family reunification, an application for entry and residence shall be submitted to the competent authorities of the Member State concerned either by the sponsor or by the family member or members.

2. The application shall be accompanied by documentary evidence of the family relationship and of compliance with the conditions laid down in Articles 4 and 6 and, where applicable, Articles 7 and 8, as well as certified copies of family member(s)' travel documents.

If appropriate, in order to obtain evidence that a family relationship exists, Member States may carry out interviews with the sponsor and his/her family members and conduct other investigations that are found to be necessary.

When examining an application concerning the unmarried partner of the sponsor, Member States shall consider, as evidence of the family relationship, factors such as a common child, previous cohabitation, registration of the partnership and any other reliable means of proof.

3. The application shall be submitted and examined when the family members are residing outside the territory of the Member State in which the sponsor resides.

By way of derogation, a Member State may, in appropriate circumstances, accept an application submitted when the family members are already in its territory.

4. The competent authorities of the Member State shall give the person, who has submitted the application, written notification of the decision as soon as possible and in any event no later than nine months from the date on which the application was lodged.

In exceptional circumstances linked to the complexity of the examination of the application, the time limit referred to in the first subparagraph may be extended.

Reasons shall be given for the decision rejecting the application. Any consequences of no decision being taken by the end of the period provided for in the first subparagraph shall be determined by the national legislation of the relevant Member State.

5. When examining an application, the Member States shall have due regard to the best interests of minor children.

## **CHAPTER IV Requirements for the exercise of the right to family reunification**

### **Article 6**

1. The Member States may reject an application for entry and residence of family members on grounds of public policy, public security or public health.
2. Member States may withdraw or refuse to renew a family member's residence permit on grounds of public policy or public security or public health.

When taking the relevant decision, the Member State shall consider, besides Article 17, the severity or type of offence against public policy or public security committed by the family member, or the dangers that are emanating from such person.

3. Renewal of the residence permit may not be withheld and removal from the territory may not be ordered by the competent authority of the Member State concerned on the sole ground of illness or disability suffered after the issue of the residence permit.

### **Article 7**

1. When the application for family reunification is submitted, the Member State concerned may require the person who has submitted the application to provide evidence that the sponsor has:

(a) accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State concerned;

(b) sickness insurance in respect of all risks normally covered for its own nationals in the Member State concerned for himself/herself and the members of his/her family;

(c) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members.

2. Member States may require third country nationals to comply with integration measures, in accordance with national law.

With regard to the refugees and/or family members of refugees referred to in Article 12 the integration measures referred to in the first subparagraph may only be applied once the persons concerned have been granted family reunification.

### **Article 8**

Member States may require the sponsor to have stayed lawfully in their territory for a period not exceeding two years, before having his/her family members join him/her.

By way of derogation, where the legislation of a Member State relating to family reunification in force on the date of adoption of this Directive takes into account its reception capacity, the Member State may provide for a waiting period of no more than three years between submission of the application for family reunification and the issue of a residence permit to the family members.

## **CHAPTER V Family reunification of refugees**

### **Article 9**

1. This Chapter shall apply to family reunification of refugees recognised by the Member States.
2. Member States may confine the application of this Chapter to refugees whose family relationships predate their entry.
3. This Chapter is without prejudice to any rules granting refugee status to family members.

### **Article 10**

1. Article 4 shall apply to the definition of family members except that the third subparagraph of paragraph 1 thereof shall not apply to the children of refugees.

2. The Member States may authorise family reunification of other family members not referred to in Article 4, if they are dependent on the refugee.

3. If the refugee is an unaccompanied minor, the Member States:

(a) shall authorise the entry and residence for the purposes of family reunification of his/her first-degree relatives in the direct ascending line without applying the conditions laid down in Article 4(2)(a);

(b) may authorise the entry and residence for the purposes of family reunification of his/her legal guardian or any other member of the family, where the refugee has no relatives in the direct ascending line or such relatives cannot be traced.

#### **Article 11**

1. Article 5 shall apply to the submission and examination of the application, subject to paragraph 2 of this Article.

2. Where a refugee cannot provide official documentary evidence of the family relationship, the Member States shall take into account other evidence, to be assessed in accordance with national law, of the existence of such relationship. A decision rejecting an application may not be based solely on the fact that documentary evidence is lacking.

#### **Article 12**

1. By way of derogation from Article 7, the Member States shall not require the refugee and/or family member(s) to provide, in respect of applications concerning those family members referred to in Article 4(1), the evidence that the refugee fulfils the requirements set out in Article 7.

Without prejudice to international obligations, where family reunification is possible in a third country with which the sponsor and/or family member has special links, Member States may require provision of the evidence referred to in the first subparagraph.

Member States may require the refugee to meet the conditions referred to in Article 7(1) if the application for family reunification is not submitted within a period of three months after the granting of the refugee status.

2. By way of derogation from Article 8, the Member States shall not require the refugee to have resided in their territory for a certain period of time, before having his/her family members join him/her.

### **CHAPTER VI Entry and residence of family members**

#### **Article 13**

1. As soon as the application for family reunification has been accepted, the Member State concerned shall authorise the entry of the family member or members. In that regard, the Member State concerned shall grant such persons every facility for obtaining the requisite visas.

2. The Member State concerned shall grant the family members a first residence permit of at least one year's duration. This residence permit shall be renewable.

3. The duration of the residence permits granted to the family member(s) shall in principle not go beyond the date of expiry of the residence permit held by the sponsor.

#### **Article 14**

1. The sponsor's family members shall be entitled, in the same way as the sponsor, to:

(a) access to education;

(b) access to employment and self-employed activity;

(c) access to vocational guidance, initial and further training and retraining.

2. Member States may decide according to national law the conditions under which family members shall exercise an employed or self-employed activity. These conditions shall set a time limit which shall in no case exceed 12 months, during which Member States may examine the situation of their labour market before authorising family members to exercise an employed or self-employed activity.

3. Member States may restrict access to employment or self-employed activity by first-degree relatives in the direct ascending line or adult unmarried children to whom Article 4(2) applies.

**Article 15**

1. Not later than after five years of residence, and provided that the family member has not been granted a residence permit for reasons other than family reunification, the spouse or unmarried partner and a child who has reached majority shall be entitled, upon application, if required, to an autonomous residence permit, independent of that of the sponsor.

Member States may limit the granting of the residence permit referred to in the first subparagraph to the spouse or unmarried partner in cases of breakdown of the family relationship.

2. The Member States may issue an autonomous residence permit to adult children and to relatives in the direct ascending line to whom Article 4(2) applies.

3. In the event of widowhood, divorce, separation, or death of first-degree relatives in the direct ascending or descending line, an autonomous residence permit may be issued, upon application, if required, to persons who have entered by virtue of family reunification. Member States shall lay down provisions ensuring the granting of an autonomous residence permit in the event of particularly difficult circumstances.

4. The conditions relating to the granting and duration of the autonomous residence permit are established by national law.

**CHAPTER VII Penalties and redress****Article 16**

1. Member States may reject an application for entry and residence for the purpose of family reunification, or, if appropriate, withdraw or refuse to renew a family member's residence permit, in the following circumstances:

(a) where the conditions laid down by this Directive are not or are no longer satisfied.

When renewing the residence permit, where the sponsor has not sufficient resources without recourse to the social assistance system of the Member State, as referred to in Article 7(1)(c), the Member State shall take into account the contributions of the family members to the household income;

(b) where the sponsor and his/her family member(s) do not or no longer live in a real marital or family relationship;

(c) where it is found that the sponsor or the unmarried partner is married or is in a stable long-term relationship with another person.

2. Member States may also reject an application for entry and residence for the purpose of family reunification, or withdraw or refuse to renew the family member's residence permits, where it is shown that:

(a) false or misleading information, false or falsified documents were used, fraud was otherwise committed or other unlawful means were used;

(b) the marriage, partnership or adoption was contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State.

When making an assessment with respect to this point, Member States may have regard in particular to the fact that the marriage, partnership or adoption was contracted after the sponsor had been issued his/her residence permit.

3. The Member States may withdraw or refuse to renew the residence permit of a family member where the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence under Article 15.

4. Member States may conduct specific checks and inspections where there is reason to suspect that there is fraud or a marriage, partnership or adoption of convenience as defined by paragraph 2. Specific checks may also be undertaken on the occasion of the renewal of family members' residence permit.

**Article 17**

Member States shall take due account of the nature and solidity of the person's family relationships and the duration of his residence in the Member State and of the existence of family, cultural and social ties with his/her country of origin where they reject an application, withdraw or refuse to renew a residence permit or decide to order the removal of the sponsor or members of his family.

### **Article 18**

The Member States shall ensure that the sponsor and/or the members of his/her family have the right to mount a legal challenge where an application for family reunification is rejected or a residence permit is either not renewed or is withdrawn or removal is ordered.

The procedure and the competence according to which the right referred to in the first subparagraph is exercised shall be established by the Member States concerned.

## **CHAPTER VIII Final provisions**

### **Article 19**

Periodically, and for the first time not later than 3 October 2007, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose such amendments as may appear necessary. These proposals for amendments shall be made by way of priority in relation to Articles 3, 4, 7, 8 and 13.

### **Article 20**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by not later than 3 October 2005. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or 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.

### **Article 21**

This Directive shall enter into force on the day of its publication in the Official Journal of the European Union.

### **Article 22**

This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 22 September 2003.

For the Council

The President

F. Frattini

(1) OJ C 116 E, 26.4.2000, p. 66, and OJ C 62 E, 27.2.2001, p. 99.

(2) OJ C 135, 7.5.2001, p. 174.

(3) OJ C 204, 18.7.2000, p. 40.

(4) OJ C 73, 26.3.2003, p. 16.

(5) OJ L 157, 15.6.2002, p. 1.